

BOARD OF TRUSTEES

Carmen. Hulu Lindsey, *Chairperson*Leina'ala Ahu Isa, *Vice Chairperson*

Dan Ahuna, Trustee Kaua'i & Ni'ihau

Kalei Akaka, Trustee O'ahu

Keli'i Akina, Trustee At-Large

Luana Alapa, Trustee Moloka'i & Lāna'i

Brendon Kalei'aina Lee, Trustee At-Large

Keola Lindsey, Trustee Hawai'i Island

John Waihe'e IV, Trustee At-Large



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS

MEETING OF THE BOARD OF TRUSTEES**DATE:** Thursday, June 24, 2021**TIME:** 1:30 pm**PLACE:** Virtual MeetingViewable at www.oha.org/livestream OR

Listen by phone: (213) 338-8477,

Webinar ID: 917 7098 6710

Due to the threat of COVID-19, Governor Ige issued the most recent Emergency Twenty First Supplementary Proclamation dated June 7, 2021 that suspends parts of Hawai'i Revised Statutes Chapter 92, Public Agency Meetings and Records to, among other things, enable boards to conduct business without any board members or members of the public physically present at the same location.

The OHA Board of Trustees will hold virtual meetings until further notice. The virtual meetings can be viewed and observed via livestream on OHA's website at www.oha.org/livestream or listen by phone: (213) 338-8477, Webinar ID: 917 7098 6710

AGENDA-AMENDED**I. Call to Order****II. Public Testimony** on Items Listed on the Agenda* (Please see page 1 & 2 on how to submit written testimony or provide oral testimony online. Oral testimony by phone will **not** be accepted)**III. Community Concerns and Celebrations***(Please see page 2 on how to submit written testimony or provide oral testimony online. Oral testimony by phone will **not** be accepted)**IV. New Business****1. Joint Committee on Beneficiary Advocacy and Empowerment (BAE) and the Committee on Resource Management**

- A. ACTION ITEM BAE-RM #21-09: Approve the Awarding of Budget Realignment #3 Unexpended Funds for a total of \$496,260 to the Iwi Kupuna Repatriation & Reinterment Grant, the Homestead Community Grant, the 'Ohana & Community Based Program Grant, and the COVID-19 Impact & Response Grant
- B. ACTION ITEM BAE-RM #21-07-01: Approve the Awarding of COVID-19 Impact and Response Grants, Island of O'ahu for a total of \$524,380 for Solicitation No. 21-04-01, Released March 2021
- C. ACTION ITEM BAE-RM #21-07-02: Approve the Awarding of COVID-19 Impact and Response Grants, Island of Hawai'i for a total of \$582,653 for Solicitation No. 21-04-02, Released March 2021
- D. ACTION ITEM BAE-RM #21-07-03: Approve the Awarding of COVID-19 Impact and Response Grants, Island of Maui for a total of \$335,994 for Solicitation No. 21-04-03, Released March 2021
- E. ACTION ITEM BAE-RM #21-07-04: Approve the Awarding of COVID-19 Impact and Response Grants, Island of Kaua'i for a total of \$169,537 for Solicitation No. 21-04-04, Released March 2021
- F. ACTION ITEM BAE-RM #21-07-05: Approve the Awarding of COVID-19 Impact and Response Grants, Islands of Moloka'i and Lāna'i for a total of \$55,042 Solicitations No. 21-04-05 and 21-04-06, respectively, Released March 2021

BOARD OF TRUSTEES

Carmen. Hulu Lindsey, *Chairperson*Leina'ala Ahu Isa, *Vice Chairperson*

Dan Ahuna, Trustee Kaua'i & Ni'ihau

Kalei Akaka, Trustee O'ahu

Keli'i Akina, Trustee At-Large

Luana Alapa, Trustee Moloka'i & Lāna'i

Brendon Kalei'āina Lee, Trustee At-Large

Keola Lindsey, Trustee Hawai'i Island

John Waihe'e IV, Trustee At-Large



STATE OF HAWAII

OFFICE OF HAWAIIAN AFFAIRS

- G. ACTION ITEM BAE-RM #21-08: Approve the Awarding of a Noncompetitive Grant for a total of \$4,186 to Administer the Ni'ihau FY2021'Ohana & Community Based Program Grant and FY2021 COVID- 19 Impact & Response Grant
- H. ACTION ITEM BAE-RM #21-10: Approve the Awarding and Reallocation of the Native Hawaiian Teacher Education & Professional Development Grants for a total of \$212,739 from Solicitation No. 21-06, Released March 2021
- I. ACTION ITEM BAE-RM #21-11: Approve the Awarding of Kūlia Grants, for a total of \$500,000, Solicitation No. 21-07, Released March 2021

2. Committee on Resource Management

- A. Action Item RM #21-07A: OHA Biennium Budget for the Fiscal Biennium Periods 2021-2022 (FY22) and 2022-2023 (FY23)
- B. Action Item RM #21-07B: OHA Biennium Budget for the Fiscal Biennium Periods 2021-2022 (FY22) and 2022-2023 (FY23), Fiscal Stabilization Policy

- 3. Accept the Report of the Permitted Interaction Group re: to Investigate and Recommend a Short List of Eligible Entities for Selection of a Development Consultant; Land and Commercial Property Policies; and the Development and Implementation of a Request for Proposal for a Community Planner, pursuant to HRS§92-2.5(b)(1)(C)

V. Executive Session†

- 1. Consultation with Board Counsel Robert G. Klein re: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities with respect to the Report of the Permitted Interaction Group re: to Investigate and Recommend a Short List of Eligible Entities for Selection of a Development Consultant; Land and Commercial Property Policies; and the Development and Implementation of a Request for Proposal for a Community Planner, pursuant to HRS§92-2.5(b)(1)(C) and HRS§92-5(4).
- 2. Consultation with Board Counsel Robert G. Klein re: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities with respect to the OHA Biennium Budget for the Fiscal Biennium Periods 2021-2022 (FY22) and 2022-2023 (FY23) and Fiscal Stabilization Policy, pursuant HRS§92-5(4).

VI. Announcements

VII. Adjournment

If you require an auxiliary aid or accommodation due to a disability, please contact Raina Gushiken at telephone number 594-1772 or by email rainag@oha.org no later than three (3) business days prior to the date of the meeting.

Meeting Materials will be available to the public on Monday, June 21, 2021 and posted to OHA's website at:

www.oha.org/bot

†Notice: The 72 Hour rule, pursuant to OHA BOT Operations Manual, Section 49, shall be waived for distribution of new committee materials.

‡ Notice: This portion of the meeting will be closed pursuant to HRS § 92-5.

* **Public Testimony on Items Listed on the Agenda must be limited to matters listed on the meeting agenda. Community Concerns and Celebrations is not limited to matters listed on the meeting agenda.** Hawai'i Revised Statutes, Chapter 92, Public Agency Meetings and Records, prohibits Board members from discussing or taking action on matters not listed on the meeting agenda.

**Notice: Trustees may establish or revise an OHA position on ANY proposed bill / resolution / executive message currently moving through the state legislature or other relative elected body. The Matrices, which are available for public review in the meeting materials at this stated meeting, provide a brief description of each bill, the bill's number, the bill's title, the bill's intent, and the proposed and specific OHA position on each measure. However, the Trustees

BOARD OF TRUSTEES

Carmen. Hulu Lindsey, *Chairperson*Leina'ala Ahu Isa, *Vice Chairperson*

Dan Ahuna, Trustee Kaua'i & Ni'ihau

Kalei Akaka, Trustee O'ahu

Keli'i Akina, Trustee At-Large

Luana Alapa, Trustee Moloka'i & Lāna'i

Brendon Kalei'āina Lee, Trustee At-Large

Keola Lindsey, Trustee Hawai'i Island

John Waihe'e IV, Trustee At-Large



STATE OF HAWAII OFFICE OF HAWAIIAN AFFAIRS

both in committee and as the Board of Trustees (BOT) reserve the right to discuss any and all bills on the Matrix, as well as those that time does not permit to be placed on the Matrix, in order to discharge their fiduciary obligations as Trustees of the Office of Hawaiian Affairs

Testimony can be provided to the OHA Board of Trustees either as: (1) **written testimony** emailed at least 24 hours prior to the scheduled meeting, or (2) live, **oral testimony online** during the virtual meeting.

- (1) Persons wishing to provide **written testimony** on items listed on the agenda should submit testimony via **email** to BOTmeetings@oha.org at least **24 hours prior** to the scheduled meeting. Any testimony received after this deadline will be late testimony and will be distributed to the Board members after the scheduled meeting. **Due to COVID- 19, please do not fax, mail, or hand-deliver written testimony**
- (2) Persons wishing to provide **oral testimony online** during the virtual meeting must first register at: https://zoom.us/webinar/register/WN_JOrmJ4XIQK6Tg5AQRX6NEg

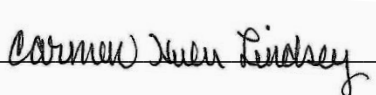
You need to register if you would like to orally testify. Once you have completed your registration, a confirmation email will be sent to you with a link to join the virtual meeting, along with further instructions on how to provide oral testimony during the virtual meeting. The registration page will close during the Public Testimony or Community Concerns agenda item. Oral testimony by telephone/landline **will not** be accepted at this time.

To provide oral testimony online, you will need:

- (1) a computer or mobile device to connect to the virtual meeting;
- (2) internet access; and
- (3) a microphone to provide oral testimony.

Oral testimony online will be limited to five (5) minutes. Once your oral testimony is completed, you will be asked to disconnect from the meeting, unless you are also signed up for oral testimony during Community Concerns and Celebrations. If you do not sign off on your own, support staff will remove you from the Zoom meeting. You can continue to view the remainder of the meeting on the livestream or by telephone, as provided at the beginning of this agenda.

Please visit OHA's website for more detailed information on how to submit Public Testimony OR Community Concerns at: <https://www.oha.org/how-to-submit-testimony-for-oha-bot-meetings/>



Trustee Carmen Hulu Lindsey
Chairperson, Board of Trustees

6/18/2021
Date

Office of Hawaiian Affairs
Meeting of the Board of Trustees
June 24, 2021
1:30 P.M.

IV. New Business

1. Joint Committee of the Beneficiary Advocacy and Empowerment (BAE) and the Committee on Resource Management (RM)

- A. ACTION ITEM BAE-RM #21-09: Approve the Awarding of Budget Realignment #3 Unexpended Funds for a total of \$496,260 to the Iwi Kupuna Repatriation & Reinterment Grant, the Homestead Community Grant, the ‘Ohana & Community Based Program Grant, and the COVID-19 Impact & Response Grant
- B. ACTION ITEM BAE-RM #21-07-01: Approve the Awarding of COVID-19 Impact and Response Grants, Island of O‘ahu for a total of \$524,380 for Solicitation No. 21-04-01, Released March 2021
- C. ACTION ITEM BAE-RM #21-07-02: Approve the Awarding of COVID-19 Impact and Response Grants, Island of Hawai‘i for a total of \$582,653 for Solicitation No. 21-04-02, Released March 2021
- D. ACTION ITEM BAE-RM #21-07-03: Approve the Awarding of COVID-19 Impact and Response Grants, Island of Maui for a total of \$335,994 for Solicitation No. 21-04-03, Released March 2021
- E. ACTION ITEM BAE-RM #21-07-04: Approve the Awarding of COVID-19 Impact and Response Grants, Island of Kaua‘i for a total of \$169,537 for Solicitation No. 21-04-04, Released March 2021
- F. ACTION ITEM BAE-RM #21-07-05: Approve the Awarding of COVID-19 Impact and Response Grants, Islands of Moloka‘i and Lāna‘i for a total of \$55,042 Solicitations No. 21-04-05 and 21-04-06, respectively, Released March 2021
- G. ACTION ITEM BAE-RM #21-08: Approve the Awarding of a Noncompetitive Grant for a total of \$4,186 to Administer the Ni‘ihau FY2021 ‘Ohana & Community Based Program Grant and FY2021 COVID- 19 Impact & Response Grant
- H. ACTION ITEM BAE-RM #21-10: Approve the Awarding and Reallocation of the Native Hawaiian Teacher Education & Professional Development Grants for a total of \$212,739 from Solicitation No. 21-06, Released March 2021
- I. ACTION ITEM BAE-RM #21-11: Approve the Awarding of Kūlia Grants, for a total of \$500,000, Solicitation No. 21-07, Released March 2021

**** Committee Report will be sent out as soon as it becomes available.*

Office of Hawaiian Affairs
Meeting of the Board of Trustees
June 24, 2021
1:30 P.M.

IV. New Business

- A.** Action Item RM #21-07A: OHA Biennium Budget for the Fiscal Biennium Periods 2021-2022 (FY22) and 2022-2023 (FY23)
- B.** Action Item RM #21-07B: OHA Biennium Budget for the Fiscal Biennium Periods 2021-2022 (FY22) and 2022-2023 (FY23), Fiscal Stabilization Policy

***Committee Report will be sent out as soon as it becomes available.

Office of Hawaiian Affairs
Meeting of the Board of Trustees
June 24, 2021
1:30 P.M.

IV. New Business

1. Accept the Report of the Permitted Interaction Group re:
to Investigate and Recommend a Short List of Eligible Entities for
Selection of a Development Consultant; Land and Commercial
Property Policies; and the Development and Implementation of a
Request for Proposal for a Community Planner, pursuant to HRS§92-
2.5(b)(1)(C)


OFFICE OF HAWAIIAN AFFAIRS
Action Item

BOARD OF TRUSTEES

June 24, 2021

BOT #21-07


Action Item Issue: Accept the Report of the Permitted Interaction Group re: to Investigate and Recommend a Short List of Eligible Entities for Selection of a Development Consultant; Land and Commercial Property Policies; and the Development and Implementation of a Request for Proposal for a Community Planner

Co-Prepared by:  Jun 19, 2021


Kalani Fronda Date
Ka Pou Kihi Kanaloa 'Āina, Land Director

Co-Prepared by:  Jun 20, 2021

Casey K. Brown Date
Ka Pou Nui, Chief Operating Officer

Reviewed by:  Jun 20, 2021

Sylvia M. Hussey, Ed.D. Date
Ka Pouhana, Chief Executive Officer

Reviewed by:  Jun 21, 2021

Carmen Hulu Lindsey Date
Ke Kauhuhu o ke Kaupoku
Chair, Board & Permitted Interaction Group

Action Item BOT #21-07: Accept the Report of the Permitted Interaction Group re: to Investigate and Recommend a Short List of Eligible Entities for Selection of a Development Consultant; Land and Commercial Property Policies; and the Development and Implementation of a Request for Proposal for a Community Planner

I. Proposed Action

Accept the report of the Permitted Interaction Group re: to Investigate and Recommend a Short List of Eligible Entities for Selection of a Development Consultant; Land and Commercial Property Policies; and the Development and Implementation of a Request for Proposal for a Community Planner.

II. Issue

Whether or not the Board of Trustees (BOT) will accept the attached report of the Permitted Interaction Group (PIG) re: Development Consultant, Land and Commercial Property Policies and Community Planner (Report). The PIG was authorized and formed on April 15, 2021, via Action Item BOT #21-05, consistent with Hawai'i Revised Statutes §92-2.5(b)(1), to investigate: and recommend a short list of eligible entities for selection of a Development Consultant; Land and Commercial Property policies; and the development and implementation of a Request for Proposal for a Community Planner.

III. Discussion

Authorization and Scope. When authorized, the Permitted Interaction Group's (PIG) purview, membership and term/duration was established and described below:

- A. **Permitted Interaction Group - Purview.** The PIG was formed and authorized to investigate: and recommend a short list of eligible entities for selection of a Development Consultant; Land and Commercial Property policies; and the development and implementation of a Request for Proposal for a Community Planner. The purview of the PIG is for the Board of Trustees (BOT), BOT staff and OHA Administration staff to work together to investigate the:
1. **Request for Proposal Process – Development Consultant.** Request for Proposal (RFP) process activities include: development and preparation of the RFP itself which includes all requirements and evaluation criteria; posting (e.g., state and OHA websites) and distributing broadly (e.g., social media, professional, industry, indigenous networks); pre-proposal conference, including distribution of written responses to questions; evaluation of responses; discussion with priority respondents and best and final offers, if necessary. **In the RFP itself, OHA will note that the selected respondent for the Development Consultant is ineligible for any future related 3rd party assistance (e.g., Community Planner, Developer).** A resultant and recommended short list of eligible entities will be brought to the Board for action.
 2. **Land and Commercial Property Policies.** Investigate and review the Real Estate Vision, Mission and Strategy Policy, June 6, 2007; and the Property, Policy Guidelines, Adopted July 3, 2014.
 3. **Request for Proposal – Community Planner.** Investigate the development and preparation of an RFP for a Community Planner.

Action Item BOT #21-07: Accept the Report of the Permitted Interaction Group re: to Investigate and Recommend a Short List of Eligible Entities for Selection of a Development Consultant; Land and Commercial Property Policies; and the Development and Implementation of a Request for Proposal for a Community Planner

- B. **Permitted Interaction Group – Members.** The membership of the Permitted Interaction Group was comprised of: (a) Trustee Carmen Hulu Lindsey; (b) Trustee Leina`ala Ahu Isa; (c) Trustee John Waihee, IV; and (d) Trustee Kalei Akaka. Trustee Carmen Hulu Lindsey served as the Chair of the Permitted Interaction Group and Trustee Leina`ala Ahu Isa served as its Vice Chair. Sylvia M. Hussey, Ka Pouhana, functioned as the Project Manager.
- C. **Permitted Interaction Group - Term/Duration.** The term of the Permitted Interaction Group expires at the completion of the assigned tasks or at the discretion of the Chair of the Board of Trustees, subject to later adjustment, but in no event later than July 31, 2021.

IV. Aggregation of Recommendations

The image below, from the Report, details the aggregation of recommendations from the PIG based on investigative activities:

VI. AGGREGATION OF RECOMMENDATIONS

Based on the recommendations detailed above, the following aggregates the recommendations from the investigative PIG which aligns to the purview and scope as authorized by Action Item #21-05, approved on April 15, 2021:

Recommendation re: PURVIEW 1 – DEVELOPMENT CONSULTANT

Given the investigative activities, the PIG recommends the Board acknowledge the release of the IHDC RFP (Appendix A) and review the associated evaluation process which provides the broadest participation and contribution of the entire Board.

Recommendation re: PURVIEW 2 – LAND AND COMMERCIAL PROPERTY POLICIES

The PIG recommends further effort be expended by Administration to review and update these policies, returning to the Board with recommendations: Real Estate Vision, Mission and Strategy Policy, June 6, 2007 (Appendix B); and Committee on Land and Property, Policy Guidelines, Adopted July 3, 2014 (Appendix C).

Recommendation re: PURVIEW 3 – COMMUNITY PLANNER

The PIG recommends that the development of a RFP for a Community Planner be suspended until the completion of the Request for Proposal, RFP NO. LA 2021-022, In House Development Consultant (IHDC) process, to allow for optimized insights and improvements.

