

STATE OF HAWAII  
HAWAII COMMUNITY DEVELOPMENT AUTHORITY  
Honolulu, Hawaii, 96813  
*March 7, 2018*

Chairperson and Members  
Hawaii Community Development Authority  
State of Hawaii  
Honolulu, Hawaii

HCDA Board Members:

**SUBJECT:**

Draft Hawaii Community Development Authority Leasing Policy

**SUMMARY:**

At its January 3, 2017 meeting the HCDA adopted the findings and recommendation of the Financial Position Task Force. Recommendation 1 of Goal 3 was to develop and implement policies to ensure the prudent management of HCDA properties that balances revenue generation with HCDA's mission. Provided as Attachment 1, for board information and discussion is a draft of the first three policy elements governing leases – 1. Request for Proposals, 2. Unsolicited Proposals, and 3. Below-Market Proposals.

The attached policies have been drafted as a board level policy and is intentionally written at a high-level to provide staff some latitude in administration.

**AUTHORITIES:**

Hawaii Revised Statutes (HRS) §206E-4(3) indicates that the Authority may make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter.

The policies presented are intended to serve as a board instrument establishing standards for vetting lease proposals prior to consideration by the board.

**BACKGROUND:**

The task force findings and recommendation for Goal 3, adopted by the Authority at its January 3, 2018 meeting follows:

**GOAL 3 – EVALUATE OPPORTUNITIES TO ENHANCE REVENUES GENERATED BY HCDA PROPERTIES**

**FINDINGS:**

**Finding 1** – HCDA operations rely heavily on revenues generated by its properties.

- a. Revenues generated thru HCDA leasing and management activities as other HCDA revenues streams have restrictions on use and cannot be used to fund operations.
- b. Each year approximately \$1,375,000 of leasing and management revenues is budgeted for the general and administrative operations of the HCDA, such as office space, office equipment, and the salary of four full-time staff positions that is necessary for administering HCDA's three community development districts.
- c. Revenues from leasing and management activities must also be reinvested in the properties from which they are derived in the form of maintenance, capital improvements, and property management.
- d. HCDA's mission also requires the development public facilities such as parks and roads; the maintenance of these public facilities are also partially paid from HCDA leasing and management activities.
- e. The formulation and maintenance of community development plans and rules is a core function of the HCDA by statute; the process is costly and onerous, and is also funded by leasing and management revenues.

**Finding 2** – Nominal leases, public facilities, and underdeveloped properties must be balanced by revenue generating properties.

- a. After the loss of makai property to OHA, HCDA's property portfolio is unbalanced with an emphasis on undeveloped land, public facilities and nominal leases; having lost developed properties that yield better cash flow.
- b. The HCDA also regularly receives inquiries for increased public facilities and nominal leases for its properties.
- c. The HCDA lacks policies to guide its decisions its leasing and management activities to ensure the sustainability of HCDA operations.

**Recommendation 1** – Develop and implement policies to ensure the prudent management of HCDA properties that balances revenue generation with HCDA's mission.

As an essential component to sustaining HCDA operations policies should be implemented to guide real estate decisions. The policy should recognize the HCDA's unique mission and include considerations towards mitigating long-term exposure to below-market leases and public facility maintenance costs.

The proposed guidelines could be captured in an overall leasing policy with individual sections that specifically address areas such as:

- Solicitation of property for lease;
- Process for unsolicited proposals;
- Establishing market rent;
- Due diligence requirements for leasing decisions;
- Evaluating below-market lease proposals; and
- General lease terms and conditions.

**ANALYSIS:**

As a board level policy, the policy presented is intentionally broad and not overly prescriptive to allow staff some latitude in the application of the policy and avoid unforeseen and unintentional consequences while establishing expectations and standards for leasing proposals brought for board consideration.

The policy presented is limited to the first three elements which were prioritized based on the task force findings. Policy elements on due diligence, general terms and conditions, and lease management are still in process. As drafted, these first three elements are discrete, so they could be adopted and later supplemented as the other elements are completed and approved.

This is intentionally presented as a discussion item to obtain feedback based on the current direction to inform revisions as well as the development of future policy elements.

