



State of Hawai‘i

REQUEST FOR PROPOSALS
RFP NO. BOT 2023-006

BOARD OF TRUSTEES BOARD LEGAL COUNSEL SERVICES

ISSUE DATE: September 12, 2022

DUE DATE: October 13, 2022, 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 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. BOT 2023-006

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 legal professional services firms for the Board of Trustees (hereinafter “BOT” or “Board”) of the OHA in the functional role of Board Counsel.

This RFP may be downloaded from either the State Procurement Office (hereinafter “SPO”) website at <https://hiepro.ehawaii.gov> or the OHA website at www.oha.org/solicitations beginning Monday, September 12, 2022.

Proposals shall be submitted no later than 2:00 p.m. Hawai‘i Standard Time (hereinafter “HST”), Thursday, October 13, 2022. Proposals shall be submitted through the HIEPRO website and/or via e-mail to proposals@oha.org. If submitting via e-mail, the official time will be that in which the e-mail is received by 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 shall be sent to proposals@oha.org.

OFFICE OF HAWAIIAN AFFAIRS
Carmen Hulu Lindsey
Chairperson, Board of Trustees, Chief Procurement Officer

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Section 1 – Administrative Overview

I. Authority

In 1978, the Article XII of the State of Hawai‘i Constitutional Convention established the Office of Hawaiian Affairs (hereinafter “OHA”) to address the historical injustices and challenges arising out of those circumstances. Chapter 10 of the Hawai‘i Revised Statutes, as amended, outlines the OHA’s duties and purposes, including promoting and protecting the rights of Native Hawaiians.

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 nation, recognized nationally and internationally.”

The OHA seeks to competitively procure and engage a legal professional services firm for the functional role of Board Counsel for the Board of Trustees. The role and responsibilities of the Board Counsel function include but are not limited to (in no order of priority): 1) Responding to questions and addressing issues pertaining to the Board’s powers, duties, privileges, immunities, and liabilities; 2) Advising on emerging matters (including legislation) that have or may have legal ramifications to the Board or to the OHA; 3) Advising on emerging matters that have or may have governance ramifications, including matters related to fiduciary responsibilities, ethics, and sunshine law; 4) Preparing and delivering decision support materials, legal analyses and recommendations; 5) Collaborating with OHA’s Corporate Counsel in delivery of training for the Board (e.g., Governance, State of Hawai‘i laws) and other advising services; 6) Supporting the Administration in times of transition and related governance processes (e.g., certification of election, first organizing meeting); 7) Knowledgeable in the use of parliamentary procedures governing meeting proceedings to promote efficiency and effectiveness; 8) Fielding inquiries, providing legal counsel and assisting in appropriately redirecting concerns raised; 9) Attending all Board and requested Committee meetings as scheduled and needed; and 10) Providing other legal and advisory services as assigned and engaged.

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/her 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: proposals@oha.org

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

The Board of Trustees is responsible for administering and monitoring the Contract. The designated Contract Administrator or his/her designated representative is responsible for monitoring the activities performed under the Contract and is identified as:

Board of Trustees, Chairperson or Designee
 Office of Hawaiian Affairs
 560 North Nimitz Highway, Suite 200
 Honolulu, Hawai‘i 96817

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

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

IV. Terms and Acronyms

BAFO	Best and Final Offer
BOT	Board of Trustees of the Office of Hawaiian Affairs
Board	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
HAR	Hawai‘i Administrative Rules
HCE	Hawai‘i Compliance Express
HOPA	Head of the Purchasing Agency
HRS	Hawai‘i Revised Statutes
HST	Hawai‘i Standard Time
Kūkākūkā	Discussion
LLC	Limited Liability Corporation
Native Americans	Collectively American Indians, Alaska Natives and Native Hawaiians
NHO	Native Hawaiian Organization
Offeror	All persons who submit a proposal in response to this Request For Proposal No. BOT 2023-006
OHA	Office of Hawaiian Affairs
Personnel	All persons engaged in performing the work covered by the contract will be considered employees of the Offeror
RFP	Request for Proposals

V. Procurement Timeline

Activity	Scheduled Dates
Release of Request for Proposals	Monday, September 12, 2022
Virtual Information Meeting	Monday, September 19, 2022
Due Date to Submit Questions	Friday, September 23, 2022
OHA's Response to Questions	Monday, September 26, 2022
Proposals Due Date/Time	Thursday, October 13, 2022, 2:00 p.m.
Evaluations	October 13 th to October 24 th , 2022
Presentations (TBD)	Week of October 24 th
Notice of Award	Tuesday, November 1, 2022
Contract Start Date	Thursday, December 1, 2022

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

VI. Virtual Information Meeting

Due to COVID-19, we will be offering a virtual informational meeting on Monday, September 19, 2022, 2:00 p.m. HST. The OHA requests that all Offerors who plan to attend the virtual information meeting and the virtual site visit to submit the RFP Registration Form no later than Friday, September 16, 2022, so we may confirm your attendance.