V. Funding Source

Not applicable, no dedicated funding needed to Accept the Report of the Permitted Interaction Group re: Development Consultant, Land and Commercial Property Policies and Community Planner.

Action Item BOT #21-07: Accept the Report of the Permitted Interaction Group re: to Investigate and Recommend a Short List of Eligible Entities for Selection of a Development Consultant; Land and Commercial Property Policies; and the Development and Implementation of a Request for Proposal for a Community Planner

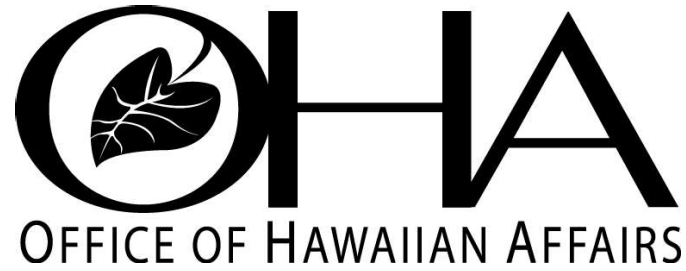
VI. Recommended Action

The PIG recommends, the Board of Trustees accept the Report of the Permitted Interaction Group re: to Investigate and Recommend a Short List of Eligible Entities for Selection of a Development Consultant; Land and Commercial Property Policies; and the Development and Implementation of a Request for Proposal for a Community Planner.

VII. Reference Document

Action Item BOT #21-05: Approve the Formation of a Permitted Interaction Group to Investigate: and Recommend a Short List of Eligible Entities for Selection of a Development Consultant; Land and Commercial Property Policies; and the Development and Implementation of a Request for Proposal for a Community Planner, dated April 15, 2021

VIII. Attachment: Office of Hawaiian Affairs Report of the Permitted Interaction Group re: Development Consultant, Land and Commercial Property Policies and Community Planner, June 2021.



Office of Hawaiian Affairs
Report of the Permitted Interaction Group re:
Development Consultant, Land and
Commercial Property Policies and
Community Planner

June 2021

Disclaimer: The document is intended for the sole use of OHA Trustees, Counsel, Administration, and Staff. Its contents may not be reproduced or reprinted in whole or in part without the express written permission of its counsel.

	<u>TABLE OF CONTENTS</u>	<u>PAGE</u>
I.	EXECUTIVE SUMMARY	3
II.	3RD PARTY ASSISTANCE	5
III.	PERMITTED INTERACTION GROUP – PURVIEW 1 – DEVELOPMENT CONSULTANT	6
IV.	PERMITTED INTERACTION GROUP – PURVIEW 2 – LAND AND COMMERCIAL PROPERTY POLICIES	7
V.	PERMITTED INTERACTION GROUP – PURVIEW 3 – COMMUNITY PLANNER	8
VI.	AGGREGATION OF RECOMMENDATIONS	9
VII.	REFERENCE DOCUMENTS	10
VIII.	CONCLUSION AND NEXT STEPS	11
	TABLE OF APPENDICES	12
	A RFP No. LA 2021-022 Development Consultant + Attachments	
	B AS IS: REAL ESTATE VISION, MISSION AND STRATEGY POLICY, JUNE 6, 2007 (INITIAL)	
	C AS IS: COMMITTEE ON LAND AND PROPERTY, POLICY GUIDELINES, ADOPTED JULY 3, 2014 (INITIAL)	

I. EXECUTIVE SUMMARY

- A. Overview.** On April 15, 2021, via Action Item BOT #21-05, the Board of Trustees (“BOT” or “Board”) approved the formation of a Permitted Interaction Group (PIG)¹ to investigate the Development and Implementation of a Request for Proposal (RFP) for a Development Consultant; and Recommend a Short list of Eligible Entities to the Board, with the noted purview, members and term/duration.
- B. Permitted Interaction Group - Purview.** The purview of the PIG is for the Board of Trustees (BOT), BOT staff and OHA Administration staff to work together to investigate the:
- 1. Request for Proposal Process – Development Consultant (Purview 1).** RFP process activities include: development and preparation of the RFP itself which includes all requirements and evaluation criteria; posting (e.g., state and OHA websites) and distributing broadly (e.g., social media, professional, industry, indigenous networks); pre-proposal conference including distribution of written responses to questions; evaluation of proposals; discussion with priority offerors and best and final offers, if necessary. In the RFP itself, OHA noted that the selected offeror for the Development Consultant is ineligible for any future related 3rd party assistance (e.g., Community Planner, Developer). As a result a recommended short list of eligible entities will be brought to the Board.
 - 2. Land and Commercial Property Policies (Purview 2).** Investigate and review the Real Estate Vision, Mission and Strategy Policy, June 6, 2007; and the Property, Policy Guidelines, Adopted July 3, 2014.
 - 3. Request for Proposal – Community Planner (Purview 3).** Investigate the development and preparation of an RFP for a Community Planner.
- C. Permitted Interaction Group – Members.** The membership of the Permitted Interaction Group was established as follows: (a) Trustee Carmen Hulu Lindsey; (b) Trustee Leina`ala Ahu Isa; (c) Trustee John Waihee, IV; and (d) Trustee Kalei Akaka. Trustee Carmen Hulu Lindsey served as the Chair of the Permitted Interaction Group and Trustee Leina`ala Ahu Isa served as its Vice Chair. Sylvia M. Hussey, Ka Pouhana (Chief Executive Officer), functioned as the Project Manager. Casey Brown, Ka Pou Nui (Chief Operating Officer) and Kalani Fronda, Ka Pou Kihi Kanaloa `Āina, (Land Director) also supported the work of the PIG.
- D. Permitted Interaction Group - Term/Duration.** The term of the PIG expired at the completion of the assigned tasks or at the discretion of the Chair of the Board of Trustees, subject to later adjustment, but in no event later than July 31, 2021.

¹ Consistent with Hawai‘i Revised Statutes §92-2.5(b)(1)A.

- E. **PIG Investigation Activities and Related Recommendations.** Upon approval and authorization (April 15, 2021), the PIG immediately convened and met each week to complete various investigative activities, accomplish tasks and make the following recommendations:
1. **Purview 1.** Acknowledge the release of RFP NO. LA 2021-022 In House Development Consultant (Appendix A) and review the associated evaluation process which provides the broadest participation and contribution of the entire Board;
 2. **Purview 2.** Delegate to Administration the responsibilities to review and update the following policies, returning to the Board with recommendations: Real Estate Vision, Mission and Strategy Policy, June 6, 2007 (Appendix B); and Committee on Land and Property, Policy Guidelines, Adopted July 3, 2014 (Appendix C); and
 3. **Purview 3.** Suspend the process for development of a RFP for a Community Planner, until the completion of RFP NO. LA 2021-022, In House Development Consultant to allow for optimized insights and improvements.
- F. **Report Distribution.** The report distribution is scheduled to be agendized for the June 17, 2021 Board meeting and consistent with past practice, no discussion will be held. Full and free discussion and related Board actions are scheduled to be agendized for the June 24, 2021 Board meeting.

INTENTIONALLY LEFT BLANK

II. 3RD PARTY ASSISTANCE

Previous PIG work illuminated the need for professional 3rd party assistance in the furtherance of development and deployment of strategies for Nā Lama Kukui (NLK) and Kaka‘ako Makai (KM). Working definitions and descriptors of such 3rd party assistance is provided below in support of recommendations. While working descriptors below reflect KM application, engagement of 3rd party assistance can further NLK strategies as well.

- A. ***Development Consultant.*** Provides planning, consultative, analysis, review, validation and other services as needed, spanning the period from inception of engagement through the period of time to develop a Kaka‘ako Makai Land Development Plan including implementation (e.g., regulatory approval, development, construction, tenant occupancy) of the first project in the master plan.
- B. ***Community Planner.*** Prepares and delivers a Land Development Plan to include a vision, physical master plan and implementation strategies to guide the future development opportunities of the Kaka‘ako Makai, thirty (30) acres of land considering all of the related attributes (e.g., size, characteristics, height, use or other restrictions).
- C. ***Developer.*** Real estate or property development encompasses a range of activities such as renovation and releasing of existing buildings, purchase and finance of raw land and sale of developed land to others. Developers coordinate all activities from converting ideas from paper to tangible real property. While there are similar activities, real estate development as a business process does differ from construction or house building. Entity is responsible to determine the marketing of the property, develop the building program and design, obtain the necessary public approvals and financing, build the structure(s), rent out, and manage.

INTENTIONALLY LEFT BLANK

III. PERMITTED INTERACTION GROUP – PURVIEW 1 – DEVELOPMENT CONSULTANT

- A. Context.** The PIG identified the following RFP process activities: development and preparation of the RFP itself which includes all requirements and evaluation criteria; posting (e.g., state and OHA websites) and distributing broadly (e.g., social media, professional, industry, indigenous networks); pre-proposal conference, including distribution of written responses to questions; evaluation of proposals; discussion with priority offerors and best and final offers, if necessary. In the RFP itself, OHA would note that the selected offerors for the Development Consultant is ineligible for any future related 3rd party assistance (e.g., Community Planner, Developer). As a result, a recommended short list of eligible entities would be brought to the Board.

In addition, via *Action Item BOT #21-04: Approve the Solicitation of a Request for Proposal for a Development Consultant*, April 15, 2021, the Board approved the RFP process.

- B. Investigative Activities.** With the context in mind, the PIG began investigative activities including but not limited to: reviewed similar RFPs issued or available; held discussions with relevant internal functional areas—Procurement, Corporate Counsel, Land; completed iterative discussions with the State Procurement Office; reviewed all content of the RFP document itself (e.g., scope of services, proposal format and instructions, proposal evaluation and award, attachments) and studied the roles and responsibilities of the evaluation committee.

The activities resulted in Administration's release of the Request for Proposal, RFP NO. LA 2021-022, In House Development Consultant (IHDC), Issue Date: May 24, 2021 and a Due Date of June 25, 2021, 2:00 p.m. HST (Appendix A). In addition, the PIG studied evaluative committee structures to understand the benefits and risks the various structures provide. The PIG concluded that while it could bring forward the recommended short list of eligible entities, doing so would require the PIG to become the evaluation committee and **therefore not provide for the broadest participation and contribution of the entire Board.**

- C. Recommendation.** Given the investigative activities, the PIG recommends the Board acknowledge the release of the IHDC RFP and review the associated evaluation process which provides the broadest participation and contribution of the entire Board.

INTENTIONALLY LEFT BLANK

IV. PERMITTED INTERACTION GROUP – PURVIEW 2 – LAND AND COMMERCIAL PROPERTY POLICIES

- A. **Purview – Land and Commercial Property Policies.** From the Land and Commercial Property Permitted Interaction Group Report dated April 2021, the following recommendations were made:

C. Recommendations re: Land and Commercial Property Policies

The following recommendations are made by the Permitted Interaction Group:

1. Refer the Real Estate Vision, Mission and Strategy Policy, June 6, 2007 (Appendix A) to the next authorized PIG for closer review and alignment;
2. Refer the Committee on Land and Property, Policy Guidelines, Adopted July 3, 2014 (Appendix B) to the next authorized PIG for closer review and alignment; and

- B. **Investigative Activities.** The PIG noted the following policies within the purview of the PIG: 1) Real Estate Vision, Mission and Strategy Policy, June 6, 2007 (Appendix B); and Committee on Land and Property, Policy Guidelines, Adopted July 3, 2014 (Appendix C). The PIG's work noted the following:

1. ***Real Estate Vision, Mission and Strategy Policy, June 6, 2007 (Appendix B).*** Based on the date of the 2007 developed policy, the PIG did not have institutional knowledge as to the context for its initial development; the policy did not appear to be updated in 2012 and a stand-alone Kaka'ako Makai policy was developed. The PIG recommends further effort be expended to review and update this policy by Administration and bring policy recommendations to the Board.
2. ***Committee on Land and Property, Policy Guidelines, Adopted July 3, 2014 (Appendix C).*** Based on the recollection of PIG members and the preamble, the Board's Committee on Land and Property determined that it is "...prudent to establish certain general policy guidelines, procedures, and project best practices governing land acquisitions, dispositions, development, management, and use by the Office of Hawaiian Affairs in order to provide general guidance to the Committee in dealing with all matters which fall within the purview of the Committee and to better implement and enact OHA's real estate vision, mission and strategy. These policy guidelines, procedures, and project best practices are not intended to be immutable or unchangeable, and revisions, modifications, supplements, and clarifications thereto are and should be anticipated and encouraged as the real estate holdings of OHA evolve and the members of the Committee may change over time."

The Board's committees eventually were consolidated to the current two committees: Committee on Resource Management and Committee on Beneficiary Advocacy and Empowerment. The policy adopted in 2014 has not been updated since its initial adoption. The PIG recommends further effort be expended to review and update this policy by Administration and bring policy recommendations to the Board.

- C. **Recommendation.** The PIG recommends further effort be expended by Administration to review and update these policies, returning to the Board with recommendations: Real Estate Vision, Mission and Strategy Policy, June 6, 2007 (Appendix B); and Committee on Land and Property, Policy Guidelines, Adopted July 3, 2014 (Appendix C).

V. **PERMITTED INTERACTION GROUP – PURVIEW 3 – COMMUNITY PLANNER**

- A. **Context. Request for Proposal – Community Planner (Purview 3).** Investigate the development and preparation of an RFP for a Community Planner.
- B. **Investigative Activities.** Refer to the investigative activities in Purview 1 above.
- C. **Recommendation.** The PIG recommends that the development of a RFP for a Community Planner be suspended until the completion of the Request for Proposal, RFP NO. LA 2021-022, In House Development Consultant (IHDC) process to allow for optimized insights and improvements.

INTENTIONALLY LEFT BLANK

VI. AGGREGATION OF RECOMMENDATIONS

Based on the recommendations detailed above, the following aggregates the recommendations from the investigative PIG which aligns to the purview and scope as authorized by Action Item #21-05, approved on April 15, 2021:

Recommendation re: PURVIEW 1 – DEVELOPMENT CONSULTANT

Given the investigative activities, the PIG recommends the Board acknowledge the release of the IHDC RFP (Appendix A) and review the associated evaluation process which provides the broadest participation and contribution of the entire Board.

Recommendation re: PURVIEW 2 – LAND AND COMMERCIAL PROPERTY POLICIES

The PIG recommends further effort be expended by Administration to review and update these policies, returning to the Board with recommendations: Real Estate Vision, Mission and Strategy Policy, June 6, 2007 (Appendix B); and Committee on Land and Property, Policy Guidelines, Adopted July 3, 2014 (Appendix C).

Recommendation re: PURVIEW 3 – COMMUNITY PLANNER

The PIG recommends that the development of a RFP for a Community Planner be suspended until the completion of the Request for Proposal, RFP NO. LA 2021-022, In House Development Consultant (IHDC) process, to allow for optimized insights and improvements.

INTENTIONALLY LEFT BLANK

VII. REFERENCE DOCUMENTS

The following documents are listed as reference documents for report development purposes:

1. **Action Item BOT #21-05:** Approve the Formation of a Permitted Interaction Group to Investigate: and Recommend a Short List of Eligible Entities for Selection of a Development Consultant; Land and Commercial Property Policies; and the Development and Implementation of a Request for Proposal for a Community Planner, April 15, 2021;
2. **Action Item BOT #21-04:** Approve the Solicitation of a Request for Proposal for a Development Consultant, April 15, 2021;
3. **Action Item BOT #21-03:** Accept the Report of the Land and Commercial Property Permitted Interaction Group, April 15, 2021;
4. **Action Item BOT #21-01:** Approve the Formation of a Permitted Interaction Group to Investigate the Development of Land and Commercial Property Policies and Strategies relating to the Development of OHA's Nā Lama Kukui and Kaka'ako Makai Properties, January 28, 2021;
5. **Action Item BOT #20-05:** The BOT approved the formation of a Permitted Interaction Group to investigate the development of T-Level Trustee policies for OHA's Board Governance Framework, September 10, 2020;
6. **Action Item RM #19-14:** The BOT approved the Economic Development Policy implementation procedures as detailed in Attachment A, September 25, 2019;
7. **Action Item RM #19-15:** The BOT approved the Debt Management Policy implementation procedures as detailed in Attachment A, September 25, 2019;
8. **Action Item RM #19-10:** The BOT approved a second amendment to BOT #12-05 - Kaka'ako Makai Policy relating to the allocation of revenue from OHA's Kaka'ako Makai properties to the Land Legacy Program, August 21, 2019; and
9. **Action Item RM #19-07:** The BOT: Approved the Economic Development Policy, noting that Administration will return with the implementation procedures for Board action; Approved the Debt Management Policy, noting that Administration will return with the implementation procedures for Board action; Acknowledged the Spending Policy language and the existing Native Hawaiian Trust Fund (NHTF) Spending policy, as Amended, noting Administration will return with consolidated policy document for Board action; and Acknowledged the Investment and Real Estate Policy language and the existing NHTF Investment and Real Estate Vision, Mission, and Strategy policies, noting Administration will return with consolidated policy document(s) for Board action.

VIII. CONCLUSION AND NEXT STEPS

Consistent with Hawai‘i Revised Statutes §92-2.5(b)(1), on April 15, 2021, via Action Item BOT #21-05, the Board of Trustees (“BOT” or “Board”) approved the formation of a Permitted Interaction Group (PIG)² to investigate the Development and Implementation of a Request for Proposal (RFP) for a Development Consultant; and Recommend a Short list of Eligible Entities to the Board, with the above noted purview, members and term/duration.

The report distribution is scheduled to be agendized for the June 17, 2021 Board meeting and consistent with past practice, no discussion will be held. Full and free discussion and related Board actions are scheduled to be agendized for the June 24, 2021 Board meeting.

INTENTIONALLY LEFT BLANK

² Consistent with Hawai‘i Revised Statutes §92-2.5(b)(1)A.

TABLE OF APPENDICES

- A** RFP No. LA 2021-022 Development Consultant + Attachments
- B** AS IS: REAL ESTATE VISION, MISSION AND STRATEGY POLICY, JUNE 6, 2007 (INITIAL)
- C** AS IS: COMMITTEE ON LAND AND PROPERTY, POLICY GUIDELINES, ADOPTED JULY 3, 2014 (INITIAL)

INTENTIONALLY LEFT BLANK



State of Hawai‘i

REQUEST FOR PROPOSALS
RFP NO. LA 2021-022

“IN-HOUSE” DEVELOPMENT CONSULTANT

ISSUED DATE: May 24, 2021

DUE DATE: June 25, 2021, 2:00 p.m. HST

The Office of Hawaiian Affairs
560 N. Nimitz Highway, Suite 200
Honolulu, Hawai‘i 96817

Notice to Interested Parties: Offerors interested in submitting a proposal are encouraged to register your company by completing the Registration Form and submitting it to the OHA’s RFP Coordinator via email at proposals@oha.org. See Attachment 2 – RFP Registration Form.