Respectfully submitted,



Aedward Los Banos  
Administrative Services Officer

APPROVED FOR SUBMITTAL:



Garrett Kamemoto, Interim Executive Director  
Hawaii Community Development Authority

Attachments

Exhibit A – DRAFT Leasing Policy

	<b>Guidelines and Protocols Governing the Consideration of Proposals to Lease and/or Develop Property</b>	<b>Policy No.:</b> Lease-00
		<b>Version:</b> DRAFT
		<b>Effective Date:</b> Month Day, Year

### **Objective**

Establish guidelines and protocols for the solicitation, evaluation and presentation of lease or development proposals for consideration by Members of the Hawaii Community Development Authority (HCDA).

### **Scope**

The policy shall apply to all new solicitations or proposals to lease and/or develop HCDA property.

### **Introduction**

#### **Leasing and Management Established**

HCDA's mission to implement a community redevelopment plan, includes the responsibility of managing and redeveloping real property that it has control over or has title to; establishing the leasing and management function within the HCDA. The HCDA currently owns and manages a variety of classes of properties in various states of improvement.

Hawaii Revised Statutes (HRS) §206E-1 broadly identifies specific community development needs to address undeveloped, blighted or economically depressed areas as follows:

- Suitable affordable housing;
- Insufficient commercial and industrial facilities for rent;
- Facilities necessary for basic livability, such as parks; and
- Extensive land use allocations to one, rather than mixed uses.

Specific needs and goals are also provided in statute for each of the HCDA's community development districts. Together these mandates shape the HCDA's leasing and management function. These mandates go beyond the development of infrastructure and identify the need for both for-profit commercial as well as public facilities.

#### **Balancing Public Facilities and Commercial Facilities**

There is a significant public expectation for State land to be used for public facilities, however, public facilities oftentimes generate little or no revenue while requiring funding to maintain and operate. This makes the development of commercial facilities essential to the sustainability of the HCDA and each of its community development districts (CDDs).

Revenues received from HCDA leasing and management operations do not carry the restrictions that other HCDA revenue sources have, which are codified in Hawaii Administrative Rules (HAR) and focus on public facilities such as affordable housing. This makes revenues generated

from commercial facilities essential to funding HCDA operations and making necessary investments in HCDA's CDDs.

Historic examples of how HCDA leasing and management revenues have been used follow:

- Covering general expenses incurred for the:
  - Administration of the plan and rules in each of HCDA's three CDDs;
  - Funding public facilities and programs; and
  - Payment of general and administrative expenses such as office space, equipment, supplies, etc.
- Management and maintenance of HCDA-owned property.
- Capital improvements and deferred maintenance of HCDA-owned property.
- Development and amendment/updates of community development plan and rules.
- Seed projects in other CDDs where an economic base does not exist.

### **Policies**

To sustain HCDA operations and implement community redevelopment plans the following policies should be considered to balance commercial and public facilities.

1. Request for proposals;
2. Unsolicited proposals;
3. Below-market lease proposals;
4. Due diligence requirements for leasing decisions;
5. General lease terms and conditions; and
6. Lease management.



	<b>Solicitation for Proposals for the Lease and/or Development of Property</b>	<b>Policy No.:</b> Lease-01
		<b>Version:</b> DRAFT
		<b>Effective Date:</b> Month Day, Year

## Introduction

A Request for Proposals (RFP) is a formal solicitation issued by the HCDA for proposals in response to specifications. RFPs generally include specific evaluation criteria on which proposals will be reviewed against.

For most property owned by The State of Hawaii (State), statutes require land transactions to utilize a public auction process which tracks closely to the State procurement code for competitive sealed proposals. While HCDA is exempt from this requirement, the exemption does not preclude the HCDA from utilizing this process which would generally include:

1. Developing a request for proposals, including evaluation criteria;
2. Public posting that allows ample time for responses to be compiled and submitted;
3. A general meeting with interested parties (as a group) to clarify the solicitation;
4. Public posting of responses to any substantive questions received;
5. A proposal submission and deadline;
6. Proposal evaluation and selection; and
7. Public award.