VII. Submission of Questions

Offerors are encouraged to submit questions pertaining to this RFP. Questions must be submitted to the RFP Coordinator through the HiePRO website and/or by emailing proposals@oha.org no later than the "Due Date to Submit Questions" date, identified in Section 1, Item V. Procurement Timetable. All 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 when the "OHA's Response to Questions" is identified in Section 1, Item V. Procurement Timetable.

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 or 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 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 the OHA no later than 2:00 p.m. HST, Thursday, October 13, 2022.

- D. Wages and Labor Law Compliance. Prior to entering into a Contract in excess of \$25,000, an 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 Offeror 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 Offeror will be further obligated to notify his/her employees performing work under this Contract regarding the provisions of section 103-55, HRS, and current wage rates for public employees performing similar work. The Offeror may meet this obligation by posting a written notice to this effect in the Offeror’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 July 1, 2024 for state employees performing similar work have been published by the DHRD.

If wages increase after the execution of the Contract, the Offeror may request an increase in Contract price in order to correspondingly increase the wages of the Offeror’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 Offeror will not be paid for any reimbursement of retroactive pay negotiated by the State. The Offeror's request for the increase must meet the following criteria:

1. At the time of the offer, if the Offeror's hourly wage rate is greater than the prevailing State wage, the Offeror's requests for increase will not be considered.
2. At the time of the request, the Offeror 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 Offeror 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. Trade Secrets/Confidential Information. If an Offeror believes that any portion of a proposal contains information that should be withheld 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 the 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 and samples or brochures of related services which demonstrate experiences 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 HiePRO website <https://hiepro.ehawaii.gov/sav-search.html> and to the OHA website www.oha.org/solicitations.

XIII. Additional Terms and Conditions

The Offeror shall be bound by the confidentiality requirements of the contract. Offeror 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 reserves the right to add terms and conditions during contract negotiation 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 Offeror understands that the information obtained from these efforts is the sole property of the OHA, that any use of the information must be approved by the OHA Contract Administrator, 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 will ensure that the OHA is provided with the written authorization(s) necessary to verify 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 interest 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 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(b) and HAR §3-122-97(c)); and
8. Offer not responsible (HAR §3-122-97(b) and HAR §3-122-97(c)).

XIX. Notice of Award

Any contract arising out of this solicitation is subject to the approval by the OHA BOT Chairperson 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 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.

Chief Procurement Officer	Procurement Officer
Name: Carmen Hulu Lindsey	Name: Christopher Stanley
Title: Chairperson, Board of Trustees & Chief Procurement Officer	Title: Procurement Manager
Address: Office of Hawaiian Affairs 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 Offeror's performance under the Contract will be monitored and evaluated by the OHA Contract Administrator or his/her designated representative, the OHA auditor, 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 Offeror 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 Offeror agrees to comply with Chapter 11, §11-355, HRS, which states that campaign contributions are prohibited from a State and County government Contractor during the term of the Contract if the Contract is paid with funds appropriate by the legislative body between the execution of the Contract through the completion of the Contract.

(END OF SECTION)

Section 2 – Scope of Services

I. Information

The OHA grew out of organized efforts in the 1970s to right past wrongs suffered by Native Hawaiians for over 100 years. Hawaiians' newfound activism brought their plight to the consciousness of the general public. At the Hawai'i state constitutional convention in 1978, OHA was created to address and remediate historical injustices perpetrated against Native Hawaiians. Convention delegates envisioned an agency that would provide a form of self-determination for the Hawaiian people and proactively advocate for their overall wellbeing.