Notice to Offerors

(Chapter 103D, Hawai‘i Revised Statutes)

REQUEST FOR PROPOSAL (“hereinafter “RFP”) No. LA 2021-022

Notice is hereby given that pursuant to Chapter 103D, Hawaii Revised Statutes, as amended, (hereinafter “HRS”), the Office of Hawaiian Affairs (hereinafter “OHA”) will be accepting proposals from qualified individuals and firms to provide real estate planning and development services as a consultant providing assistance to trustees and administration staff on a work assignment basis in a variety of planning, technical, and graphical activities related to its commercial real property portfolio. The “In-House” Development Consultant (hereinafter “IHDC”) will work for the OHA as its trusted advisor responsible for managing the entire development process; coordinating the work of the development team, and serving as a central point for communication to facilitate decision making. The IHDC shall also assist the OHA by providing additional resources and expertise to accomplish negotiated task assignments authorized by the OHA.

Offerors must have experience with real estate planning and development services, including extensive experience in managing all phases of development, a proven ability to assess the conditions of a commercial real estate portfolio, and knowledge of current City, State, and Federal regulations as they apply to the completion of a master plan and development.

This RFP may be downloaded from either the State Procurement Office (hereinafter “SPO”) website at <https://hands.ehawaii.gov/hands/opportunities> or the OHA website at www.oha.org/solicitations beginning May 24, 2021. Proposals shall be submitted via email to proposals@oha.org by no later than 2:00 p.m. Hawaii Standard Time (hereinafter “HST”), June 25, 2021. The official time will be that which the email is received by the OHA.

The OHA reserves the right to reject any and all proposals and to accept any proposal in whole or in part when in the best interest of the OHA and the State. Questions relating to this solicitation will be directed to the RFP Coordinator, Mr. Christopher Stanley, Procurement Manager, at proposals@oha.org.

OFFICE OF HAWAIIAN AFFAIRS
Hulu Lindsey
Chairperson of the BOT, Chief Procurement Officer

Table of Contents

Section 1 – Administrative Overview	4
Section 2 – Scope of Services	15
Section 3 – Proposal Format and Instructions	32
Section 4 – Proposal Evaluation & Award	38
Section 5 - Attachments	46
Attachment 1 - Proposal Submittal Checklist	
Attachment 2 – RFP Registration Form	
Attachment 3 – Sample Cover Letter	
Attachment 4 - Acknowledgement of Addenda	
Attachment 5 – Wage Certificate	
Attachment 6 – Offer Form OF-1 and OF-2	
Attachment 7 – General Terms and Conditions	
Attachment 8 - 2021-2022 Hawaii State Government Observed Holidays	

Section 1 – Administrative Overview

I. Authority

Established under Article XII of the Constitution of the State of Hawai‘i and Chapter 10 of the Hawai‘i Revised Statutes (HRS), the OHA is a semi-autonomous public agency of the State of Hawai‘i, with the legal mandate of bettering the conditions of Native Hawaiians. The OHA’s mission is “To mālama (protect) Hawai‘i’s people and environmental resources and the OHA’s assets toward ensuring the perpetuation of the culture, the enhancement of lifestyle, and the protection of entitlements of Native Hawaiians while enabling the building of a strong and healthy Hawaiian people and lāhui, recognized nationally and internationally.”

The OHA seeks to competitively procure and engage a qualified individual or firm to provide real estate planning and development services as a consultant providing assistance to trustees and administration staff on a work assignment basis in a variety of planning, technical, and graphical activities related to its commercial real property portfolio. The “In-House” Development Consultant (IHDC) will work for the OHA as its trusted advisor responsible for managing the entire development process, coordinating the work of the development team, and serving as a central point for communication to facilitate decision making. The IHDC shall also assist the staff by providing additional resources and expertise to accomplish negotiated task assignments authorized by the OHA.

A determination has been made that the OHA is unable to secure these services through a low bid process. Factors included in the determination are: 1) price is not the primary consideration in determining an award; 2) the resulting contract may need to be other than a fixed price type; 3) the specifications for the services cannot be sufficiently described through low bid process; 4) oral or written discussion need to be conducted with Offerors concerning their proposals; 5) Offerors may need to revise their proposal, including price; and 6) the award needs to be based on a comparative evaluation in order to determine the most advantageous offering to the OHA. To that end, a low bid process is not practicable.

This RFP is issued under the provisions of Chapter 103D, HRS, as amended, and its companion administrative rules. Offerors are charged with presumptive knowledge of all requirements of the cited authorities. Submission of a valid executed proposal by any Offeror will constitute admission of such knowledge on the part of such Offeror.

II. RFP Organization

This RFP is organized into five (5) sections:

Section 1: Administrative Overview – Provides Offeror with an overview of the procurement and contracting process.

Section 2: Scope of Services – Provides Offeror with a general description of the tasks to be performed, delineates Offeror’s responsibilities, and defines deliverables as applicable.

Section 3: Proposal Form and Instruction – Describes the required format and content for the proposal.

Section 4: Proposal Evaluation & Award – Describes how proposals will be evaluated.

Section 5: Attachments

III. Contracting Office

The Contracting Office is responsible for overseeing the procurement and issuing the contract resulting from this RFP. The Contracting Office is:

Office of Hawaiian Affairs
Procurement Services Program
560 North Nimitz Highway, Suite 200
Honolulu, Hawai‘i 96817 Telephone: 594-1888

The RFP Coordinator or his designated representative is listed below:

Christopher Stanley
Office of Hawaiian Affairs
Procurement Services Program
560 North Nimitz Highway, Suite 200
Honolulu, Hawai‘i 96817
Email: chriss@oha.org

The OHA reserves the right to change the RFP Coordinator without prior written notice.

The Land Assets Program is responsible for administering and monitoring this contract. The designated Contract Administrator under this contract is identified as:

R. Kalani Fronda, CCIM
Office of Hawaiian Affairs
560 North Nimitz Highway, Suite 200
Honolulu, Hawai‘i 96817

Any changes to the OHA’s Contract Administrator or his designated representative will be provided in writing to the Offeror. The OHA reserves the right to make the changes to the OHA’s Contract Administrator.

Once the successful Offeror has received the Notice to Proceed, all communications regarding approvals, reports, and requests shall be directed to the OHA’s Contract Administrator.

IV. Terms and Acronyms

BAFO	Best and Final Offer
BOT	Board of Trustees of the Office of Hawaiian Affairs
CEO	OHA Chief Executive Officer
COGS	Certificate of Good Standing
CPO	OHA Chief Procurement Officer
DCCA	Department of Commerce and Consumer Affairs
FY	Fiscal Year
GET	General Excise Tax
Hālauola	The concept of a center of “life” and “healing”, speaks to the possibility of the land being strategically directed to provide benefit to the physical, mental, emotional and spiritual well being for Native Hawaiians
HAR	Hawai‘i Administrative Rules
HCDA	Hawai‘i Community Development Association
HCE	Hawai‘i Compliance Express
HRS	Hawai‘i Revised Statutes
HST	Hawai‘i Standard Time
Hui Kukuluae‘o	2013 Planning team consisting of Group 70, Rider Levett Bucknall and Sanford Murata, Inc.
IHDC	“In-House” Development Consultant
Kīpuka	A cultural oasis. Hawaiian nationalism speaks to the sensitive and mindful idealism and symbolism of restitution. Reflects the deep understanding and commitment to the surrounding community locally but also globally across the ocean expanse to other parts of the Pacific and beyond
Kūkākūkā	Discussion
MDP	Master Development Plan
Offeror	All persons who submit a proposal in response to this Request For Proposal No. LA2021-22
OHA	Office of Hawaiian Affairs
Personnel	All persons engaged in performing the work covered by the contract will be considered employees of the IHDC or agents of the IHDC.
RFP	Request for Proposals
SPO	State Procurement Office
STATE	State of Hawai‘i, including its department, agencies, and political subdivisions
TMK	Tax Map Key
USPS	United States Postal Service

V. Procurement Timeline

Activity	Scheduled Dates
Release of Request for Proposals	Monday, May 24, 2021
Virtual Information Meeting & Virtual Site Visit	Friday, June 4, 2021, 2:00 p.m. HST
Due Date to Submit Questions	Thursday, June 10, 2021
OHA's Response to Questions	Monday, June 14, 2021
Proposals Due Date/Time	Friday, June 25, 2021, 2:00 p.m. HST
Evaluations	June 2021 – July 2021
Presentations (TBD)	July 2021
Notice of Award	TBD
Contract Start Date	TBD

The OHA reserves the right to amend or revise the Procurement Timeline without prior written notice when it is in the best interest of the OHA. The Timeline represents the OHA's best estimate of the schedule that will be followed. All times indicated are HST. If a component of this Timeline is delayed, the rest of the Timeline may be shifted accordingly.

VI. Virtual Information Meeting & Virtual Site Visit

Due to COVID-19, we will be offering a virtual informational meeting and virtual site visit scheduled for Friday, June 4, 2021 at 2:00 p.m. HST.

The OHA requests that all Offerors who plan to attend the virtual information meeting and the virtual site visit please submit the RFP Registration Form no later than Monday, May 31, 2021, 2:00 p.m. HST, so we may confirm your attendance.

VII. Submission of Questions

Offerors may submit questions to the RFP Coordinator at proposals@oha.org. The deadline for submission of written questions is provided in the Procurement Timeline, above. All written questions will be responded to in an addendum to this RFP and posted to the OHA's website and the SPO website no later than the date of "OHA's Response to Questions."

The only official position of the OHA 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/statement and may not be relied upon as such.

VIII. Submission of Sealed Proposal

A. Form/Formats. Proposal forms and formats such as for the price proposal are included in Section 5 - Attachments to this RFP.

- B. Proposal Submittal. Proposals must be submitted via email to proposals@oha.org by the date and time designated in the Procurement Timeline for this RFP. Any proposals received after the designated date and time will be rejected.
- C. Pre-opening Modification or Withdrawal. 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.

The written request must be submitted to proposals@oha.org. Modifications and/or withdrawals will be clearly marked as such and must be received by OHA no later than 2:00 p.m. HST, June 25, 2021.

- D. Wages and Labor Law Compliance. Prior to entering into a contract in excess of \$25,000, the successful Offeror will certify that it complies with section 103-55, HRS, as amended, entitled “Wages, hours, and working condition of employees of contractors performing services.” Section 103-55, HRS, provides that the services to be performed will be performed by employees paid at wages not less than wages paid to public officers and employees for similar work. Offerors are further advised that in the event of an increase in wages for public employees performing similar work during the period of the contract, the IHDC will be obligated to provide such increased wages.

Offerors will complete and submit the attached Wage Certificate certifying that the services required will be performed pursuant to section 103-55, HRS. See Attachment 5 – Wage Certificate.

The IHDC will be further obligated to notify his/her employees performing work under the contract regarding the provisions of section 103-55, HRS, and current wage rates for public employees performing similar work. The IHDC may meet this obligation by posting a written notice to this effect in the IHDC’s place of business in an area accessible to all employees.

Offerors are strongly encouraged to account for salary increases as posted by the State of Hawai‘i Department of Human Resources Development (hereinafter “DHRD”). The OHA will consider requests for increases as a result of wage increases to public officers and employees during the contract period or any option period that is not published. At the release of this solicitation, the effective wages through January 1, 2021 for state employees performing similar work have been published by the DHRD.

If wages increase after the execution of the contract, the IHDC may request an increase in contract price in order to correspondingly increase the wages of the IHDC’s employees performing the work, including any increase in costs for benefits required by law that are automatically increased as a result of increased wages, such as federal old-age benefits, workers’ compensation, temporary disability insurance, unemployment insurance, and prepaid health insurance.

The IHDC will not be paid for any reimbursement of retroactive pay negotiated by the State. The IHDC's request for the increase must meet the following criteria:

1. At the time of the offer, if the IHDC's hourly wage rate is greater than the prevailing State wage, the IHDC's requests for increase will not be considered.
2. At the time of the request, the IHDC must or must have provided documentation to show that it is in compliance with section 103-55, HRS (i.e., its employees are being paid no less than the known wage rates of a State position). Documentation will include the employee's payroll records and a statement that the employees are being utilized for this contract.
3. Request for an increase must be made in writing to the OHA on a timely basis as follows:
 - a. Request for increase for the initial contract period must be made as soon as practicable after the State wage agreements are made public. Approved requests will be retroactive to the date of increase for the State employees with adequate documentation that the IHDC provided its employees a wage increase.
 - b. To obtain the current wage information, download the information from the Department of Human Resources Development's website at the following address:

<https://dhrd.hawaii.gov/state-employees/classification-and-compensation/>

It is the sole responsibility of the Offeror to comply with section 103-55, HRS, as applicable.

- E. Confidential Information. If an Offeror believes that any portion of a proposal contains information that should be withheld from public disclosure as confidential, the Offeror will request in writing nondisclosure of such information 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. Note 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. The OHA will not make any determination of confidentiality for the Offeror.

If the proposal is marked confidential in its entirety, the OHA Procurement Services Program will not make a determination of confidentiality and will refer any request for information to OHA Corporate Counsel and/or the State's Office of Information Practices.

F. Exceptions. Offerors will list any exceptions taken to the terms, conditions, specifications, or other requirements listed herein. Offerors must reference the RFP section where the exception is taken and provide a description of the exception taken and any proposed alternative. The OHA will retain the right to grant exceptions to discretionary policies. Request for exceptions from State, Federal, or local laws will not be approved.

IX. Discussions with Offerors Prior to Proposal Submissions

Discussion may be conducted with the Offeror to promote understanding of the OHA's requirements.

X. Opening of Proposals

The date and time recorded for the receipt of any proposals by the OHA, any modification to proposals, and withdrawals of proposals will be the date and time of receipt of the email by the OHA. All documents received will be held in a secure place by the OHA and will not be examined for evaluation purposes until the submittal deadline. The procurement file will be open to public inspection after a contract has been awarded and executed by all parties. Proposals will not be opened at a public proposal opening.

XI. Additional Materials and Documentation

Proposal samples or descriptive literature should not be submitted unless specifically requested within the RFP. Offerors may include up to five (5) pages of documentation, literature, samples, or brochures of related services which demonstrate experience to related services.

XII. RFP Amendments

The OHA 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. All amendments to this RFP will be posted to the SPO website <https://hands.ehawaii.gov/hands/admin/search> and to the OHA website www.oha.org/solictations.

XIII. Additional Terms and Conditions

The IHDC shall be bound by the confidentiality requirements of the contract. IHDC personnel performing work under the contract shall be required to sign confidentiality agreements that prohibit the disclosure of non-public information received from the OHA.

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

XIV. Intellectual Property Rights

The OHA reserves the right to unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive licenses to use, modify, reproduce, perform, release, display, create derivative works from the work product, and to disclose the work product, and to transfer the intellectual property to third parties for the OHA's purposes.

The IHDC understands that the information obtained from these efforts is the sole property of the OHA, and that any use of this information must be approved by the OHA, and that any information and all materials used to complete the project will be returned to the OHA.

XV. Cancellation of the Request for Proposals

The RFP may be canceled and any or all proposals rejected in whole or in part, without liability to the OHA, when it is determined to be in the best interest of the OHA.

XVI. Costs for Proposal Preparation and Verification

Any costs incurred by the Offeror in preparing or submitting a proposal are the Offeror's sole responsibility. Any cost incurred by the Offeror prior to the execution of a contract is not eligible for reimbursement.

Costs incurred in connection with the review, inspection and verification of information provided in the RFP will be the Offeror's sole responsibility.

Offerors must ensure that the OHA is provided with the written authorization(s) necessary to verify the information provided in the Offeror's proposal.

XVII. Mistakes in Proposals

While Offerors are bound by their proposals, circumstances may arise where a correction or withdrawal of a proposal is proper. An obvious mistake in a proposal may be corrected, withdrawn, or waived by the Offeror to the extent that it does not conflict with the best interests of the OHA or to the fair treatment of other Offerors. Mistakes in proposals will be handled as provided for in Section 3-122, HAR.

XVIII. Rejection of Proposals

The OHA reserves the right to consider as acceptable and responsive 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 be automatically rejected for any one or more of the following reasons:

1. Cancellation of solicitations and rejection of offers (HAR §3-122-95);
2. Cancellation of solicitation (HAR §3-122-96);
3. Rejection of offers (HAR §3-122-97);
4. Reporting of anti-competitive practices (HAR §3-122-191 to §3-122-196);
5. Rejection for inadequate accounting system (HRS §103D-314(2));
6. Late proposals (HAR §3-122-16.08);
7. Proposal not responsive (HAR §3-122-97); and
8. Offer not responsible (HAR §3-122-108 to HAR §3-122-112).

XIX. Notice of Award

Any contract arising out of this solicitation is subject to the approval by the OHA LOB Director as to content, the OHA Corporate Counsel as to form, and subject to the availability of funding.

The successful 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 OHA 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 section 3-122-112, HAR, Responsibility of Offeror, the Offeror will produce documents to the Procurement Officer to demonstrate compliance with this section.

The Offeror receiving the award will be required to enter into a formal written contract with the OHA. The General Conditions of the contract are attached, and minimum service specification are included herein. See Attachment 7 – General Terms and Conditions.

XX. Protests

Pursuant to sections 103D-701, HRS, as amended, and 3-126-4 HAR, an actual or prospective Offeror 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 Protest shall be emailed to proposals@oha.org conducting the protested procurement and the Procurement Officer who is conducting the procurement as indicated below within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto.

Provided that a protest based upon the content of the solicitation will be submitted in writing prior to the date set for receipt of offers, a protest of an award or proposed award will be submitted within five (5) days after the posting of award of the contract. Deliveries from other than USPS will be considered hand deliveries and considered submitted on the date of actual receipt by the OHA. Any notice of award letter(s), resulting from this solicitation will be posted on the Procurement Reporting System on the State Procurement Office website at <https://hands.ehawaii.gov/hands/opportunities> and the OHA website at www.oha.org/solicitations.

Head of Purchasing Agency	Procurement Manager
Name: Sylvia Hussey	Name: Christopher Stanley
Title: Chief Executive Officer	Title: Procurement Manager
Mailing: Office of Hawaiian Affairs Address: 560 North Nimitz Highway, Suite 200 Honolulu, Hawai'i 96817	Address: Office of Hawaiian Affairs 560 North Nimitz Highway, Suite 200 Honolulu, Hawai'i 96817

XXI. Availability of Funds

The award of a contract and any allowed renewal or extension thereof, are subject to the availability and allotment of the OHA funds, State and/or Federal funds.

XXII. Monitoring and Evaluation

The IHDC's performance under the contract will be monitored and evaluated by the OHA Contract Administrator or his/her designated representative, the OHA Compliance and Contract Management function, and/or other designated representatives.

Failure to comply with all material terms of the contract may be cause for suspension or termination as provided in the General Conditions. The IHDC may be required to submit additional written reports, including a corrective action plan, in response to monitoring conducted by the OHA. 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 OHA.

XXIII. General and Special Conditions of Contract

The General Conditions that will be imposed contractually are included as an attachment. See Attachment 7 – General Terms and Conditions.

Special Conditions may be imposed by the OHA. The OHA reserves the right to make appropriate modifications to the quantity of items or reporting requirements contingent upon unforeseen conditions.

XXIV. Cost Principles

The OHA will utilize standard cost principles from section 3-123, HAR, which are available on the SPO website. Nothing in this section will be construed to create an exemption from any cost principle arising under State and Federal laws.