If needed, the proposals may be reviewed and top scoring proposals may be asked to submit a best and final offer (BAFO) for final evaluation and selection.

A similar process is prescribed for the procurement of goods and services as well as for land transactions for other State departments/agencies. It is an ideal model for the HCDA, that is copacetic with the implementation of a community development plan. These advantages/benefits include:

1. Advanced planning;
2. Enhanced transparency;
3. Access to a broad range of opportunities;
4. Obtain terms favorable to the HCDA thru competition; and
5. Obtain valuable feedback and other information.

An RFP also protects offerors as the process protects the contents of a proposal until an award is made to maintain the integrity of the process and ensure fair competition.

As an alternative, Hawaii Revised Statutes (HRS) §206E-14, allows the HCDA to lease its property without recourse to public auction for a *redevelopment project*. This would allow the HCDA to solicit proposals directly from specific offerors. Regardless of a public or private solicitation, the RFP process as described herein would apply.

## **Policy**

It is the policy of the HCDA to utilize its land base and deploy real estate placed under its management to advance its mission as articulated in its plan and rules. Utilizing a formal solicitation requesting proposals facilitates the implementation of a community development plan in a manner that is organized, systematic, and transparent.

## **Solicitation Development**

HCDA staff shall identify the prospective parcel, or portion thereof, and develop for board consideration a draft solicitation that:

1. Is based on and cites the applicable community development plan and rules;
2. Demonstrates how it advances the HCDA's mission in the applicable CDD;
3. Identifies an expected timeframe for the RFP, including significant milestones;
4. Proposes criteria for how proposals will be evaluated;
5. May include market information or expectations, if known, that may be discussed in Executive Session, pursuant to Hawaii Revised Statutes § 92-5; and
6. Identifies an HCDA staff person who will be responsible for the solicitation and serve as the agency point of contact.

At its discretion, the HCDA may utilize a Request for Interest (RFI) or public meeting to help inform or refine the scope and contents of an RFP.

Following presentation of the proposed solicitation to the board, the board may approve the solicitation with or without amendments or defer approval if further information is needed. The board may also decide to reject the staff proposed RFP entirely.

## **Contents of the Request for Proposal**

An RFP should contain the following information:

1. A scope of work (SOW) that articulates the HCDA's objectives for the RFP:
  - a. A statement of the need or issue the HCDA seeks to fulfill or resolve through the RFP.
  - b. Identifies the potential award for the highest ranking proposal (e.g. lease, development agreement, etc.)
2. A brief description of the subject property, including the current condition, any encumbrances, and any other applicable information relative to the premises.
3. Minimum qualifications or requirements that a proposal or offeror must meet or demonstrate its capacity to achieve. This section may also identify any desirable qualifications.
4. A timeline for the solicitation, highlighting significant dates.
5. Specific criteria that will be used to evaluate a proposal for completeness and rate proposals to inform recommendations or determine the best proposal. At a minimum, each RFP shall include scoring provisions for the following criteria:

- a. How the proposal relates to HCDA's mission and the applicable community development plan, rules and guidelines;
- b. Offeror qualifications and other information or requirements that demonstrates the offeror's ability to perform successfully;
- c. Proposed financial terms; and
- d. The proposal should be organized with relevant information presented to facilitate an efficient review.

Scores for these criteria may be weighted accordingly, to meet the purposes of the RFP.

6. References to all applicable HCDA Plan/Rules/Guidelines.
7. A process for managing questions, inquiries and related responses and other communications to maintain fair competition and transparency.
8. Disclaimers that clearly indicate that the HCDA:
  - a. Reserves the right to amend or cancel the solicitation at any time.
  - b. Reserves the right to disqualify proposals it deems to be non-responsive, or offerors it identifies to be unqualified or not responsible.
  - c. Shall not be responsible for any costs incurred by an offeror in the preparation of its proposal.

### **Content of Proposals**

The content of a proposal should be responsive to the specifications of the RFP. Information provided should be adequate for an evaluator to complete the evaluation and verify any requirements or qualifications. Proposals that fail to provide adequate information may be deemed incomplete and as a result, disqualified.