OHA was established through Article XII of the State Constitution. Chapter 10 of the Hawai'i Revised Statutes outlines the established public trust which includes, among other responsibilities, the betterment of the conditions of Native Hawaiians. Under federal law, OHA is recognized as a native Hawaiian organizations (NHO). The Office is a state agency with a high degree of autonomy. OHA is responsible for improving the wellbeing of Native Hawaiians. OHA is governed by a Board of Trustees made up of nine members who are elected statewide to four-year terms to set policy for the agency. OHA is administered by a Ka Pouhana (Chief Executive Officer) who is appointed by the Board of Trustees to oversee a staff of about 150 people throughout the State of Hawai'i and the Washington, D.C. OHA operates on an annual budget of approximately \$47MM funded by the Native Hawaiian Trust Fund earnings, Public Land Trust revenues, State of Hawai'i general funds, commercial properties net income, federal funds and other sources of revenue.

Native Hawaiians are owed the same trust responsibility as any other Native American group. To meet this obligation, Congress has enacted programs and policies to promote education, health, housing, and a variety of other federal programs that support Native Hawaiian self-determination. Similar to American Indians and Alaska Natives, Native Hawaiians have never relinquished our right to self-determination despite the United States' involvement in the illegal overthrow of Queen Lili'uokalani in 1893 and the dismantling of our government.

Over 150 Acts of Congress consistently and expressly acknowledge or recognize a special political and trust relationship to Native Hawaiians based on our status as the Indigenous, once-sovereign people of Hawai'i. Among these laws specifically benefitting Native Hawaiians are the Hawaiian Homes Commission Act, 1920, 42 Stat. 108 (1921); the Native Hawaiian Education Act, 20 U.S.C. § 7511; the Native Hawaiian Health Care Improvement Act, 42 U.S.C. ch. 122; and the Hawaiian Homelands Homeownership Act codified in the Native American Housing Assistance and Self Determination Act, Title VIII, 25 U.S.C. § 4221.

OHA responded to community mana’o (input) by focusing its new 15-year strategic plan, Mana i Maui Ola, on four key directions that directly impact lāhui wellbeing: education, economic stability, housing and health. Additionally, the new plan recognizes that ‘ohana (family), mo‘omeheu (culture), and ‘āina (land and water) are foundational strengths so this has been interwoven into Mana i Maui Ola strategies for education, economic stability, housing and health. OHA affects action in the areas of advocacy, community engagement, conducting research, and managing assets; procures goods and services; and provides grants-in-aid and loans.

1. **Advocates for Native Hawaiians.** OHA develops and shapes public policies that have broad implications for the Hawaiian community. OHA also helps ensure that laws are complied with at the local, state, and federal levels. OHA engages communities to guide decision-making, sharing up-to-date information with community members and mobilizing communities to advocate for Hawaiian positions on issues.
2. **Engages the Community.** Creating strategic alliances with members of the Native Hawaiian community and general public by sharing information via community outreach efforts and events, and digital and print media platforms. Leveraging resources of various entities around shared goals. OHA worked closely with the Native Hawaiian & Pacific Islander Hawai’i COVID-19 Response Recovery and Resilience Team to address the impact of the global pandemic in Hawai’i. Building formal relationships among aligned organizations with similar priorities, such as the Department of Hawaiian Home Lands, the Native Hawaiian Chambers of Commerce, Papa Ola Lokahi & Native Hawaiian Health Care System, Kamehameha Schools, Lili‘uokalani Trust and others.
3. **Conducts Research.** Research helps guide advocacy decisions, and OHA’s sharing of research findings and other resources helps empower communities. As a researcher, OHA serves by gathering, compiling and analyzing data that identifies issues important to the Native Hawaiian community.
4. **Manages Assets.**

Beneficiary and Community Investments. OHA invests more than \$15 million annually into the Native Hawaiian community through grants to Hawaiian-serving nonprofits, sponsorships for initiatives and events that align with OHA’s strategic foundations and directions, academic scholarships, disaster aid, and more.

Loans. Over the years, OHA has provided low-interest loans of over \$66 million to more than 2,750 Native Hawaiian consumers. The Native Hawaiian Revolving Loan Fund has helped borrowers start or support existing businesses, improve their homes, consolidate debt and continue their education.

Beneficiary Legal Services. OHA dedicates over \$1 million annually for the provision of legal services to beneficiaries on issues such as quiet title action, ahupua'a and kuleana tenant rights, land title assistance, traditional and customary practices, culturally significant places, and native land trust entitlement.