XXV. Campaign Contributions by State and County Contractor Prohibited

If awarded a contract in response to this solicitation, the IHDC agrees to comply with Section 11-355, HRS, which states that campaign contributions and campaign solicitations are prohibited from a State and County government contractor at any time between the execution of the contract through the completion of the contract if the contract is paid with funds appropriated by the legislative body.

(END OF SECTION)

Section 2 – Scope of Services

I. Information

A. Project overview and history

The OHA commercial real property portfolio is approximately thirty-five (35) total acres, comprised of five (5) acres at Nā Lama Kukui, located at 560 North Nimitz Highway in Honolulu, Hawai‘i, and thirty (30) acres in Kaka‘ako Makai, Honolulu , Hawai‘i, as well as any additional commercial properties acquired during the term of the contract.

The following policies guide the OHA’s commercial real property portfolio:

1. Create synergy among the OHA’s Real Estate Vision, Mission, and Strategy Policy; Committee on Land and Property Policy Guidelines; Kaka‘ako Makai Policy, and the OHA’s Vision and Mana i Maui Ola: OHA’s 15-Year Strategic Plan for 2020-2035;
2. Ensure that cultural and stewardship values drive/provide the basis for design and use decisions;
3. Balance near-term revenue stream with long-term financial and strategic goals and decisions;
 - a. Create a Hawaiian Sense of Place;
 - b. Balance Pono and Commerce;
4. Develop a timely, accountable process; and
5. Exercise appropriate leadership and management.

To develop its initial vision for Kaka‘ako Makai, in 2013, the OHA contracted the team of Hui Kukuluae’o, consisting of Group 70, Rider Levett Bucknall and Sanford Murata, Inc. To move forward with its development efforts, however, the OHA needed to frame the full spectrum of opportunities by identifying strategic priorities for development. In its Kaka‘ako Framework Plan in October 2013, the OHA defined the following three strategic priorities for Kaka‘ako Makai while also recognizing the need to generate an annual income from the Kaka‘ako Makai properties that is consistent with its \$200 million value:

1. Create a *kīpuka* where Hawaiian national identity can flourish;

2. Support a *hālau ola* that invests in native intellectual capital & innovation; and
3. Integrate a planned community that embraces *live, work, and play* ideal.

Currently, the OHA is in the processes of developing a Conceptual Master Plan that will further refine the aforementioned strategic priorities into specific land use recommendations to ensure that all future development of the OHA's Kaka'ako Makai lands is able to reach the apex of culture and commerce.

Over the past eight years, the OHA contracted two teams (in 2013 and 2015, respectively) to create framework, visualize possibilities, and identify strategies for development. These reports, along with other key documents related to the Kaka'ako Makai properties, are accessible via the links below.

- [ACT 15 \(PDF\)](#)
- [Executed 2012 OHA-State Settlement Agreement \(PDF\)](#)
- [Kaka'ako Makai Cultural Landscape Analysis](#)
- [Kaka'ako Makai Fact Sheet](#)
- [Kaka'ako Makai Framework Plan](#)
- [Kaka'ako Makai Geotechnical Due Diligence report \(PDF\)](#)
- [Kaka'ako Makai Map \(PDF\)](#)
- [Kaka'ako Makai Market Assessment and Land Valuation](#)
- [Kaka'ako Makai OHA's Vision](#)
- [Kaka'ako Makai Policies](#)
- [Kaka'ako Makai Strategic Action Plan](#)
- [Sea Level Rise report \(PDF\)](#)
- [Land Management Development Design by Rider Levett Bucknall et al](#) - Land Management & Development Design Services; Strategic Action Plan, Cultural Landscape & Ancestral Connectivity Analysis, Charette Vision & Strategic Priority, Market Assessment & Land Value Analysis, Master Baseline Infrastructure Review, Master Baseline Development Strategy
- [15-0331 OKMQ1 Background Analysis – Part1](#) - Q1 -Part 1 Background Analysis; Long-Range Plans and Vision Documents, Regulatory Plans, Policies and Requirements, Recommended Considerations
- [15-0331 OKMQ1 Background Analysis – Part 2](#) -Q1 – Part 2 Background Analysis; Long-Range Plans and Vision Documents, Regulatory Plans, Policies and Requirements, Recommended Considerations
- [Community Engagement Plan WCIT](#) - Community Engagement Plan; Identify Role Players in Community Engagement, Prep for Conceptual Master Plan Input, Coordinate Info Received
- [04-15-0325 – OKM LAP Pres – Qtr1 Update](#) - Q1 Update; Conceptual Master Planning Schedule and Implementation Strategy
- [05-15-0528 – OKM LAP Pres – Qtr 2 Update](#) - Q2 Update; Update Project Schedule, Summary for Market Analysis Findings, Update Preliminary Land Use Scenarios and Preliminary Financial Assessment
- [06-15-0709-OKMQ2 Deliverables](#) - Q2 Deliverables; Market Analysis – General & Limiting Conditions; Kaka'ako Market, Commercial

(Retail/Restaurant), Residential Condominium, Hospitality, Office Market, Industrial, Cultural Uses and Attractions; Pae ‘Āina Meeting Summary, Draft Land Use Scenarios, Draft Financial Assessment

- [07-EKF Cultural Themes 062515](#) - Cultural Theme Content; Themes for Design Guidelines – Kīpuka, Hālauāola and Kūlia Ānu‘u
- [08-15-1205 – OKM Q3 Deliverables – Part 1](#) - Q3 Deliverables; Land Use Themes, Final Land Use Scenarios and Pae ‘Āina Meeting Summary w/Appendices
- [10-15-1205 – OKM Q3 Deliverables – Part 2](#) - Q3 Deliverables Part 2; Draft 2 Financial Assessment, Final Memo, Development Roadmap, Phasing Strategy and Development Schedule, Public-Private Financing Tools

The OHA also completed in FY2021 an Asset Strategy Report for Nā Lama Kukui which will be made available upon award of the contract.

B. Funding source and period of availability

Funds are subject to the biennial budget as approved by the OHA BOT and/or allocation by the Governor and State Legislature. Funding and period of availability may change upon written notice by the OHA.

It is understood that the contract will not be binding unless the OHA can document that there is an available and unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the contract. Any contract entered into as a result of this RFP is binding only to the extent that funds are certified as available and allocated and received by the OHA. The availability of funds in excess of the amount certified as available shall be contingent upon future appropriations or special fund revenues.

It has been determined that there are sufficient funds to pay for the initial term of the contract and the funds necessary for the remaining term(s) of the contract are likely to be available from the OHA. Pursuant to Chapter 103D-315, HRS, as amended, the OHA reserves the right to cancel the contract when future funds are not available to support continuation of performance in subsequent contract periods. Nothing in this RFP shall be interpreted to mean that the OHA shall be liable to pay for services provided.

II. General Requirements

A. Qualifying Requirements

1. The Offeror will comply with section HRS §103D-601, as amended, entitled “Cost Principles Rules Required.”
2. The Offeror must have no outstanding balances owing to the OHA. Exception may be granted by the CEO of the OHA for debts recently acquired and for debts for which a repayment plan has been approved by the CEO of the OHA.

3. Offerors are advised that if awarded a contract, the successful Offeror must furnish proof of compliance with the requirements of Section 103D-310, HRS, and §3-122-112, HAR.
 - a. Chapter 237, General Excise Tax Law;
 - b. Chapter 383, Hawai‘i Employment Security Law;
 - c. Chapter 386, Workers’ Compensation Law;
 - d. Chapter 392, Temporary Disability Insurance;
 - e. Chapter 393, Prepaid Health Care Act; and
 - f. Certificate of Good Standing (hereinafter “COGS”) for entities doing business in the State.
4. Be registered and incorporated or organized under the laws of the State of Hawai‘i (hereinafter “Hawai‘i business”).

The Offeror must be one of the following:

- a. Hawai‘i business: A business entity referred to as a “Hawai‘i business” is registered and incorporated or organized under the laws of the State of Hawai‘i. 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 (hereinafter “DCCA”). A Hawai‘i 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 Hawai‘i business.
- b. Compliant non-Hawai‘i business: A business entity referred to as a “compliant non-Hawai‘i business,” is not incorporated or organized under the laws of the State of Hawai‘i, but is registered to do business in the State. As evidence of compliance, the Offeror will submit a CERTIFICATE OF GOOD STANDING.

5. Business Office

The Offeror must have, at a minimum, a telephone number and electronic mail address from which it conducts business and be accessible by telephone from 8:00 a.m. to 5:00 p.m. HST, for meetings, teleconferences, video conferences, concerns or requests that need immediate attention. An answering service is not acceptable. An office location, telephone number and electronic mail address must be identified in the Offerors’ proposal.

6. Certificate of Eligibility

The Offeror must demonstrate compliance with the following:

- a. Tax Clearance Form A-6;

- b. Department of Labor and Industrial Relation, Applications for Certificate of Compliance Form LIR#27; and
- c. Certificate of Good Standing issued by the DCCA and the Hawaii Compliance Express (hereinafter “HCE”), which allows businesses to register online through a simple wizard interface at:

<https://vendors.ehawaii.gov/hce/splash/welcome.html>

The HCE provides the applicant with a “Certificate of Vendor Compliance” with current compliance status as of the issuance date, accepted for both contracting purposes and final payment. Business that elect to use the new HCE services will be required to pay an annual fee of \$12.00 to the Hawai‘i Information Consortium, LLC (hereinafter “HIC”).

7. Indemnification

The Offeror must agree to defend, indemnify, and hold harmless the State of Hawai‘i, the OHA, its elected and appointed officials, 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.

8. Insurance Requirements

To be eligible for award, the Offeror agrees to acquire insurance from an insurance carrier or carriers licensed to conduct business. Within fifteen (15) days prior to the contract start date, the successful Offeror must furnish to the Contracting Office a valid certificate(s) of insurance as evidence of the existence of the following insurance coverage in the amount not less than the amounts specified. The insurance must be maintained in full force and effect throughout the entire performance period. Failure to maintain the required insurance shall be considered a material default of the contract.

<u>Coverage</u>	<u>Limits</u>
Commercial General Liability (including personal injury, death, and property damage)	\$2,000,000 per occurrence; \$2,000,000 general aggregate per policy year; \$2,000,000 product and completed operations aggregate limit per policy year.
Personal and Advertising Injury	\$1,000,000 each occurrence.
Umbrella Liability	\$2,000,000 aggregate.

Automobile Insurance covering all owned, non-owned, and hired automobiles	Bodily injury liability limits of \$1,000,000 each person and \$1,000,000 per accident; property damage liability limits of \$1,000,000 per accident. Or \$2,000,000 combined single limit.
Workers Compensation as required by laws of the State of Hawai‘i	Insurance to include Employer’s Liability. Such coverage shall apply to all employees of the CONTRACTOR and (in case any sub-contractor fails to provide adequate similar protection for all its employees) to all employees of sub-contractors
Professional Liability (Errors and Omissions)	\$1,000,000 per claim \$2,000,000 annual aggregate

- a. The State of Hawai‘i, the OHA, its elected and appointed officials, employees, and volunteers shall be named added as additional insured with respect to occurrences during or in connection with the performance of this contract. Before the effective date of this contract, the Offeror agrees to provide the OHA with certificate(s) of insurance necessary to satisfy the OHA that the insurance provision of this contract have been complied with and to keep such certificate(s) on deposit with the OHA during the entire term of this contract. The minimum insurance required shall be in full compliance with the Hawai‘i Insurance Code throughout the entire term of the contract, including supplemental contracts, and shall be written by a company authorized to do business in the State of Hawai‘i and rated no less than an AM Best rating of A- VIII. The Offeror and its carriers agree to waive their rights of subrogation with respect to any claims covered, or which should have been covered, by valid and collectible insurance, including any deductibles or self-insurance maintained thereunder. Upon request by the OHA, the Offeror shall furnish a copy of the policy or policies that satisfy the insurance requirements of this contract.
- b. Failure of the Offeror to provide and keep in force such insurance shall be regarded as a material default under this contract, entitling the OHA to exercise any or all the remedies provided in this contract for default of the Offeror.
- c. The procuring of such required policy or policies of insurance shall not be construed to limit the Offeror’s liability hereunder or to fulfill the indemnification provisions and requirements of this contract. Notwithstanding said policy or policies of insurance, the Offeror shall be obliged for the full and total amount of damage, injury, or loss cause by negligence or neglect connected with this contract.
- d. To satisfy the minimum coverage limits required by this contract, the Successful Offeror may use an umbrella policy in addition to the mandatory

insurance policies (e.g, general liability insurance, automobile Insurance, and workers' compensation) provided that the OHA approves, and the umbrella policy follows the underlying coverage forms.

- e. The Offeror shall notify the OHA in writing of any cancellation or substantive change in insurance at least thirty (30) calendar days prior to the effective date of such cancellation or change.
- f. The OHA is a self-insured semi-autonomous state agency. The Offeror's insurance shall be primary. Any insurance maintained by the State of Hawai'i and the OHA shall apply in excess of, and shall not contribute to insurance provided by the Offeror.
- g. Other Additional Insurance

The Offeror may, at its own expense, obtain additional insurance coverage for further protection subject to the OHA's approval. Request for approval will include a description of the additional insurance coverage, the amount of the premium, and justification for additional insurance.

9. Minority/Women Business Participation (hereinafter "MBE/WBE")

Whenever possible, the Offeror awarded the contract agrees to subcontract with minority owned business enterprises and/or women owned business enterprises certified as such as recognized.

10. Using Best Effort to Fulfill Minority/Women Business Participation

In the event that the OHA has reasonable belief that the Offeror will not use its best efforts to meet the MBE/WBE participation goal, the OHA reserves the right to cancel the contract in whole or in part. Best efforts may be established by demonstrating that the Offeror already is or is working towards being certified as an MBE/WBE or has contracted or solicited bid/quotes from subcontractors that are certified as MBE/WBE through the Small Business Administration.

B. Type of Contract

- 1. The successful Offeror will be required to execute a contract for goods and services based on competitive sealed proposals. No profit or administrative mark-up will be allowed on project reimbursable expenses, including, without limitation, postage, supplies, and travel.

Subsequent to the award and within ten (10) days after the prescribed forms are presented for signature, the successful Offeror will execute and deliver to the OHA a contract in such number of copies as required by the OHA.

The successful Offeror will be required to enter into a formal written contract with the OHA in accordance with the laws, rules and regulations of the State of

Hawai‘i. The stated requirement appearing elsewhere in this RFP will be incorporated and will become part of the terms and conditions of the contract.

By submission of a proposal, the Offeror warrants and represents that they have read and are familiar with the contractual and service requirements set forth in the RFP and its attachments, the provisions of which are expressly incorporated into this RFP by reference.

All proposals will become the property of the OHA. The successful Offeror’s proposal will be incorporated in the resulting contract by reference.

2. Subcontracting

No work or services will be subcontracted or assigned without the prior written approval of the OHA. No subcontract will under any circumstances relieve the IHDC of its obligation and liability under contract with the OHA. All persons engaged in performing the work covered by the contract will be considered personnel of the IHDC.

3. Contract Modification

The contract may be modified only by a written supplemental contract signed by the OHA and the authorized signatory designated to sign contracts on behalf of the IHDC as designated in a corporate resolution, if applicable.

4. Additional Services and Fees

The IHDC and the OHA will negotiate for additional needed services and fees for work not described in the contract, but which may arise during the course of the contract. Any agreement will be in writing, executed by all parties, and shall be attached to the contract as a contract amendment to expire at the same time as the original contract or subsequent period.

5. Laws, Rules, Ordinances and Regulations

Reference to Federal, State, City and County laws, ordinances, rules and regulations, and standard specifications will include any amendment thereto effective as of the date of the RFP.

6. Bonds

No performance or payment bond is required.

C. Multiple or Alternate Proposals (Refer to HAR §3-122-4)

☐ Allowed ☒ Not allowed

D. Single or Multiple Contract to be Awarded (Refer to HRS §103D-322)

☒ Single ☐ Multiple ☐ Single & Multiple

E. Single or Multi-Term Contract to be Awarded (Refer to HRS §103D-315)

☒ Single term (2 years or less) ☐ Multi-term (more than 2 years)

Initial term of contract: Twelve (12) months

Length of each extension: Up to Twelve (12) months, may be less than Twelve (12) months when it is in the best interest of the OHA

Maximum Length of Contract: Not to exceed Sixty (60) months

F. Condition for Contract Extensions

The initial period will commence on the contract start date. The following conditions must be met for an extension:

1. The IHDC experienced cost savings and has unexpended funds available that can be used to provide additional goods and services; or
2. The OHA determines there is an ongoing need for the services and has funds to extend services not to exceed sixty (60) months. Contract extensions will be awarded as agreed upon in the primary contract. Exceptions will be granted upon satisfactory justification such as increase in cost of goods or services; and
3. A supplemental contract must be executed prior to expiration of the primary contract; and
4. The IHDC must obtain the OHA's approval in writing.

The option to extend the contract will be at the sole discretion of the OHA. The contract will be extended at the same rates as proposed in the original proposal unless price adjustments are negotiated. Submission of a proposal constitutes acknowledgement by the Offeror that the Offeror is able and willing to contract for services for the duration of the contract period. If the IHDC is unwilling or unable to fulfill the scope of services described in the contract, the OHA reserves the right to assign the costs of re-procurement to any payment owed under the contract. These costs may include without limitations reproduction costs, staff time, and postage.

The IHDC will provide the requested insurance information and a completed wage certificate. The IHDC will pay the State of Hawai'i general excise tax and all other applicable taxes.

G. Contract price adjustments (other than wage rate increases)

Each proposal offered will be firm for a twenty-four (24) month period upon issuance of the Notice to Proceed.

Contract price adjustments will be limited to liability and/or automobile insurance. The following conditions must be met for the OHA to consider a price adjustment:

1. The IHDC provides adequate documentation of price increase(s), such as an insurance policy statement;
2. The increase will not exceed five percent (5%) of the original price for each budget line item; and
3. The request for increase must be reasonable and there must be sufficient funding available to support the increase.

III. Contract Monitoring and Remedies

A. Monitoring

1. The satisfactory provision of goods and services will be monitored by the OHA Contract Administrator. Performance will be monitored on an ongoing basis by the OHA through desk monitoring and/or other methods by the OHA Contract Administrator and his/her designated representative(s).
2. Should the IHDC fail to comply with the requirements of the contract, the OHA may request a written corrective action plan, a timeline for implementation, and the responsible parties to the OHA. The OHA will monitor the IHDC for implementation of the corrective action plan. The OHA reserves the right to request regular or additional report(s) on progress towards compliance with the contract and the corrective action plan.
3. Should the IHDC continue to fail to comply with the requirements of the contract, the OHA reserves the right to engage the services of another to perform the services to remedy the defect or failure and to deduct such costs from monies due to the IHDC or to directly assess the IHDC .
4. In the event the IHDC fails, refuses, or neglects to perform the services in accordance with the requirements of this RFP and the contract, the OHA reserves the right to purchase in the open market corresponding services and to deduct this cost from the monies due or that may thereafter become due to the IHDC . If monies due to the IHDC is insufficient for this purpose, the IHDC shall pay the difference upon demand by the OHA. The OHA may also utilize all other remedies provided under the contract and/or as permitted by law.
5. In the event the IHDC is not performing the required services as contracted, the OHA reserves the right to extend the contract for intervals of less than twelve (12) months. During this time, the OHA will monitor the IHDC's performance and/or improvement and the implementation of its corrective action plan to determine whether the OHA will continue to contract with the IHDC.