5. **Manages Land.** As Hawai'i's 13th largest landowner, OHA manages more than 27,530 acres of land, most of which is set aside for cultural and agricultural endeavors, with a focus on preserving wahi pana – legendary, culturally important site.

The primary function of the Board Counsel is to respond to questions and address issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

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 Offeror must furnish proof of compliance with the requirements of Section 103D-310, HRS and Section §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(s) will be one (1) 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. Be registered to do business in the State of Hawai‘i (hereinafter “compliant non-Hawai‘i business”).

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 will 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 will be identified in the Offerors’ proposal.

6. Certificate of Eligibility

The Offeror will 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 will 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. Prior to the Contract start date, the Offeror shall 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 is 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 Offeror 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	\$1,000,000 per claim

and Omissions)

\$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 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")

The Offeror that can demonstrate minority/women business participation, as certified through the United States Small Business Administration, will be awarded additional evaluation points.

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.

11. Misrepresentation of or Change in Minority/Women Business Participation

In the event the OHA learns that the minority/women business participation was misrepresented, the OHA reserves the rights to cancel the contract in whole or in part. In the event there are change(s) during the term of the contract (e.g., death, retirement, incapacitation), the OHA reserves the right to assess the continuing viability of service provision, including cancellation of the contract, subcontracting, in whole or in part.

12. Non-Discrimination

The Offeror shall comply with all applicable federal and state laws prohibiting discrimination against any person on the grounds of race, color, national origin, religion, creed, sex, age, sexual orientation, marital status, handicap, or arrest and court records in employment and any condition of employment with the Offeror or in participation in the benefits of any program or activity funded in whole or in part by the State.

13. Conflicts of Interest – Promise of Reciprocity

The Offeror represents that neither the Offeror nor any employee or agent of the Offeror presently has any interest, and promises that no such interest, direct or

indirect, shall be acquired, that would or might conflict in any manner or degree with the Offeror's performance of the contract.

14. Conflicts of Interest – Relationships

Offeror will not be a BOT member, executive officer, director, or other staff of the OHA. Offeror will not be a member of the immediate family of a BOT, executive officer, director, or other staff of the OHA.

15. Campaign Contributions

If funds for this contract have been appropriated by a legislative body, the Offeror is required to comply with HRS section 11-355, which states that campaign contributions are prohibited from a state and county government contractor during the term of the contract if the then contractor is paid with funds appropriated by a legislative body between the execution of the contract through the completion of the contract.

B. Type of Contract

1. The successful Offeror will be required to execute a contract for legal and other advisement services based on competitive sealed proposals, including hours and rates by professional service classification (e.g., partners, associates, paralegals). No profit or administrative mark-up will be allowed on reimbursable expenses, including, without limitation, postage, supplies, photocopying. When needed, travel will be authorized and arranged for the Board Counsel function by the OHA.
2. Subsequent to the award and within ten (10) days after the prescribed forms are presented for signature, the Offeror will execute and deliver to the OHA a contract in such number of copies as required by the OHA.

The 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 Offeror's proposal will be incorporated in the resulting contract by reference.

3. Subcontracting

Subcontracting, if needed, is allowable with prior written approval of the OHA. No subcontract will under any circumstances relieve the Offeror of its obligation and liability under contract with the OHA. It is the contractual and professional responsibility of the Offeror to supervise, be responsible for and clearly identify the personnel vs. sub-contractor(s) of the Offeror, ensuring compliance with employee vs. independent contractor parameters are the ultimate responsibility of the Offeror.

4. 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 Offeror as designated in a corporate resolution, if applicable.

5. Additional Services and Fees

The Offeror and the OHA will negotiate for additional needed services and fees for work not described in the contract by 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.

6. 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.

7. 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: Twenty-four (24) 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 Offeror 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 twelve (12) 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 or an increase in an expanded scope of services; and
3. A supplemental contract must be executed prior to expiration of the primary contract; and
4. The Offeror 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 Offeror is unwilling or unable to fulfill the scope of services described in the contract, the OHA reserves the right to assign the costs of reprourement to any payment owed under the contract. These costs may include without limitations reproduction costs, staff time, and postage.

The Offeror will provide the requested insurance information and a completed wage certificate. The Offeror 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 Offeror 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 Offeror 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 Offeror 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 Offeror 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 Offeror or to directly assess the Offeror.
4. In the event the Offeror 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 Offeror. If monies due to the Offeror is insufficient for this purpose, the Offeror 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 Offeror 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 Offeror's performance and/or improvement and the implementation of its corrective action plan to determine whether the OHA will continue to contract with the Offeror.

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.

- C. The OHA Contract Administrator shall act as the contract monitor and principal liaison between the Contractor and the OHA. The OHA Contract Administrator shall assist in resolving policy questions expediting decisions and the review of the work performed.

IV. Scope of Services

A. Overview

The OHA seeks to competitively procure and engage a legal professional services firm for the functional role of Board Counsel for the Board of Trustees (hereinafter “BOT” or “Board”). The role and responsibilities of the Board Counsel function include but are not limited to (in no priority order): 1) Responding to questions and addressing issues pertaining to the Board’s powers, duties, privileges, immunities, and liabilities; 2) Advising on emerging matters (including legislation) that have or may have legal ramifications to the Board or the OHA; 3) Advising on emerging matters that have or may have governance ramifications, including matters related to fiduciary responsibilities, ethics, and sunshine law; 4) Preparing and delivering decision support materials, legal analyses and recommendations; 5) Collaborating with OHA’s Corporate Counsel in delivery of training for the Board (e.g., Governance, State of Hawai‘i laws) and other advising services; 6) Supporting the Administration in times of transition and related governance processes (e.g., certification of election, first organizing meeting); 7) Knowledgeable in the use of parliamentary procedures governing meeting proceedings to promote efficiency and effectiveness; 8) Fielding inquires, providing legal counsel and assisting in appropriately redirecting concerns raised; 9) Attending all Board and requested Committee meetings as scheduled and needed; and 10) Providing other legal and advisory services as assigned and engaged.

- B. The Offeror should respond to this RFP noting the rate per hour per staff classification (e.g., partner, associate, paralegal) and such rates should already include administrative burden (vs. reimbursable expenses). In addition, a separate meeting attendance hourly rate shall be identified and tiered such that: 1) There is a meeting attendance rate for meeting(s) in which an Executive Session is scheduled for consultation with Board Counsel; and 2) A lower meeting attendance rate for all other meeting attendance.
- C. The Offeror 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).

No person shall enter an OHA worksite if they have: (i) a fever, cough, shortness of breath or difficulty breathing, or other symptoms of respiratory illness or of COVID-19 as set forth by the CDC; (ii) had close contact with a person who has or is suspected to have COVID-19; or (iii) traveled outside of Hawai‘i in the past ten (10) days and have not satisfied the negative test exception to the mandatory self-quarantine period, subject to any subsequent out-of-state travel restrictions imposed through Statewide or county emergency orders, rules, or proclamations related to COVID-19 (novel coronavirus).

V. Qualifications and Requirements

A. Specialized Experience:

The Offeror shall ensure and articulate in the response the requisite demonstrated knowledge, skills, and experiences in Native Hawaiian affairs:

- 1) To understand the origins, purposes, statutory responsibilities and governance of the OHA, including The Constitution of the State of Hawai‘i and The Admission Act;
- 2) To advise a semi-autonomous state agency that is neither the executive, legislative nor judicial branches of state government but has State of Hawai‘i constitutional and statutory purposes and responsibilities;
- 3) To understand issues regarding ceded lands, public land trust, federal Trust responsibility, traditional and customary rights, iwi kūpuna, Hawaiian language, The Admission~~s~~ Act, development, and implementation of federal, state and county policies; and
- 4) To understand development, implementation, reauthorization of seminal, foundational public policy of the Native Hawaiian Education Act, the Native Hawaiian Healthcare Improvement Act and the Hawaiian Homestead Commission Act; and
- 5) To develop and deliver training to the Trustees in meeting fiduciary and statutory duties and responsibilities.

B. Resourcing:

The Offeror shall ensure that all persons (i.e., internal or external) performing work under the contract meet minimum licensing and experience requirements for the assignment.

C. Administrative Requirements:

1. The Contract Administrator is the OHA point of contact and authorizer for access to and utilization of the Offeror services. The Offeror shall designate a point of contact

to respond to the OHA's inquiries, complaints, and problems within one (1) working day of receipt.

2. The Offeror will ensure adequate and appropriate representation at regularly scheduled meetings with the OHA and/or the OHA Board of Trustees. The OHA anticipates that 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. A detailed monthly billing report is expected of the Offeror upon commencement of the engagement and due no later than the 10th of the subsequent billing month to the Contract Administrator.