B. Termination

The OHA reserves the right to terminate the contract without penalty for cause or convenience as provided in the General Conditions. See Attachment 7 – General Terms and Conditions.

IV. Scope of Services

The OHA is looking for a development consultant to provide assistance to its trustees and administrative staff on a work assignment basis in a variety of planning, technical, and graphical activities related to its commercial real property portfolio. The IHDC will work for the OHA as its trusted advisor responsible for managing the entire development process, coordinating the work of the development team, and serving as the central point for communication to facilitate decision making. The IHDC shall also assist the staff by providing additional resources and expertise to accomplish negotiated task assignments authorized by the OHA.

The IHDC shall provide services that include, but may not be limited to the following:

A. Kaka’ako Makai Phase 1 – Vision Plan

1. Review, summarize, and synthesize work performed by the OHA’s previous consultants as listed in detail in Section 2. I. A.
2. Assist the OHA in developing a vision that integrates financial feasibility, political reality (e.g, residential or non residential), community and stakeholder input, and other goals deemed relevant by the OHA.
3. This initial phase of the project should include a “strategic plan / vision plan” for the lands that includes aspects of planning, financial analysis, civil engineering, and architecture. This initial phase is intended to provide a framework to guide the OHA’s leadership in developing Kaka’ako Makai lands. This framework will also inform public outreach plans and additional analysis as required. The project work should include investigations into market demand, infrastructure capacity, potential lot massing, and other necessary studies. The output would include high-level financial models that will inform decision making. These initial models will be continually refined and updated over the life of the project.
4. This initial phase should also study the impact of residential zoning for the properties involved. If residential uses are determined to be desirable, then the IHDC should advise and support the OHA in development of a legislative strategy for review and approval by the OHA trustees and administrative staff.

B. Kaka'ko Makai Phase 2 – Develop an implementation strategy for the OHA

1. Develop strategy to expand the permissible zoning, height, density, or other restrictions (i.e., entitlements) presently in place on the OHA properties involved.
2. Develop a package of real estate transaction types for the properties involved (i.e., self-develop vs. ground-lease vs. joint-venture vs. sale).
3. Outline options and recommendations for the entitlement phase, the horizontal construction phase, and the vertical construction phase, including possible expansion of the permissible zoning, height, density or other restrictions (i.e., entitlements), as the foundation for future phases of development. If expansion of the permissible zoning, height, density or other restrictions is sought, the IHDC shall assist in the assembly of a professional team, setting objectives for the team, and defining the roles and responsibilities of team members.
4. Phase 2 should address alternatives for future development and improvements which should occur on these OHA lands – both horizontally (e.g., infrastructure, grading, environmental remediation, etc.) and vertically (ie.construction of buildings). Financial models prepared during Phase 1 will inform and frame the discussion so the OHA may be able to evaluate and determine the amount of capital needed to develop these properties itself. The IHDC should consider, evaluate, and compare alternatives to the OHA financing the development of these properties itself with the other strategies of ground-leasing, joint-venturing, debt-financing, recruiting third-party equity investors, the selling of individual parcels owned by the OHA, or the consideration of any other viable strategies.

C. Kaka'ako Makai Phase 3 – Actual Implementation

Assist the OHA with advice and monitoring of the following:

1. Entitlement/master plan phase.
2. Horizontal construction phase, if necessary.
3. Vertical construction phase.
4. Most of the activities in Phase 3 are similar to those set forth in Project Conception, Pre-Development, and Construction.

- D. As directed by the OHA, provide consultant services, as described above, to the Nā Lama Kukui parcel and other parcels that may become part of the OHA commercial real property portfolio.

- E. The OHA Contract Administrator shall act as the contract monitor and principal liaison between the IHDC and the OHA. The OHA Contract Administrator shall assist in resolving policy questions, expediting decisions, and reviewing and approving the work performed by the IHDC.
- F. The IHDC shall comply with all applicable safety, hygiene, and physical distancing guidance from the Centers for Disease Control and Prevention (CDC), as well as with State, county, industry, and regulatory practices for safety, hygiene, and physical distancing, including standards and requirements adopted and issued by Hawaii Department of Health (DOH) or required by State and county emergency orders, rules, or proclamations related to COVID-19 (novel coronavirus).

V. Qualifications and Requirements

A. Specialized Experience:

1. Experience with pre-development, financing, design, construction, and related operations;
2. Specialized experience in the development of vertical communities (e.g., the development of condominiums, apartments, office buildings, and hotels);
3. A successful record of securing zoning, height, and density and other entitlements for large-scale urban developments in Honolulu;
 - Minimum of eight (8) years of experience in navigating the HCDA's process and the City & County of Honolulu's process and completing the necessary processes that are required to implement and complete projects within Urban Honolulu.
4. Minimum of ten (10) years of experience negotiating complex real estate transactions, including joint ventures, equity investments by limited partners, ground leases, and outright parcel sales;
5. The ability to prepare or direct the preparation of best-in-class market studies forecasting future demand for all land uses, including residential, commercial, and hospitality for a mixed-use master plan development;
6. The ability to prepare financial feasibility analyses and project profitability metrics to guide future strategic planning and land-use decisions;
7. A track record of successfully building community, stakeholder, and political support for real estate development projects;
8. Demonstrated experience working with and communicating to the Native Hawaiian community throughout the development process on complex development planning and implementation matters; and

9. Experience in understanding and aligning corporate policies and Hawaiian cultural initiatives with future plans and portfolio strategies.

B. Staffing:

Offeror should have an appropriate staff in terms of quantity and relevant experience with demonstrable capabilities to prepare/execute an MDP with the following components:

1. Knowledge of land development requirements in the State of Hawai'i, and knowledge and experience in building in, around and in proximity to cultural sites in Urban Honolulu. This should include knowledge and experience working with the Island Burial Councils, the State Historic Preservation Division, local archeological teams, cultural experts, and other agencies and experts who perform cultural impact surveys and studies;
2. Experience working with local government agencies including experience working with government agencies to modify existing zoning laws, codes, and regulations;
3. Experience working with various community and other stakeholder groups including Oahu Island neighborhood boards;
4. A deep and rich understanding of Hawaiian culture, history, and Hawaiian cultural practices;
5. Proven ability to prepare best-in-class market studies forecasting demand for commercial, residential, and hospitality uses within a mixed-use master plan development;
6. Proven track record preparing best-in-class financial models for an urban master plan that provide feasibility assessments for individual uses and profitability metrics for the individual project phases and the development as a whole; and
7. Ten (10) years of relevant experience in the following:
 - a. Negotiating agreements with state and local municipal officials;
 - b. Sourcing competitive bids from vertical developers and negotiating complex land sale transactions;
 - c. Negotiating ground and net lease agreements;
 - d. Bidding and/or negotiating contracts to perform necessary work to implement components of an urban master plan;
 - e. Lobbying state and local political officials to build support for large scale development projects;
 - f. Successfully working with stakeholders to generate public support for entitlements for an urban master plan in Honolulu;

- g. Achieving favorable outcomes when working with state and local government, stakeholder and public consultation on environmental and Hawaiian cultural issues;
 - h. Working with the Hawaiian community and its beneficiaries on significant land and natural resource issues relating to Hawaiian land rights; and
 - i. Partnering with the Hawaiian community and beneficiaries in consensus building.
8. The Offeror shall ensure that all personnel meet minimum licensing and experience requirements.
 9. Offeror References

Each Offeror shall provide at least three (3) references from clients or project owners, including the name, address, and telephone number of the company or agency reference, and a person who the OHA may contact. These references must have hired or contracted the Offeror within the preceding ten (10) years for services similar to the services set forth in the Scope of Work contained in this RFP.

C. Administrative Requirements

1. The IHDC shall designate a contact person who will be responsible for project oversight and for ensuring rigorous contract performance. This contact person must be able to respond to the OHA's inquiries, complaints and problems within one (1) working day of receipt.
2. The IHDC will ensure adequate and appropriate representation at regularly scheduled meetings with the OHA and/or the OHA Board of Trustees. The OHA anticipates that frequent in-person and virtual meetings with the Offeror's contact person will be required to oversee contract performance. In-person meetings will follow the CDC COVID-19 guidelines. Additional meetings may be required by the OHA as the OHA deems necessary.

D. Personnel

1. All employees or agents of the IHDC hired with respect to this contract shall be deemed personnel of the IHDC.
2. The IHDC will ensure that all personnel meet the minimum qualifications, including State licensing laws and experience requirements. The current wage rates and position class specification for personnel are available at the following addresses:

<https://dhrd.hawaii.gov/state-employees/classification-and-compensation/>

3. All staff training (such as training required to ensure that the minimum services are provided in compliance with State/Federal laws, rules, and regulations) will be the responsibility of the IHDC.
4. The IHDC will be solely responsible for the behavior and conduct of its personnel while on the OHA property. Supervision of IHDC's personnel will be the responsibility of the IHDC.
5. The IHDC will ensure the confidentiality of all information, documents, or materials viewed or discussed in performance of the work required or undertaken under the terms of this contract. The IHDC's personnel will not disclose confidential information to the general public without the express written consent of the OHA. The IHDC's personnel shall complete and sign an OHA non-disclosure agreement prior to execution of the contract and any personnel hired after execution of the contract by the IHDC must sign a non-disclosure agreement prior to commencing work on this contract.
6. During the performance of this contract, the IHDC agrees not to discriminate against any employee, agent, or prospective applicant for employment. The IHDC will take affirmative actions to ensure the equal treatment of its employees. Such actions will include the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The IHDC will insert provisions similar to the foregoing in all subcontracts.
7. The IHDC agrees to remove any of its personnel from services to the OHA upon written request by the OHA's Contract Administrator. Upon the request for removal of any of the Offeror's personnel at the request of the OHA's Contract Administrator, the IHDC will remove that person from the job site immediately. Grounds for removal include, but are not limited to, an inability to perform their duties and responsibilities in a proper and skillful manner, being intoxicated or under the influence, engaging in disorderly or abusive conduct, or being unable to demonstrate tact or diplomacy in dealing with the public.

E. Reporting Requirements

The IHDC will be responsible for the timely submission of monthly reports as requested by the OHA.

F. Payment

1. The OHA will have thirty (30) calendar days after receipt of an invoice and the satisfactory delivery of goods or the performance of contracted for services to make a payment. The OHA will reject any proposal submitted with a condition requiring payment within a period of less than 30 days.

2. The IHDC will submit invoices for payment listing the dates goods and/or services were delivered or performed as the case may be with an itemized breakdown of the expenses and costs incurred. Invoices for reimbursable expenses as agreed to and specified in the contract must include original invoice(s) for these reimbursable expenses.
3. The IHDC will clearly indicate any adjustment made to the billing statement for work not performed.
4. The IHDC will submit original invoices:
 - a. By electronic mail to (a) invoices@oha.org and (b) to the email address of the Contract Administrator for this contract or
 - b. By U.S. postal mail to:

Office of Hawaiian Affairs
Attn: Financial Services
560 North Nimitz Highway, Suite 200
Honolulu, Hawai'i 96817
5. The OHA requires the IHDC to participate in Automated Clearing House (hereinafter "ACH") payment processing method in order to expedite payments and to reduce the OHA's in-office staffing needs. Please contact our Accounting Department through your designated OHA Contract Administrator.
6. All invoices submitted for payment shall reference the contract number and purchase order number assigned to the contract. Payments will be processed upon confirmation by the OHA Contract Administrator that the IHDC has satisfactorily performed its responsibilities as specified in the contract.

(END OF SECTION)

Section 3 – Proposal Format and Instructions

I. General Instructions for Completing Forms

When an Offeror submits a proposal, it will be considered a complete plan for accomplishing the tasks identified in this RFP. The Offerors' proposal must demonstrate an understanding of and the ability to meet and perform all contractual requirements listed in this RFP.

The submission of a proposal will constitute the Offeror's indisputable representation of compliance with every requirement of the RFP and that the RFP documents are sufficient in scope and detail to indicate and convey a reasonable understanding of all terms and conditions of performance of the work to the Offeror.

All Offerors shall submit their proposal via email to proposals@oha.org.

Before submitting a proposal, each Offeror must:

1. Thoroughly examine the solicitation documents. Solicitation documents include this RFP, any attachments, plans referred to therein, and any other relevant documentation.
2. Be familiar with Federal, State, and County laws, ordinances, rules and regulations that may in any manner affect cost, progress, or performance of the work.

Proposals will be submitted to the OHA in the prescribed format outlined in this RFP. A written response is required for each item unless indicated otherwise.

Offerors may attach to their proposal supplemental literature, brochures, or other information, which may demonstrate related experience in the proposal package.

The body of the proposal should be limited to 25-50 pages, not including supplemental literature, brochures, or additional information provided as appendices or exhibits.

II. Proposal Forms

- A. The proposal forms will be completed and submitted to the OHA by the required due date and time and in the form prescribed by the OHA.
- B. Offerors will submit their proposals under the Offeror's exact legal name that is registered with the State of Hawai'i Department of Commerce and Consumer Affairs and will indicate that this is its true, correct, and official legal name. Failure to do so may delay proper execution of the contract.

- C. Offerors will submit their proposals with an authorized signature. If the proposal is not signed by an authorized signatory as shown on the corporate resolution, the proposal will be automatically rejected.
- D. A proposal security deposit is not required for this RFP.
- E. The numerical outline for the application, the titles/subtitles, and the Offeror's name and RFP identification information on the top right-hand corner of each page should be included.
- F. Consecutive page numbering of the proposal application should begin with page one (1) and end with the last numbered page of the complete and entire proposal.
- G. Other supporting documents may be submitted in an Appendix, including visual aids to further explain specific points in the proposal. If appendices are used, they should be appropriately identified and referenced.

III. Proposal Application

A. Cover Letter

A Cover Letter must be included in the proposal. See Attachment 3 – Sample Cover Letter. The Cover Letter must meet the following requirements:

1. Be printed on official business letterhead;
2. Contain a signature by an authorized signatory;
3. Contain the following statement:

“The undersigned has carefully read and understands the terms and conditions specified in the RFP LA 2021-022, and in the General Conditions, and hereby submits the following Proposal to perform the work specified herein, all in accordance with the true intent and meaning thereof.

The undersigned further understands and agrees that by submitting their Proposal, 1) he/she is declaring his/her Proposal is not in violation of Chapter 84, Hawai'i Revised Statutes, concerning prohibited State Contracts, 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion, and 3) he/she hereby authorizes the Office of Hawaiian Affairs to verify information provided in this Proposal.”;

4. Contain the true, correct, and official legal name and address of the Offeror;
5. Contain the contact person's name, telephone number and e-mail address;

6. Contain a statement specifying the official legal status of the Offeror's entity and its taxpayer identification number; and
7. Contain a statement that the Offeror is or will be registered to do business in Hawai'i and has or will obtain a State General Excise Tax license before work under the contract commences.

B. Offer Form OF-1 and OF-2

Pricing shall be submitted on Offer Form. See Attachment 6 – Offer Form OF-1 and OF-2. The price shall be the all-inclusive cost, including the general excise tax, to the OHA. No other costs shall be honored. Any unit price shall be inclusive.

C. Acknowledgement of Addendum

By completing the Acknowledgement of Addenda form, the Offeror will acknowledge and confirm that all addenda to this RFP issued by the OHA have been received by the Offeror. See Attachment 4 - Acknowledgement of Addenda. If no addendum has been received, the Offeror will check the appropriate box on the form.

D. Experience and Capability

The OHA is requiring that the Offeror have a minimum of ten (10) years of experience on projects of similar size and nature.

1. Necessary Skills and Experience

The Offeror must demonstrate that it has the necessary skills, abilities, knowledge, and experience relating to the delivery of the proposed services. The Offeror must also provide a listing of verifiable references and experiences with projects or contracts related to the services that were provided to a government agency or private entity within the last ten (10) years. The Offeror must identify the name of the client, the nature and duration of the engagement, and the primary accomplishments achieved.

Provide a list of companies or governmental organizations to which your proposed team is/are currently providing services. If this list does not include at least five (5) entities, then provide the names of the entities for which similar services were provided. For each entity include:

- a. Term of your contract (beginning and ending dates);
- b. Brief description of the scope of work; and
- c. Name, address, and telephone number of the individual who administered your contract(s).

2. Professional References

The Offeror must provide a list of professional references for the last ten (10) years, including contact (e.g., e-mail, phone contact, mailing address) information for similar type work, description of the engagement and major deliverables, role of the contractor and number of hours of engagement.

3. Quality Assurance, Evaluation and Resolution

The Offeror must describe its quality assurance and evaluation plans for the proposed services, including methodology. Evaluation plans must include client surveys as appropriate. The Offeror must also describe its issue escalation and resolution process as it relates to the scope of and completion of the scope of work and/or if there are disagreements between the OHA and the Offeror.

4. Coordination of Services

The Offeror must demonstrate the capability to coordinate services with other agencies and resources in the community.

5. Past Performance

The OHA reserves the right to verify the documented experience directly with the owner/contact person as submitted in the proposal. Only information that is submitted directly to the OHA in the proposal package will be considered unless the OHA seeks additional information during the RFP evaluation process. The OHA reserves the right to review and consider past performance the Offeror may have had with the OHA.

E. Project Organization and Staffing

1. Proposed Staffing

This section must describe the staff necessary and the specific time required by the Offeror to ensure the performance of the work required under this RFP. Staff titles, qualifications and expected responsibilities must be included in the response. The Offeror must detail the proposed team's capacity to successfully plan, implement, and complete the proposed work.

2. Staff Qualifications

This section must provide the minimum qualifications including the experience and background of the staff that will be assigned to perform the work required under this RFP, including Section 2, Items V.A and V.B. The Offeror must describe the knowledge and experience of the proposed project director and/or the necessary staff including how day-to-day management requirements to

accomplish the RFP's objectives will be met. Resumes and relevant professional background/experience of each key staff position must be identified and attached.

3. Supervision and Training

The Offeror must describe its ability to supervise, train and provide administrative direction to the staff required to perform and deliver the proposed services.

4. Organization Chart

If applicable, an organizational chart containing the position title, the name and the full or part-time status of each staff member and to whom they will report or will supervise shall be provided.

F. Service Delivery

This section must include a detailed discussion of the following:

1. The Offeror's approach to applicable services, activities and management requirement from Section 2, Item IV., including, but not limited to, phases, work plans of all service activities and tasks to be completed, and related work assignments/responsibilities.
2. How the Offeror's approach is the most advantageous in terms of meeting the RFP's scope of work, cost effectiveness, and reliability.

G. Financial Capacity

This section must state the status of the Offeror's current projects and its financial capacity to accomplish those projects in a timely and orderly fashion. The Offeror must state its ability to accomplish the work required under this RFP in a timely and orderly fashion given its previous and existing commitments.

H. Price Proposal

This section must include a proposed cost for the contract period(s). Include a description of the basis for the cost of performing the requested services, including professional fees by labor category, other direct costs chargeable to the contract and general administration, overhead, and reimbursable expenses. Hourly rates provided shall be inclusive of direct costs chargeable to the contract and general administration, overhead, and ordinary reimbursable expenses.

For the purposes of price evaluation, the OHA assumes a minimum of 60 consulting hours will be needed per month in Year 1 of this effort. Based on this assumption, please provide the titles/positions, hourly rate per title/positions, and numbers of

hours per month per title/position (which in total should equal 60 hours) that you would allot for this work.

I. Commitment to Section 2 Requirement

This section shall describe the Offeror's approach to furthering the OHA's commitment to fulfill MBE/WBE on page 20, Section 2. Item II.A.10., Using Best Effort to Fulfill Minority/Women Business Participation.

(END OF SECTION)

Section 4 – Proposal Evaluation & Award

I. Proposal Evaluation

An RFP evaluation committee, approved by the OHA's Chief Procurement Officer will evaluate all responsive and responsible proposals. The evaluation of such proposals will be based solely on the evaluation criteria set out in this RFP. The evaluation committee's primary responsibility will be to review the proposals submitted. The price proposal review will be conducted by the Procurement Officer. The review criteria will be as follows:

Evaluation Categories	Possible Points
1. Experience and Capability: Up to 5 points will be awarded based on the degree to which the Offeror clearly and concisely demonstrates that it has the experience and professional qualifications with predevelopment, financing, design, construction and operations.	5 points
2. Experience and Capability: Up to 5 points will be awarded based on the degree to which the Offeror clearly and concisely demonstrates that it has the capacity and specialized experience in the development of vertical communities (e.g. condominiums apartments, office buildings, hotels).	5 points
3. Experience and Capability: Up to 5 points will be awarded based on the degree to which the Offeror clearly and concisely demonstrates that it has experience in understanding corporate policies and Hawaiian cultural initiatives with the plans and strategies of the commercial real property portfolio.	5 points

4. Experience and Capability:

Up to 10 points will be awarded based on the degree to which the Offeror clearly and concisely demonstrates that it has the following:

Minimum of 8 years of experience in navigating the HCDA's process and completing the necessary processes that are required to implement and complete projects within the HCDA Kaka'ako District.

10 points

Minimum of 8 years of experience in navigating the City and County of Honolulu's process and completing the necessary processes that are required to implement and complete projects within Urban Honolulu.

5. Experience and Capability:

Up to 10 points will be awarded based on the degree to which the Offeror clearly and concisely demonstrates that it has 10 years of experience negotiating complex real estate transactions, including joint ventures, equity investments by limited partners, ground leases and outright parcel sales.

10 points

6. Experience and Capability:

Up to 5 points will be awarded based on the degree to which the Offeror clearly and concisely demonstrates that it has the following:

Ability to prepare or direct preparation of best-in-class market studies forecasting demand for all land uses, including residential, commercial, and hospitality for a mixed use master plan development opportunity.

5 points

Ability to prepare financial feasibility analysis and project profitability metrics to guide strategic planning and land use decisions.

7. Experience and Capability:

Up to 10 points will be awarded based on the degree to which the Offeror clearly and concisely demonstrates that it has the following:

Track record of successfully building community, stakeholder, and political support for the project.

Knowledge of and experience working with the Island Burial Councils, the State Historic Preservation Division, with cultural experts, and with cultural and lineal descendants.

10 points

Demonstrated experience working with and communicating to the Native Hawaiian community on complex planning, implementation, and land development matters

8. Service Delivery:

Up to 10 points will be awarded based on the Offeror's proposal which clearly and concisely demonstrates Phase I – Vision Plan; to define vision integrating financial feasibility, goals for the OHA, political reality and community/stakeholder input. Develop a strategic plan for the lands that includes aspects of planning, financial analysis, civil engineering, architecture, etc. Study impact of residential zoning and synthesize studies previously completed.

10 points

9. Service Delivery:

Up to 10 points will be awarded based on the Offeror's proposal which clearly and concisely demonstrates Phase 2 – Determine the best implementation strategy for the OHA; how to gain entitlements, develop, assemble consultant team, develop alternatives for future development (both horizontal and vertical improvements).

10 points

10. Service Delivery: -

Up to 10 points will be awarded based on the Offeror's proposal which clearly and concisely demonstrates Phase 3 – Implementation of Master Plan; Managing and monitoring entitlement, master plan phase, horizontal construction phase, vertical construction phase, as well as manage and monitor activities inclusive of project conception, pre-development and construction.

10 points

11. Service Delivery:

Up to 5 points will be awarded based on the Offeror's proposal which demonstrates experience and ability in communicating complex project planning and development issues to non-real estate Staff and/or Board Members.

5 points

12. Price:

The Offeror proposing the overall lowest hourly rate sheet will be assigned the maximum of 5 points. Each proposal that has a higher cost factor than the proposal with the lowest cost factor will be assigned a score of less than 5.

5 points

13. Financial Capability:

Up to 5 points will be awarded based on the Offeror's proposal which clearly and concisely demonstrates that it has the financial capacity to complete the scope of work in this RFP in a timely and orderly manner.

5 points

14. Commitment to Section 2:

Up to 5 points will be awarded based on the degree to which the Offeror clearly and concisely demonstrates their approach to furthering the OHA's commitment to the Section 2.Item II.A.10 requirement, Using Best Effort to Fulfill Minority / Women Business Participation

5 points

TOTAL POSSIBLE POINTS**100 Points**

Each proposal will be initially classified as acceptable, potentially acceptable, or unacceptable. If numerous acceptable and potentially acceptable proposals are submitted, the evaluation committee may rank the proposals and limit the priority list to at least three (3) acceptable or potentially acceptable Offerors who submitted the highest-ranked proposals. If there are fewer than three (3) acceptable or potentially acceptable proposals, the OHA will not be required to hold discussion with these Offerors who submitted unacceptable proposals.

II. Mandatory Requirements

The OHA will conduct an initial review to ensure that all proposals meet the minimum threshold requirements. Each proposal will be reviewed to ensure submittal of all required attachments, certifications, forms, and narrative sections.

Statements which indicate that mandatory certification will be submitted upon contract award will be unacceptable.

III. Financial/Price Proposal Review

The financial/price proposal review will be evaluated for financial and contractual acceptability and reasonableness of the price proposal. The proposal with the lowest cost factor will receive the highest available rating allocated to cost. Each proposal that has a higher cost factor than the lowest will be assigned a lower scoring for cost.

The points allocated to higher priced proposals must be equal to the lowest proposal price multiplied by the maximum points available for price, divided by the higher proposal price as follows:

$$\frac{\text{Price of the lowest hourly rate} \times \text{Total possible points}}{\text{Price of the proposal being rated}}$$

In determining whether a proposal is responsive, the OHA will evaluate the costs and supporting documentation against realistic operational expenses.

IV. Initial Review

The Offeror's proposal will be in the form prescribed by this solicitation and will contain a response to each of the areas identified that affects the evaluation factors for award.

- A. The proposal will be evaluated to determine if the Offeror possesses the capability to successfully perform the requirements of the solicitation. The proposal criteria are:
 1. Experience and Capability;
 2. Personnel and Staffing;
 3. Service Delivery;
 4. Financial Capacity and Pricing; and
 5. Commitment to Section 2/Other Requirements.
- B. Proposals will be evaluated for technical and contractual acceptability. Proposals will be prepared in accordance with the instructions given in the RFP and will meet all requirements set forth in this RFP.
- C. All proposals will be reviewed for reasonableness. All Offerors whose offer are not within the competitive range will be notified that their proposals are unacceptable, negotiations/discussions with them are not contemplated, and any revisions to their proposals will not be considered.
- D. Award will be made to the responsible Offeror whose proposal conforms to the solicitation and will be most advantageous to the OHA considering price and other factors as indicated below:

Pursuant to section 3-122-59, HAR, if for a given request for proposal there is only one (1) responsive and responsible Offeror submitting an acceptable proposal, an award may be made to the single Offeror, or rejected, if conditions in section 3-122-59(a)(1) are not met, and new requests for proposal may be solicited or the procurement may be cancelled.

- E. The OHA reserves the right to award a contract on the basis of the initial offers received without discussion. Offers are solicited on an "all or none" basis.

Failure to submit offers for all items and quantities listed will be cause for rejection. Proposals should be submitted initially on the most favorable terms of a price and technical standpoint, which the Offeror can submit to the OHA.

All proposals submitted will be evaluated on the basis of the evaluation criteria listed herein. Proposals will conform to all terms and conditions contained in the RFP. Proposals which do not conform to all requirements expressed in this solicitation may be rejected without further evaluation, deliberation, or discussion.

- F. The OHA may evaluate the quality of each Offeror's past performance. The assessment of an Offeror's past performance will be used as one means of evaluating the credibility of the Offeror's approach to work accomplishment. A record of marginal or unacceptable past performance may be an indication that the promises made by the Offeror are less than reliable. Such an indication will be reflected in the OHA's overall assessment of the Offeror's proposal. However, a record of acceptable or even excellent past performance will not result in a favorable assessment of an otherwise unacceptable proposal.

In investigating an Offeror's past performance, the OHA may consider information in the Offeror's proposal and information obtained from other sources, including past and present clients and their employees; other government agencies, including state and local agencies, consumer protection organizations and better business bureaus; former subcontractors; and others. Evaluation of past performance is a subjective assessment based on a consideration of all relevant facts and circumstances. The OHA may seek to determine whether the Offeror has consistently demonstrated a commitment to client satisfaction and timely delivery of quality goods and services at fair and reasonable prices.

The OHA's conclusions about the overall quality of the Offeror's past performance may be influential in determining the relative merits of the Offeror's proposal and in selecting the Offeror whose proposal is considered most advantageous to the OHA.

Past performance includes the Offeror's record of conforming to specifications and to standards of good workmanship; the Offeror's adherence to contract schedules, including the administrative aspects of performance, the Offeror's control of costs,

including costs incurred for changes in the scope of services; the Offeror's reputation for reasonable and cooperative behavior and commitment to clients satisfaction; and, generally, the Offeror's business-like concern for the interests of the client.

V. Method of Award

- A. All proposals submitted will be evaluated and scored by an evaluation committee based on the evaluation criteria listed in Section 4 Proposal Evaluation and Award. Proposals shall conform to all terms and conditions contained in the Request for Proposals. Proposals which do not conform to all requirements expressed in this solicitation may be rejected without further evaluation, deliberation, or discussion.
- B. All proposals will be reviewed for reasonableness. Offerors who are not within the competitive range will be notified that their proposals are unacceptable, negotiations/discussions are not contemplated, and any revisions of their proposals will not be considered.
- C. Award will be made to the responsive and responsible Offeror whose proposal, conforming to the solicitation and will be most advantageous to the OHA with consideration to price and other evaluation criteria set out in this RFP.
- D. Pursuant to chapter 3-122-59 HAR, if there is only one responsible Offeror submitting an acceptable proposal, an award may be made to the single Offeror; rejected and new requests for proposals may be solicited if certain conditions are not met; the proposed procurement may be cancelled; or an alternative procurement method may be conducted.
- E. The OHA reserves the right to award a contract on the basis of the initial offers received without discussion. Offers are solicited on an "all or none" basis. Failure to submit offers for all items and quantities listed shall be cause for rejection. Proposals should be submitted initially on the most favorable terms of a price and technical standpoint, which the Offeror can submit to the OHA.

VI. Final Evaluation and Award

- A. The Evaluation Committee will determine the acceptable proposals and may produce a Priority List of Offerors. This priority list will consist of at least three Offerors and each Offeror may be invited to make a presentation to the committee. Once presentations are completed, a request for a Best And Final Offer (BAFO) will be made and the evaluation committee will proceed to score the Priority List of Offerors. Only Offerors on the Priority List of Offerors are eligible to enter discussions, receive further addenda to the RFP, and submit BAFOs. The RFP Coordinator will notify the winning Offeror that they have been chosen to receive the award and will notify the other Offerors in writing that a different Offeror has been selected.

VII. Discussions - Kūkākūkā

Discussions may be conducted with a priority list of Offerors who submit proposals determined to be acceptable or potentially acceptable of being selected for award, but proposals may be accepted without discussions. The objective of these discussions is to: 1) promote understanding of the requirements set forth in the RFP and the Offeror's proposal; and 2) facilitate arriving at a contract that will provide the best value to the OHA, taking into consideration the evaluation factors set forth in this RFP. Any discussion is not intended to require an award of contract by the OHA.

(END OF SECTION)

Section 5 – Attachments

Attachment 1 - Proposal Submittal Checklist

Attachment 2 – RFP Registration Form

Attachment 3 – Sample Cover Letter

Attachment 4 - Acknowledgement of Addenda

Attachment 5 – Wage Certificate

Attachment 6 – Offer Form OF-1 and OF-2

Attachment 7 – General Terms and Conditions

Attachment 8 - 2021-2022 Hawaii State Government Observed Holidays

PROPOSAL SUBMITTAL CHECKLIST
RFP LA 2021-022
“IN-HOUSE” DEVELOPMENT CONSULTANT

The following checklist is provided as a reference for proposal submittal. The offeror shall be responsible for complying with all aspects of proposal submission requirements. See the RFP for more information regarding each item. The OHA shall not be responsible for other pertinent RFP information not listed below:

- ☐ 1. Attachment 3 - Cover Letter (original signature required).
- ☐ 2. Proposal (please limit body of proposal to 50 pages)
 - a. Finance Related Requirements
 - b. Qualifications and Requirements pertaining to the Scope of Services, if any
 - c. Hawaii Compliance Express Certificate of Vendor Compliance OR
 - Department of Labor and Industrial Relations, Certificate of Compliance with section 3-122-112, HAR, Form LIR #27; AND
 - Department of Consumer and Commerce Affairs Certificate of Good Standing; AND
 - State and Federal Tax Clearance Certificates.
 - d. Corporate Resolution indicating authorized signer for proposal and contractual documents.
- ☐ 3. Attachment 4 – Acknowledgement of Addenda
- ☐ 4. Attachment 5 – Wage Certificate
- ☐ 5. Attachment 6 – Offer Form OF-1 and OF-2

RFP REGISTRATION FORM

RFP LA 2021-022	“IN-HOUSE” DEVELOPMENT CONSULTANT
-----------------	-----------------------------------

INSTRUCTIONS: If you are interested in submitting a proposal, please complete this Registration Form and e-mail this form to the RFP Coordinator: proposals@oha.org.

Registration Forms Due	Due by Monday, May 31, 2021, 2:00 p.m. HST
Proposal Submittals Due	Due by Friday, June 25, 2021, 2:00 p.m. HST Proposals shall be submitted via email to proposals@oha.org . The official time will be that which the email is received by OHA.
Notice of Award	TBD
Contract Start Date	TBD
<p style="text-align: right;">Date: _____</p> <p>Company: _____</p> <p>Address: _____</p> <p>Phone: _____ E-mail: _____</p> <p>Contact Person: _____</p>	

YOUR BUSINESS LETTERHEAD
Aloha Company • 123 Aloha ‘Oe Drive • Honolulu, HI 96819

TO: Sylvia M. Hussey, Ed.D
 Ka Pouhana, Chief Executive Officer
 Office of Hawaiian Affairs
 560 North Nimitz Highway Suite 200
 Honolulu, Hawai‘i 96817

Dear Ms. Hussey:

The undersigned has carefully read and understands the terms and conditions specified in the RFP LA 2021-022 and in the General Conditions, and hereby submits the following Proposal to perform the work specified herein, all in accordance with the true intent and meaning thereof.

The undersigned further understands and agrees that by submitting this competitive sealed Proposal, 1) he/she is declaring that his/her Proposal is not in violation of Chapter 84, Hawai‘i Revised Statutes, as amended, concerning prohibited State Contracts, 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion, and 3) he/she hereby authorizes the Office of Hawaiian Affairs to verify information provided in this Proposal.

Furthermore, Aloha Company is a Domestic Profit Corporation registered to do business in the State of Hawai‘i. Please see the Federal taxpayer identification number and State General Excise Tax License Identification number indicated below.

Date: _____

Respectfully submitted,

Phone: _____

 Exact Legal Name of Company (Offeror)

Remittance Address, if different from
 Business Address

 Authorized Signature (Original)

Print Name: _____

Title: _____

Hawai‘i General Excise Tax License
 I.D. No: _____

Business Address: _____

Federal Tax I.D./Social Security No: _____

E-mail: _____

ACKNOWLEDGEMENT OF ADDENDA
LA 2021-022
“IN-HOUSE” DEVELOPMENT CONSULTANT

The offeror has received the following Addenda, receipt of which is hereby acknowledged:

		Check box if Addendum not received
Addendum Number: _____	Date Received: _____	<input type="checkbox"/>
Addendum Number: _____	Date Received: _____	<input type="checkbox"/>
Addendum Number: _____	Date Received: _____	<input type="checkbox"/>
Addendum Number: _____	Date Received: _____	<input type="checkbox"/>
Addendum Number: _____	Date Received: _____	<input type="checkbox"/>

Offeror's Name

Authorized Signature (Original)

Print Authorized Signature Name

WAGE CERTIFICATE**DESCRIPTION OF PROJECT****“IN-HOUSE” DEVELOPMENT CONSULTANT**

Pursuant to Section 103-55, Hawai‘i Revised Statutes (HRS), I hereby certify that if awarded the contract and it is in excess of \$25,000.00 the services will be performed under the following conditions:

1. The services shall be performed by employees at wages or salaries not less than wages or salaries paid to public officers and employees doing similar work; and
2. All applicable laws of the Federal and State governments relating to worker’s compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

I understand that all payments required by Federal and State laws to be made by employers for the benefit of their employees are to be paid in addition to the base wages required by Section 103-55, HRS.

BY: _____
Signature of Person Authorized to Signer

Please Print

NAME: _____

TITLE: _____

VENDOR: _____

DATE: _____

OFFER FORM, OF-1

FROM: _____

TO: Sylvia M. Hussey, Ed. D
Ka Pouhana, Chief Executive Officer, Head of Purchasing Agency
Office of Hawaiian Affairs, State of Hawai‘i
560 N. Nimitz Highway, Suite 200
Honolulu, Hawai‘i 96817

RE: OFFICE OF HAWAIIAN AFFAIRS, STATE OF HAWAI‘I
RFP NO. LA 2021-022
“IN-HOUSE” DEVELOPMENT CONSULTANT

Dear Ms. Hussey,

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

Offeror is:

☐ Sole Proprietor ☐ Partnership ☐ *Corporation ☐ Joint Venture

*State of incorporation: _____

☐ Other _____

Hawai‘i General Excise Tax License I.D. No. _____

Federal I.D. No. _____

OFFER FORM, OF-1
(CONTINUED)

Payment address (other than street address below):

Business address (street address):

Respectfully submitted:

Exact Legal Name of Company (Offeror)**

Authorized (Original) SignatureName & Title:

Date:

Telephone No.:

Fax No.:

E-mail Address:

**If Offeror is a “dba” or a “division” of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed.

OFFER FORM, OF-2

Average hourly rate for accomplishing the development and delivery of the services	\$_____ per hour
--	------------------

Note: Pricing shall include labor, materials, supplies, all applicable taxes, and any other costs incurred to provide the specified services.