D. Resources:

1. It is the responsibility of the Offeror to supervise, be responsible for and clearly identify the personnel vs. sub-contractor(s) of the Offeror. The Offeror shall be ultimately responsible for ensuring compliance with employee vs. independent contractor parameters.
2. Subcontracting, if needed, is allowable with prior written approval of the OHA. No subcontract will under any circumstances relieve the Offeror of its obligation and liability under contract with the OHA.
3. The Offeror will ensure that all assigned resources meet the minimum qualifications, including State licensing laws and experience requirements, for the appropriate assignment. The current wage rates and position class specification for personnel are available at the following link:

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

4. All Offeror 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 Offeror.
5. The Offeror will be solely responsible for the behavior and conduct of its personnel and/or sub-contractors while on the OHA property. Supervision of Offeror's resources will be the responsibility of the Offeror.
6. The Offeror 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 Offeror shall ensure that all persons performing work under the contract will not disclose confidential information to the general public without the express written consent of the OHA.
7. During the performance of this contract, the Offeror agrees not to discriminate against any employee, contractor, agent, or prospective applicant for employment. The Offeror 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 Offeror will insert provisions similar to the foregoing in all subcontracts.

8. The Offeror agrees to remove any of its resources 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 resources at the request of the OHA's Contract Administrator, the Offeror 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 Offeror will be responsible for the timely submission of monthly billings and related reports, by the OHA.

F. Payment

1. Offeror will bill for services authorized and rendered on a monthly basis, no later than the 10th of the following month. Services billed by the Offeror, but not authorized by the Contract Administrator will not be paid the OHA.
2. The OHA will have thirty (30) calendar days after receipt of an invoice and the satisfactory provision of the deliverables 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.
3. The Offeror will clearly indicate any adjustment made to the billing statement for work not performed.
4. The Offeror will submit original invoices by electronic mail to (a) invoices@oha.org; and (b) to the e-mail address of the Contract Administrator for this contract.
5. The OHA requires the Offeror to participate in Automated Clearing House (hereinafter "ACH") payment processing method in order to expedite payments and to reduce the OHA's in-office, paper-based 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

Offeror 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 exact 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 and/or subtitles, and the Offeror 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 proposal. **For this RFP, the body of the Offeror’s proposal is limited to no more than 25 pages (back and front) or 50 one sided pages.**
- G. Other supporting documents may be submitted in an Appendix, including visual aids, to further explain specific points in the proposal. If used, appendices should be referenced in the body of the Offeror’s proposal and is not included in the 50-page limitation referenced above. The OHA recommends the Offeror focus on the content, completeness, and comprehensiveness of its response in the main body of its proposal as there will be no consideration advantage for voluminous, extraneous and/or excessive appendices.

III. Offeror Proposal

A. Cover Letter

A Cover Letter will be included in the proposal. See Attachment 3 – Sample Cover Letter. The Cover Letter shall include the following requirements:

1. Be printed on official business letterhead;
2. Signature by an authorized signatory;
3. The following statement:

“The undersigned has carefully read and understands the terms and conditions specified in the RFP BOT 2023-006 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. The exact legal name and address of the Offeror;
5. Contact person’s name, telephone number and e-mail address;
6. A statement indicating that the Offeror is a corporation or other legal entity and the taxpayer identification number of the legal entity; and
7. 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 the start of the work.

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 shall provide at least three (3) references from clients, 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.

3. Quality Assurance, Evaluation and Resolution

The Offeror will describe its quality assurance and evaluation plans for the proposed services, including methodology. Evaluation plans must include client surveys as appropriate. The Offeror will 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 will 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. Organization and Resourcing

I. Proposed Resourcing

This section will describe the staff necessary and the specific times available to ensure the performance of work in an accurate and timely manner. Resource titles, qualifications, and expected responsibilities are to be included in the response. Detail the proposed team's capacity to successfully plan, implement and develop the proposed work. The Offeror is expected to clearly articulate resourcing that are in-house employees, 3rd party sub-contractors and/or other

arrangements. The OHA will only execute one contract with the Offeror and it is the Offeror's responsibility to manage its personnel and 3rd party sub-contractors.