The Contract for the proposed services may be extended without the necessity of re-soliciting or solicitation, subject to appropriation and availability of funds to OHA, continued need for the services, and OHA's determination of satisfactory performance of the contracted organization, or unless this Contract is terminated. The option to extend the service shall be offered in writing by OHA prior to the expiration of the Contract. No Contract or amendment to a Contract shall be binding upon OHA until the Contract has been fully and properly executed by all parties thereto prior to the start date of the Contract. The contracted organization shall not provide any services until the Contract is fully and properly executed.

Offeror

Name of Company

GENERAL TERMS AND CONDITIONS

- 1) Coordination of Services by the OHA. The head of the purchasing agency (“HOPA”) (which term includes the Contract Administrator, as designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR’S work and submit to HOPA for resolution any questions which may arise as to the performance of the Contract. “Purchasing agency” as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, Hawai‘i Revised Statutes (“HRS”), or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
- 2) Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an “independent contractor,” with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the OHA shall have a general right to inspect work in progress to determine whether, in the OHA’S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the OHA does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the OHA
 - b. The CONTRACTOR and the CONTRACTOR’S employees and agents are not by reason of this Contract, agents or employees of the OHA for any purpose, and the CONTRACTOR and the CONTRACTOR’S employees and agents shall not be entitled to claim or receive from the OHA any vacation, sick leave, retirement, workers compensation, unemployment insurance, or other benefits provided to OHA employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR’S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR’S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR’S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owed by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR is also responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.

- e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawai‘i, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawai‘i, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the OHA prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
- f. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawai‘i, in accordance with section 103D-310, HRS, and section 3-122-112, Hawai‘i Administrative Rules (“HAR”), that is current within six (6) months of the date of issuance.
- g. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR’S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawai‘i, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office’s designated certification process.

3) Personnel Requirements.

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

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

- 5) Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.
- 6) Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the OHA, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the OHA a tax clearance certificate from the Director of Taxation, State of Hawai'i, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the CEO of the OHA.
- a. Recognition of a successor in interest. When in the best interest of the OHA, a successor in interest may be recognized in an assignment contract in which the OHA, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:
- 1) The Assignee assumes all of the CONTRACTOR'S obligations;
 - 2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the OHA; and
 - 3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the OHA, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.
- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty (30) days of the date that the assignment contract or amendment becomes effective.
- d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more

than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the OHA CPO's office.

- e. Recognition of a successor in interest. When in the best interest of the OHA, a successor in interest may be recognized in an assignment contract in which the OHA, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:
 - (1) The Assignee assumes all of the CONTRACTOR'S obligations;
 - (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the OHA; and
 - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
 - f. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the OHA, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.
 - g. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty (30) days of the date that the assignment contract or amendment becomes effective.
 - h. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the OHA CPO's office.
- 7) Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawai'i and the OHA, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.

- 8) Cost of Litigation. In case the OHA shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the OHA, including attorneys' fees.
- 9) [Reserved].
- 10) OHA'S Right of Offset. The OHA may offset against any monies or other obligations the OHA owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawai'i by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawai'i by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The OHA will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawai'i shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawai'i, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawai'i under such payment or other settlement plan.
- 11) Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, HAR, as the same may be amended from time to time.
- 12) Suspension of Contract. The OHA reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with provisions herein.
- a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontractors; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:
- (1) Cancel the stop performance order; or

(2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of the Contract.

- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13) Termination for Default.

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

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

14) Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the OHA so require, terminate this Contract in whole or in part, for the convenience of the OHA. The Agency procurement officer shall give written notice of the termination to the

CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.

- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the OHA'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the OHA. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.
- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the OHA in the manner and to the extent directed by the Agency procurement officer:

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

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

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one (1) year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost and pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the OHA,

the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.

- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:

(A) Contract prices for goods and services accepted under the Contract;

(B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(C) Cost of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);

(D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

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

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

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the

CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
 - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
 - (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
 - (C) Within such further time as may be allowed by the Agency procurement officer in writing.
 - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
 - (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
 - (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the OHA, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any of the OHA officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
 - c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.
- 16) Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

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

17) Payment Procedures; Final Payment; Tax Clearance.

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

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

19) Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the OHA, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of the Contract shall be permitted.
- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency Procurement officer may unilaterally order of the CONTRACTOR:
 - (1) Changes in the work within the scope of the Contract; and
 - (2) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
- d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
- e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
- f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
- g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten percent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.

- h. Tax clearance. The OHA may, at its discretion, require the CONTRACTOR to submit to the OHA, prior to the OHA'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawai'i, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of sole source contract for services should not be submitted as an amendment.
- 20) Change Order. The Agency procurement officer may, by a written order signed only by the OHA, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the OHA in accordance therewith;
 - Method of delivery; or
 - Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.
 - b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
 - c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.

- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21) Price Adjustment.

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

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

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

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract,

the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.

- c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
- d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
- e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the Contract.

24) Confidentiality of Material.

- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the OHA.
- b. All information, data, or other material provided by the CONTRACTOR to the OHA shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25) Publicity. The CONTRACTOR shall not refer to the OHA, or any office, agency, or officer thereof, or any OHA employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contracts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26) Ownership Rights and Copyright. The OHA shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the OHA upon expiration or termination of this Contract. The OHA, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.

27) Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28) Audit of Books and Records of the CONTRACTOR. The OHA may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

- a. The cost or pricing data, and
- b. An OHA contract, including subcontracts, other than a firm fixed-price contract.

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

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

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

31) Records Retention.

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

32) Antitrust Claims. The OHA and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the

purchaser. Therefore, the CONTRACTOR hereby assigns to OHA any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the OHA under an escalation clause.

- 33) Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the OHA, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the OHA any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the OHA a substitute article, process, or appliance acceptable to the OHA, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.
- 34) Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawai'i. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawai'i.
- 35) Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
- 36) Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
- 37) Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the OHA and the CONTRACTOR relative to this contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the OHA and the CONTRACTOR other than as set forth or as referred to herein.
- 38) Severability. In the event that any provision of the Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
- 39) Waiver. The failure of the OHA 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 OHA’S right to enforce the same in accordance with this Contract. The fact that the OHA specifically refers to one provision of the procurement rules or one section of the Hawai‘i Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the OHA’S rights or the CONTRACTOR’S obligations under the procurement rules or statutes.

40) Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a “release” or a “threatened release” of a reportable quantity of a “hazardous substance,” “pollutant,” or “contaminant” as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the OHA and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the OHA determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.

41) Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from the specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.

42) Confidentiality of Personal Information.

a. Definitions.

“Personal information” means an individual’s first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:

(1) Social security number;

(2) Driver’s license number or Hawai‘i identification card number; or

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

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

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

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

e. Records Retention.

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

[END OF GENERAL CONDITIONS SECTION]

Years 2021 and 2022**www.dhrd.hawaii.gov****Holidays to be observed by the
HAWAII STATE GOVERNMENT**

Website where State Holiday Schedule posted

Year 2021 HAWAII STATE HOLIDAYS

<u>(Hawaii Rev. Statutes, Sec. 8-1)</u>	<u>Day Observed in 2021</u>	<u>Official Date Designated in Statute/Constitution</u>
New Year's Day.....	Jan. 1, Friday	The first day in January
Dr. Martin Luther King, Jr. Day.....	Jan. 18 Monday	The third Monday in January
Presidents' Day.....	Feb. 15 Monday	The third Monday in February
Prince Jonah Kuhio Kalaniana'ole Day.....	Mar. 26 Friday	The twenty-sixth day in March
Good Friday.....	April 2 Friday.....	The Friday preceding Easter Sunday
Memorial Day.....	May 31 Monday	The last Monday in May
King Kamehameha I Day.....	June 11 Friday.....	The eleventh day in June
Independence Day.....	July 5 Monday	The fourth day in July
Statehood Day.....	Aug. 20 Friday	The third Friday in August
Labor Day.....	Sept. 6 Monday	The first Monday in September
Veterans' Day.....	Nov 11 Thursday	The eleventh day in November
Thanksgiving.....	Nov. 25 Thursday	The fourth Thursday in November
Christmas.....	Dec. 24 Friday	The twenty-fifth day in December

New Year's Day.....	Jan. 1, Friday	The first day in January
Dr. Martin Luther King, Jr. Day.....	Jan. 18 Monday	The third Monday in January
Presidents' Day.....	Feb. 15 Monday	The third Monday in February
Prince Jonah Kuhio Kalaniana'ole Day.....	Mar. 26 Friday	The twenty-sixth day in March
Good Friday.....	April 2 Friday.....	The Friday preceding Easter Sunday
Memorial Day.....	May 31 Monday	The last Monday in May
King Kamehameha I Day.....	June 11 Friday.....	The eleventh day in June
Independence Day.....	July 5 Monday	The fourth day in July
Statehood Day.....	Aug. 20 Friday	The third Friday in August
Labor Day.....	Sept. 6 Monday	The first Monday in September
Veterans' Day.....	Nov 11 Thursday	The eleventh day in November
Thanksgiving.....	Nov. 25 Thursday	The fourth Thursday in November
Christmas.....	Dec. 24 Friday	The twenty-fifth day in December

Year 2022 HAWAII STATE HOLIDAYS

<u>(Hawaii Rev. Statutes, Sec. 8-1)</u>	<u>Day Observed in 2022</u>	<u>Official Date Designated in Statute/Constitution</u>
New Year's Day.....	Dec. 31, Friday	The first day in January
Dr. Martin Luther King, Jr. Day.....	Jan. 17 Monday	The third Monday in January
Presidents' Day.....	Feb. 21 Monday	The third Monday in February
Prince Jonah Kuhio Kalaniana'ole Day.....	Mar. 25 Friday	The twenty-sixth day in March
Good Friday.....	April 15 Friday	The Friday preceding Easter Sunday
Memorial Day.....	May 30 Monday	The last Monday in May
King Kamehameha I Day.....	June 10 Friday.....	The eleventh day in June
Independence Day.....	July 4 Monday	The fourth day in July
Statehood Day.....	Aug. 19 Friday	The third Friday in August
Labor Day.....	Sept. 5 Monday	The first Monday in September
Election Day.....	Nov. 8 Tuesday	The first Tuesday in November following the first Monday of even numbered years (<i>Hawaii State Constitution, Article 2-Section 8</i>)
Veterans' Day.....	Nov 11 Friday	The eleventh day in November
Thanksgiving.....	Nov. 24 Thursday	The fourth Thursday in November
Christmas.....	Dec. 26 Monday	The twenty-fifth day in December

New Year's Day.....	Dec. 31, Friday	The first day in January
Dr. Martin Luther King, Jr. Day.....	Jan. 17 Monday	The third Monday in January
Presidents' Day.....	Feb. 21 Monday	The third Monday in February
Prince Jonah Kuhio Kalaniana'ole Day.....	Mar. 25 Friday	The twenty-sixth day in March
Good Friday.....	April 15 Friday	The Friday preceding Easter Sunday
Memorial Day.....	May 30 Monday	The last Monday in May
King Kamehameha I Day.....	June 10 Friday.....	The eleventh day in June
Independence Day.....	July 4 Monday	The fourth day in July
Statehood Day.....	Aug. 19 Friday	The third Friday in August
Labor Day.....	Sept. 5 Monday	The first Monday in September
Election Day.....	Nov. 8 Tuesday	The first Tuesday in November following the first Monday of even numbered years (<i>Hawaii State Constitution, Article 2-Section 8</i>)
Veterans' Day.....	Nov 11 Friday	The eleventh day in November
Thanksgiving.....	Nov. 24 Thursday	The fourth Thursday in November
Christmas.....	Dec. 26 Monday	The twenty-fifth day in December

FOOTNOTES: For use solely by State government agencies. Federal government and local banking holidays may differ. For State agencies that operate on other than Monday-Friday 7:45 AM to 4:30 PM schedules, also refer to appropriate collective bargaining agreements. Created by the Department of Human Resources Development 5/20/2020 subject to change.

PHONE (808) 594-1888

FAX (808) 594-1865



**STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
560 NORTH NIMITZ HIGHWAY, SUITE 200
HONOLULU, HAWAII 96817**

June 2, 2021

TO: Interested Parties

FROM: Chris Stanley
Procurement Manager

SUBJECT: Request for Proposal No. LA 2021-022 Addendum No. 1
"In-House" Development Consultant

This Addendum No. 1 is to notify interested offerors that the Virtual Information Session scheduled for Friday, June 4, 2021 from 2pm-3:30pm HST can be accessed in one of two ways:

1. [Click here to join the meeting](#) (via Microsoft TEAMS)
2. Call in (audio only) to: +1 (872) 205-9168 and enter Phone Conference ID: 550 862 743# when prompted

If you have any questions, please contact Chris Stanley, RFP Coordinator at proposals@oha.org.

PHONE (808) 594-1833

FAX (808) 594-1865



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
560 NORTH NIMITZ HIGHWAY, SUITE 200
HONOLULU, HAWAII 96817

June 15, 2021

REQUEST FOR PROPOSALS (RFP) NO. LA 2021-022

"IN-HOUSE" DEVELOPMENT CONSULTANT

ADDENDUM 2

Q. I am not completely understanding the purpose you seek for the "Wage Certificate 43 Form".

A. The purpose of the Wage Certificate Form is to ensure that entities providing services to the State of Hawaii and its agencies are paying no less than the State of Hawaii would for equivalent positions on contracts larger than \$25,000. It also helps to ensure that all applicable Federal and State Employment laws are followed with respect to the contractor and their employees.

Q. We would like to inquire whether you would consider a 2-week extension of the submission due date.

A. Not at this time.

Q. Will the pursuit and awarding of this contract preclude the selected vendor from pursuing other specific future work related to these OHA landholdings, i.e. master plan, design work, entitlements, etc.?

- A. The award of this contract would prohibit the selected vendor from pursuing other specific future work related to these OHA landholdings, however the mere pursuit via participation in this RFP would not preclude an offeror from pursuing other specific future work related to these OHA landholdings (including but not limited to the master plan, design work, entitlements which are types of deliverables that can be defined in your respective proposals).

Potential Offerors are still required to identify and eliminate any sources of conflicts of interest and they are subject to [HRS Section 103D-101 Requirements of Ethical Public Procurement](#), and [HAR Section 3-131-1.02 Procurement Code of Ethics](#), which provide in part:

Any person, including any actual or prospective bidder, offeror, contractor, or business shall act in good faith to practice purchasing ethics, and when applicable, display business integrity as a responsible offeror, including but not limited to the following:

1. Avoid the intent and appearance of unethical behavior or business practices;
2. Refrain from any activity that would create a conflict between personal interests and the interests of the State;
3. Identify and eliminate any conflicts of interest; and
4. Ensure that all persons are afforded equal opportunity to compete in a fair and open environment.

Q. Who makes the selection? Could it be the BOT?

- A. An Evaluation Committee will make evaluate and rank the proposals. The Evaluation Committee could comprise some or all of the BOT.



OFFICE OF HAWAIIAN AFFAIRS

REAL ESTATE VISION, MISSION, AND STRATEGY POLICY

First Reading: May 17, 2007
Second Reading: June 6, 2007

Table of Contents

I. VISION.....	2
II. MISSION	2
III. OHA REAL ESTATE STRATEGY	2
1. OHA Will Champion Real Estate Best Practices.....	2
A. Best Practices	2
B. Real Estate Asset Allocation Model.....	3
C. Prudent Investment Standard	4
D. World Class Strategic Management.....	4
E. Mandatory Property Standards.....	4
F. Types of Property Involvements.....	5
G. Specific Decision Criteria / Dual Priority for Economic and Cultural Concerns	5
2. OHA Shall Seek Portfolio Expansion.....	6
A. Beyond Ceded Lands	6
B. Collaboration and Relationships	6
3. OHA Shall Seek Decision Making Influence over All Land in Hawai'i	6
A. Every Property in Hawai'i is Sacred	7
B. Sacred Lands Assessment	7
C. Advocate Superior Land Policy	7
D. Sacred Land Advocacy	8
4. OHA Shall Establish Superior Organization and Infrastructure	8
A. Professional Property Investing and Stewardship.....	8
B. World Class Strategic Management System	8
5. OHA Shall Build a Strong Financial Foundation for All Property Involvements.....	8
A. Interlinked Financial Foundation	9
B. Prudent Real Estate Investment Policy	9
IV. STATUS / EFFECTIVE DATE	9

I. VISION

The OHA real estate vision is to be the real estate partner of choice:

- By every person and entity with any involvement in Hawai'i lands: individuals, institutions, corporations, public purpose entities and government agencies.
- For any and every type of Hawai'i property and Property Involvement.

II. MISSION

OHA shall protect and preserve Hawai'i lands and their cultural significance by:

- Bridging the ancient use of lands with future land use patterns
- Advocating for land use and transaction practices and regulations congruent with the Hawaiian Sense of Place.
- Creating financially viable Property Involvements.

III. OHA REAL ESTATE STRATEGY

1. OHA Will Champion Real Estate Best Practices

A. Best Practices

- 1) The Board and Staff will model Best Practices in all OHA Property Involvements.
- 2) The OHA Real Estate Strategy shall be consistent with OHA's mission, values, goals, and resources.
- 3) The implementation of the OHA Real Estate Strategy will be guided by a congruent OHA Real Estate Business Plan and OHA Real Estate Investment Policy.
- 4) OHA Property Involvements shall be World Class and have congruency among the following elements:
 - a. Strategy
 - b. Structure
 - c. Staff

- d. Rewards
- e. Tasks
- f. Resources
- g. Systems
- h. Style.

5) OHA will meet Prudent Investing Standards applicable to investment properties.

B. Real Estate Asset Allocation Model

1) OHA shall prioritize resource allocation by adopting a Real Estate Asset

Allocation Model to include:

a. Legacy Lands

i. Conservation and Preservation Lands

ii. Cultural Lands

b. Corporate Real Estate

c. Programmatic Lands

i. Housing Lands

ii. Agricultural Lands

iii. Educational Lands

iv. Health & Human Services Lands

v. Community Lands

d. Investment Lands

i. Directly held Lands

ii. Value creation (development) Lands

iii. Real Estate Investment Fund

2) The Real Estate Asset Allocation Model shall be congruent with and developed in

conjunction with the OHA Investment Policy.

C. Prudent Investment Standard

- 1) OHA shall develop specific investment decision criteria consistent and congruent with the OHA Real Estate Business Plan and OHA Real Estate Investment Policy.
- 2) OHA shall conduct Due Diligence on all Property Involvements in order to assess risk and reward.
- 3) The implementation of Property Involvements will include the separation of (1) opportunity origination; (2) Due Diligence and evaluation; and (3) approval functions.

D. World Class Strategic Management

- 1) Trustees shall devote their attention, time, energy and resources to big picture, high-level, major policy priorities – not transaction specific deal-making.
- 2) The Board of Trustees shall emphasize policy making and approval of capital commitments.
- 3) Staff shall be responsible for implementation of the Board of Trustees decisions.