II. Resource Qualifications, Including Staff

This section will provide the minimum qualifications including the experience of the Offeror's resources, including staff assigned to the Contract. Describe the knowledge and experience of the Offeror's proposed resourcing, including the day-to-day management of the resources. In the body of the proposal, include a brief biography of each resource (e.g., professional, administrative, 3rd party) who would be assigned to the engagement, including credentials, industry experience and role within the firm, identifying the primary point of contact for the engagement. Resumes and relevant professional background/experience of each key staff position should be included as an appendix.

The OHA expects that those staffing resources proposed in the Offeror's response will be the resources assigned to the engagement. New or re-assignments to the OHA engagement must be discussed and approved by the OHA before the start of the assignment; the OHA will not be responsible for, nor obligated to pay any amount for work performed by non-approved resources.

III. Supervision and Training

The Offeror will describe its ability to supervise, train and provide content and administrative direction relative to the fulfillment of the scope of services in the RFP and Offeror's response.

IV. Organization Chart

The Offeror will provide an organization chart of the resources, position and/or function of each resource/staff and line of responsibility/supervision, including position title, name, and full or part-time or sub-contractor status. If applicable, a supporting organization chart(s) may be included to articulate specific streams of work and activities requiring specialized statements of work (e.g., actuaries, subject matter expertise).

F. Service Delivery

This section will include a detailed discussion of the following:

1. The Offeror's approach to applicable services, activities and management requirements from Section 2, Item IV. Scope of Work including, but may not be limited to, phases, work plans for 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 scope of work, cost effectiveness, and reliability.

G. Financial Capacity

This section will state the Offeror's status of current projects and the financial capacity. Given the state of the Offeror's current workload and work in progress, provide information as to the financial capacity to provide the scope of services required by the RFP. Given the nature of the scope of services required by the RFP, the OHA does not intend to provide any deposits or advances to the Contractor, nor provide or sign documents related to promissory notes, loans, guarantees, lines of credit or other financing related documents.

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.

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 or designee, 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 technical aspects of the proposal submitted. The review criteria will be as follows:

Evaluation Categories		
Category 1- Experience and Capability	Possible Points	70 Maximum Points
<ul style="list-style-type: none"> • (Firm) Up to 20 points will be awarded based on the degree to which the Offeror clearly and concisely demonstrates that it has the aggregated qualifications and experiences as a whole to provide the required legal professional services. 	20	
<ul style="list-style-type: none"> • (Resources) Up to 25 points will be awarded based on the degree to which the Offeror clearly and concisely demonstrates that it has access to resources (internal or external) with the requisite knowledge and experience to provide the required legal professional services. 	25	
<ul style="list-style-type: none"> • (References) Up to 25 points will be awarded based on the degree to which the Offeror provided professional references that demonstrated its knowledge, skills, abilities, and experiences in providing the required legal professional services. 	25	
Category 2 – Price Proposal	Possible Points	20 Maximum Points
<ul style="list-style-type: none"> • (Proposed Resourcing) Up to 10 points will be awarded based on proposed resourcing for the professional services (internal or external to the firm). 	10	
<ul style="list-style-type: none"> • (Proposed Tiered Rates) Up to 10 points will be awarded based on a separate and tiered meeting attendance hourly rates that: 1) there is a meeting attendance rate for meeting(s) in which an Executive Session is scheduled for consultation with Board Counsel; and 2) A lower meeting attendance rate for all other meeting attendance. 	10	
Category 3 – Resource Capability	Possible Points	5 Maximum Points

Evaluation Categories		
<ul style="list-style-type: none"> Up to 5 points will be awarded based on the Offeror's proposal which clearly and concisely demonstrates that it has the resource capacity to complete the scope of work in this RFP in a timely and orderly manner. 	5	
Category 4 – Commitment to Section 2	Possible Points	5 Maximum Points
<ul style="list-style-type: none"> The Offeror that can demonstrate minority/women business participation, as certified through the United States Small Business Administration, will be awarded 5 points. 	5	
TOTAL POINTS	100	100 Maximum Points

Each proposal will be classified initially 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 three (3) responsive and responsible Offerors who submitted the highest-ranked proposals. If there are less 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 rating 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:

$$\frac{\text{Price of the lowest price proposal}}{\text{Price of the proposal being rated}}$$

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

The OHA will also review the most recent audited financial statements of the Offeror.

IV. Technical 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 technical 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 and/or 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 from 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. Any notice of award letter(s), resulting from this solicitation shall 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.
- G. Past Performance. 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 technical 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

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 priority listed 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