E. Mandatory Property Standards

- 1) Every Property Involvement shall be considered in light of and be consistent with Real Estate Asset Allocation Model and specific decision criteria.
- 2) OHA shall only consider Property Involvements in which a complete information package consistent with OHA specifications is provided.
- 3) Once a proposal for a Property Involvement has been submitted to OHA, Trustees shall have no contact, in any form (including social occasions) with any person associated with the Property Involvement until after the closing or a denial of the proposal.

- 4) Any Trustee who has any personal relationship with any person or any entity associated with a particular Property Involvement, shall reveal the nature of the relationship prior to voting on any associated matter. The Board shall, in consultation with counsel, decide whether that Trustee should be barred from voting prior to taking the vote.

F. Types of Property Involvements

- 1) OHA shall acquire the following kinds of Property Involvements:
 - a. Ceded Lands to be held in trust for the future Nation.
 - b. Other Property Involvements as part of a land base to support the future Nation.
 - c. Property Involvements that enhance the stature, self-respect, self-sufficiency and well-being of all Hawaiians.
 - d. Property Involvements that promote the well-being of all people with a connection to Hawai'i.
 - e. Property Involvements that promote and respect Hawaiian places and their sacred cultural traditions.
 - f. Property Involvements that provide places to promote OHA purposes, activities and programs.
 - g. Property Involvements that generate the financial resources to sustain OHA, its programs, purposes and mission.

G. Specific Decision Criteria / Dual Priority for Economic and Cultural Concerns

- 1) OHA shall develop specific decision criteria for each aspect of a Property Involvement.
- 2) OHA shall apply multi-factor decision model – combining financial and non-financial factors – to all property decisions.

- 3) Sacred land involvements shall have economic integrity, for if they do not, their financial sustainability shall be compromised and ultimately their sacred purposes shall be compromised.
- 4) Entrepreneurial, profit seeking land involvements must respect all OHA values, priorities and objectives.

2. OHA Shall Seek Portfolio Expansion

A. Beyond Ceded Lands

- 1) OHA shall proactively pursue control of Hawaiian properties beyond Ceded Lands.
- 2) OHA shall pursue control of Hawaiian properties beyond Ceded Lands in order to be the catalyst to transform Hawai'i land stewardship.

B. Collaboration and Relationships

- 1) OHA shall seek to partner with other organizations to pursue all of its land-based objectives – rather than independently trying “to do it all.”
- 2) OHA shall encourage private parties to pursue land involvements consistent with OHA values, priorities, and objectives.
- 3) OHA shall be an advocate/agent/representative/partner of multiple levels of government: federal/state/local.
- 4) OHA shall seek to be known as the pre-eminent joint venture partner for any property project in Hawai'i.
- 5) OHA shall seek to be the organization that those who care about Hawai'i – its people, its culture, its history, and its lands – choose as the recipient for their donations and their estates.

3. OHA Shall Seek Decision Making Influence over All Land in Hawai'i

A. Every Property in Hawai'i is Sacred

- 1) OHA shall promote the idea that every property in Hawai'i is sacred and pursue initiatives that help achieve a broad acceptance of this truth.
- 2) OHA shall pursue initiatives that respect the sacred qualities and cultural legacy of every property.
- 3) OHA shall address issues for each land parcel and Property Interest that reflect its sacred circumstances.
- 4) OHA shall model respect for the land and honoring Hawaiian Sense of Place.

B. Sacred Lands Assessment

- 1) OHA shall assess the sacred status and relative priority of every property in Hawai'i.
- 2) OHA shall implement a GIS-based inventory of all property in Hawai'i that includes information about property circumstances, owners, and their motives.
- 3) OHA shall initiate relationships with stakeholders of significant properties.

C. Advocate Superior Land Policy

- 1) OHA shall advocate that every property analysis and appraisal report for any property transaction shall contain an assessment of how that property and transaction may influence the Hawaiian Sense of Place.
- 2) OHA shall advocate that a precondition to implementing any proposed Property Involvement – particularly property development and modification - shall be an assessment of how that proposed Property Involvement would affect the Hawaiian Sense of Place.
- 3) OHA shall take leadership to articulate and document the Hawaiian Sense of Place.

- 4) OHA shall employ its power, stature, and influence to encourage responsible land stewardship and development.

D. Sacred Land Advocacy

- 1) OHA shall pursue education, advocacy, collaborative development relationships, legislative initiatives, and – where necessary/appropriate – litigation to protect, preserve and enhance Hawai‘i lands.
- 2) OHA shall protect Hawai‘i places that need protection.
- 3) OHA shall employ its power to encourage urban development that models the Hawaiian Sense of Place.

4. OHA Shall Establish Superior Organization and Infrastructure

A. Professional Property Investing and Stewardship

- 1) To provide competent, responsible stewardship of land in Hawai‘i, OHA shall develop its Land organization to a meaningful scale.
- 2) OHA’s Land organization shall contain diverse organization capabilities in order to respond to the diverse property priorities of OHA stakeholders.
- 3) OHA’s Land organization structure shall combine generalist professional skills in integrative functions with specialist knowledge and capabilities.

B. World Class Strategic Management System

- 1) OHA shall invest in technology, staff, data and expertise to classify all Hawai‘i land and property interests.
- 2) OHA shall obtain a comprehensive portfolio management database/system.
- 3) OHA shall leverage staff productivity by investing in sophisticated property analysis software plus data retrieval and project management automation systems.

5. OHA Shall Build a Strong Financial Foundation for All Property Involvements

A. Interlinked Financial Foundation

- 1) OHA shall provide organizational, managerial and financial support to facilitate the OHA Real Estate Strategy.
- 2) Each important OHA property shall be managed by a separate legal entity and supported by an independent foundation.
- 3) OHA shall establish where appropriate a family of Hawai'i land foundations at three levels:
 - a. Hawai'i
 - b. Each island
 - c. Each property/land parcel
- 4) OHA shall design an overlay governance structure to balance Trustee leadership and guidance with local community initiative and self-determination.
- 5) OHA shall encourage those who care about preserving the traditions of Hawai'i to invest in Hawaii's future through contribution of lands and money to the family of Hawai'i land foundations.

B. Prudent Real Estate Investment Policy

- 1) Capital investment decisions shall reflect risks and rewards.
- 2) OHA shall not set arbitrary limits or pursue one-size-fits-all capital budgeting, as that would be contrary to Best Practices.
- 3) OHA shall not set an arbitrary capital spending ceiling, as that would be in conflict with fiduciary duty to beneficiaries.

IV. STATUS / EFFECTIVE DATE

This document is effective as of June 6, 2007.



OFFICE OF HAWAIIAN AFFAIRS

COMMITTEE ON LAND AND PROPERTY

POLICY GUIDELINES

Adopted by the Board of Trustees, July 3, 2014

PREAMBLE:

The Committee on Land and Property (the “**Committee**”) has determined that it is prudent to establish certain general policy guidelines, procedures, and project best practices governing land acquisitions, dispositions, development, management, and use by the Office of Hawaiian Affairs (“**OHA**”) in order to provide general guidance to the Committee in dealing with all matters which fall within the purview of the Committee and to better implement and enact OHA’s real estate vision, mission and strategy. These policy guidelines, procedures, and project best practices are not intended to be immutable or unchangeable, and revisions, modifications, supplements, and clarifications thereto are and should be anticipated and encouraged as the real estate holdings of OHA evolve and the members of the Committee may change over time.

GENERAL GUIDELINES:

1. **Protection, Preservation, and Enhancement.** Land acquisitions, dispositions, development, management and use shall be guided by the following general principals which seek to protect and preserve OHA’s lands and their cultural significance while enhancing the revenue generated therefrom for the purpose of preserving, protecting, and maintaining OHA’s lands and to also provide supplemental funding for OHA sponsored programs by:
 - Bridging the ancient use of lands with future land use patterns.
 - Advocating for land use and transaction practices and regulations congruent with the Hawaiian Sense of Place.
 - Creating financially viable Property Involvements.

It is recognized that over time changes will occur but nonetheless the intention is that they be accomplished within the context of maintaining OHA’s primary objective of maintaining, protecting and preserving OHA’s lands and their cultural significance while enhancing the revenue generated therefrom in order to provide supplemental funding for OHA sponsored programs.

2. **Balancing of OHA’s Real Estate Portfolio.** OHA currently holds lands which are classified as (a) legacy lands, (b) corporate real estate, (c) programmatic lands, and (d) investment properties (collectively, the “**OHA Lands**”). Over time OHA will add to or dispose of certain of these lands and it is prudent for the Committee to periodically review not less than every 3 years the overall allocation of these real estate holdings into each category and to strive for a balance among these categories which satisfies the objectives of Paragraph 1 above, while still generating an overall return which provides a sustainable source of revenue to (x) maintain, preserve, and protect the OHA land holdings in all categories, and (y) generate sufficient revenue to provide the necessary supplemental funding for OHA sponsored programs. In the periodic review and balancing of the OHA’s Real Estate Portfolio the Committee shall recognize and assign a special priority to the preservation, maintenance, upkeep and protection of the

designated legacy lands, including legacy lands which are only a portion of larger tracts of lands owned or controlled by OHA, due to their special cultural significance to OHA and the Native Hawaiian community notwithstanding their lack of revenue generating potential for other OHA purposes.

3. **OHA Real Estate Strategy.** The Committee with the assistance of its retained consultant(s) shall formulate and submit to the OHA Board for approval an overall OHA Real Estate Strategy to guide the Committee's overall strategy with respect to the (a) the targeted balance of OHA's Real Estate Portfolio among the 4 property categories, (b) the maintenance, preservation, and protection of the OHA Lands, and (c) the acquisition, development, operation, and disposition of the OHA Lands. Once established the OHA Real Estate Strategy shall be considered a guiding principal of the Committee. The OHA Real Estate Strategy shall be periodically reviewed by the Committee and as appropriate shall be adjusted, modified or supplemented to address (a) the changing real estate environment in Hawaii, (b) the evolving and changing needs and requirements of OHA, and (c) any changes which may occur from time to time in the balancing of OHA's Real Estate Portfolio among the 4 property categories. This review shall occur not less frequently than every 3 years.
4. **OHA Real Estate Business Plan.** The Committee with the assistance of its retained consultant(s) shall formulate and submit to the OHA Board for approval an OHA Real Estate Business Plan intended to implement the OHA Real Estate Strategy and to guide the Committee's overall strategy with respect to the OHA Lands. Once established the OHA Real Estate Business Plan shall be considered a guiding policy of the Committee. The OHA Real Estate Business Plan shall be periodically reviewed by the Committee and as appropriate shall be adjusted, modified or supplemented to address (a) the changing real estate environment in Hawaii, (b) the evolving and changing needs and requirements of OHA, and (c) any changes which may occur from time to time to the OHA Real Estate Strategy. This review shall occur not less frequently than every 3 years and always in conjunction with any review and update of the OHA Real Estate Strategy.

The OHA Real Estate Business Plan shall also include guidelines relating to the form of ownership by OHA of the various categories of OHA Lands within OHA's Real Estate Portfolio, and financing options relative to development and operation of, and capital improvements to, the OHA Lands.

5. **OHA Real Estate Investment Policy.** The Committee with the assistance of its retained consultant(s) shall formulate and submit to the OHA Board for approval an overall OHA Real Estate Investment Policy in conformance with the OHA Real Estate Strategy and the OHA Real Estate Business Plan. Once established the OHA Real Estate Investment Policy shall guide the Committee's overall real estate investment strategy. Once established the OHA Real Estate Investment Policy shall be considered a guiding policy for the Committee in its review and evaluation of new potential real estate investments, and in its periodic review and evaluation of existing OHA real estate investments. The OHA Real Estate Investment Policy shall be

periodically reviewed by the Committee and as appropriate shall be adjusted, modified or supplemented to address (a) the changing real estate environment in Hawaii, (b) the evolving needs and requirements of OHA, and (c) any changes which may occur to the OHA Real Estate Strategy and OHA Real Estate Business Plan. This review shall occur not less frequently than every 3 years, and always in conjunction with the review and update of the OHA Real Estate Strategy and OHA Real Estate Business Plan.

6. **Oversight of the Use and Condition of OHA's Real Estate; Policy for Proper Use and Stewardship of such Real Estate.** The proper management, operation, maintenance and upkeep of the OHA Lands in good order and condition is a prerequisite to the OHA guiding principles of competent and responsible stewardship and the protection and preservation of the OHA Lands and their cultural significance. The implementation of a proper program of management, operation, maintenance and upkeep of the OHA Lands will require a careful balance between those functions which can be effectively and efficiently performed by OHA staff and the retention of various third-party professionals/vendors in property management, operation, leasing, landscaping, maintenance and repair.
7. **Avoid Short Timelines.** Decisions related to the foregoing matters are best made following appropriate investigation, analysis, study, and recommendations by highly reputable, experienced, and competent retained consultants, and a reasonable time period thereafter for review, comment and follow up by Committee members prior to making any final decision. Therefore, absent special circumstances, the Committee should strive to avoid short timelines for its decision making.
8. **Plan for Subsequent Review of Capital Budget.** While the initial capital budget for a project must be approved in advance by the OHA Board, the actual cost is usually only refined and confirmed after responses to the Request for Proposals are received and reviewed and further discussions with the successful consultant/vendor/bidder have been completed. If the final cost is in excess of the then approved capital budget, the Committee shall review and consider various alternative options to address the shortfall in the approved capital budget for such project, including without limitation, (a) seeking an increase in the approved capital budget from the OHA Board, or (b) the modification or alteration of the project scope and/or plans in order to bring the contemplated project back within the approved capital budget, or (c) the possible delay of the project to a time when adequate funding is available. The Committee's recommended course of action shall be subject to approval by the full OHA Board.

PROJECT RELATED BEST PRACTICES:

1. **Request for Proposals (RFPs).** Given the nature of the undertakings and responsibilities of the Committee the selection and retention of highly reputable and recognized real estate experts/consultants and investment advisers/consultants in the formulation of the OHA Real Estate Strategy, the OHA Real Estate Business Plan, and the OHA Real Estate Investment Policy

is prudent. In addition the selection and retention of highly reputable and responsible third-party professionals/vendors to be contractually responsible for property management, operation, leasing, landscaping, maintenance and repair of certain OHA Lands is also prudent.

The use of a process of issuing a Request for Proposal with clearly defined criteria and requirements will result in a competitive selection process which will assist the Committee in making a knowledgeable and informed final decision.

2. **General Guidelines for RFPs.** The following general guidelines are established for use by the Committee when it deems it appropriate to use a Request For Proposal ("**RFP**") process for any matter or project undertaken:
 - a. Establish Clear Criteria and Requirements. RFP's shall establish clear criteria and requirements for use in the competitive bid process to assure that each bidder is responding to a correct and accurate request so that the bid responses can be reviewed and compared against the RFP to assure compliance with the criteria and requirements and that the scope of work and price comparisons are on a relatively equal basis in terms of achieving the delivery of a detailed project at a specified quality for the best price consistent with the proposed capital budget for said matter or project from a responsible, reputable and reliable consultant or contractor.
 - b. Retention of Appropriate Consultant(s) to Establish RFP. With respect to any matter or project to be undertaken the Committee shall first retain the services of reputable and competent consultant(s) to (i) assist with the establishment of the criteria and requirements to be included within an RFP to be issued to prospective bidders, (ii) make knowledgeable recommendations as to the persons or companies from whom bids should be solicited, (iii) establish a review and evaluation process for the responsive RFPs, (iv) review and assist the Committee in reviewing the bids for compliance with the RFP, and (v) upon completion of the work to review and confirm satisfactory completion and performance in compliance with the RFP and Contract.
 - c. Competitive Bids. It is generally recommended that at least three (3) consultants/contractors/vendors be solicited to respond to the RFP. It is understood that in some cases otherwise qualified consultants/contractors/vendors who are solicited may choose not to respond to the RFP, and that in such cases if not less than two (2) responses to the RFP are received from qualified consultants/contractors/vendors there should be no requirement to solicit other consultants/contractors/vendors on that particular RFP. The lowest responsible bidder is not necessarily the low bidder in terms of cost and there shall be no requirement to accept the lowest bid in terms of cost as all other pertinent factors and components shall be appropriately considered and weighed in reaching the final decision.

- d. Conformance with OHA Procurement Procedures. The RFP process set forth herein shall at all times be consistent with and conform to all applicable OHA Procurement Procedures in effect from time to time.
3. **Establish Clear Responsibility for Oversight and Completion.** For all Committee matters and projects the Committee shall establish a clear line of responsibility for oversight and successful completion of the approved matter or project. It is a best practice to ensure that the responsibility for project oversight and completion is clear.
- a. Single Accountable Project Leader. Except in special circumstances as may be approved by the Committee it is recommended that the responsibility for successfully implementing and managing a Committee approved matter or project should be assigned and delegated to one (1) member of the Committee (the "**Project Leader**"), as may be designated by the Committee as a whole or by the Committee Chair. The designated Project Leader shall be the initial and primary point of contact on the matter or project for the OHA staff member(s) assigned to implement, manage and oversee the completion of the matter or project.
- b. Role of Continuing Committee Oversight. The designated Project Leader shall make recommendations to the Committee Chair or the Committee as a whole when and if matters or issues arise during the course of the matter or project requiring discretionary approval or resolution which do not fall within the scope or purview of the designated Project Leader and the Committee shall exercise that discretion, unless the Committee determines it requires OHA Board approval.
- c. Conflict Resolution. If any conflicts or disputes arise between the consultant/contractor/vendor selected for the project and the OHA staff responsible for project oversight, implementation, and completion, such conflict or dispute will be referred to the Project Leader for resolution, but if the Project Leader decides such resolution is not within the Project Leader's delegated authority, then and in such event resolution of the dispute shall be referred to the Committee Chair, and/or in the Committee Chair's discretion either (a) to an ad hoc committee of members of the Committee so designated to handle any such matters, or (b) the Committee, as a whole.
4. **Effective Use of the Committee.** The OHA Board has complete oversight over the formation of and assignment of responsibilities to the Committee. Effective use of the Committee can and will facilitate the review, analysis, and informed consideration of the alternatives and options available so as to assist the OHA Board in making prudent and informed final decisions relating to the matters or projects within the purview of the Committee. Nonetheless it shall remain clear that absent a specific delegation to the Committee from the OHA Board, the final decision making authority on all matters remains with the OHA Board.

CONFORMANCE WITH OHA BOARD POLICIES AND GUIDELINES:

These policy guidelines and procedures are intended at all times to be consistent with and not in conflict with any policies, guidelines or procedures which may be adopted from time to time by the OHA Board. In the event of any such conflicts the provisions of the policies, guidelines and procedures adopted by the OHA Board shall control over these policy guidelines and procedures. If any such inconsistency is found to exist, the Committee shall modify and amend its policy guidelines and procedures to bring them into full conformance.

Office of Hawaiian Affairs
Meeting of the Board of Trustees
June 24, 2021
1:30 P.M.

V. Executive Session