If responding to the RFP requires the offeror to make a judgment, with regard to, an uncertainty or the absence of information, the offeror should clearly identify any assumption(s) made and isolate potential implication(s) of the assumption(s).

Each proposal should also contain a written attestation from the offeror stating that the offeror has the authority to commit its organization to the terms and conditions contained in its proposal.

### **Receipt of Proposals**

Proposals shall be logged and time and date stamped upon receipt. Only proposals received by the HCDA by the deadline set forth in the RFP shall be considered. This also applies to proposals received by mail or a courier service. The offeror shall be responsible for ensuring the specified number of proposals are provided by the appointed deadline. Proposals received after the submission deadline shall be rejected.

The proposals shall remain sealed and secured and officially unsealed when the evaluation process is initiated.

### **HCDA Procedures**

Unless otherwise directed by the board, when an RFP is issued, the HCDA Executive Director (ED) shall appoint a committee responsible for the review and evaluation of proposals. While



the ED may provide guidance on the RFP and evaluation, s/he should remain independent of the actual evaluation and remain objective to manage any contested award or resolve any dispute amongst committee members. Should circumstances create a conflict for the ED, this responsibility shall be delegated to the HCDA Administrative Services Officer.

On an appointed date and time, identified in the RFP, the evaluation committee will meet to officially unseal proposals. At this time, the proposal log and time/date stamps shall be verified and the proposals distributed for independent evaluation by the appointed committee members.

Committee members shall evaluate proposals based on the evaluation criteria established in the RFP and evaluations completed independently. Committee members shall use the same scoring sheet which will include a signature block for the evaluator. The committee should meet after completing its evaluations to resolve any disparities in scoring. The committee shall be responsible for delivering to the ED, a tabulation of the proposals scores, ranking of proposals, and its recommendation(s).

The ED shall review the committee report and if the results merits further discussion, he or she shall forward the recommendation to the Chairman of the Authority who will decide whether the proposal should be placed on a future agenda. Action by the board to accept a proposal shall initiate the public award.

Any decision of the applicable Authority shall not bind the Authority to any further action. Acceptance by the Authority of a proposal permits the negotiation of the HCDA's agreement with the offeror and the final agreement may be subject to a further vote(s) of the applicable Authority, as necessary.

	<b>Consideration of Unsolicited Proposals to Lease and/or Develop Property</b>	<b>Policy No.:</b> Lease-02
		<b>Version:</b> DRAFT
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## Introduction

An Unsolicited Proposal is a written proposal submitted to the HCDA on the initiative of the offeror for the purpose of developing a partnership that is not in response to a formal Request for Proposals (RFP) or informal request by the HCDA.

Hawaii Revised Statutes (HRS) §206E-14 permits the HCDA to lease its property without recourse to public auction for a *redevelopment project*. This permits the HCDA to directly enter into exclusive negotiations with a third-party with the approval of the applicable Authority.

The flexibility to consider an unsolicited proposal presents certain advantages to the HCDA and to a Community Development District (CDD) as follows:

- Entertain innovative ideas which may fall outside current solicitations;
- Activate and revitalize, underutilized assets;
- Respond quickly to existing needs of a CDD; and
- Obtain information on market conditions.

## Policy

It is the policy of the Hawaii Community Development Authority (HCDA) to pursue new and innovative ideas that advance its mission as articulated in its plans and rules. Where these new and innovative ideas fall outside of current solicitations and advance the mission of the HCDA, the ideas may be submitted as an Unsolicited Proposal.

## Unsolicited Proposals

To be considered, an Unsolicited Proposal must:

- Advance the rules and plans of the HCDA;
- Be independently originated and developed by the Offeror;
- Be in the best interest of the community involved and the State of Hawaii;
- Be prepared without the assistance of HCDA staff and members of the Authority, and without the endorsement or direction of the HCDA;
- Demonstrate a unique opportunity presented to the HCDA that would be unavailable during a competitive process;
- Include sufficient detail to permit a determination that the proposal would be worthwhile and the proposed work would benefit the plans and rules promulgated by the HCDA as directed by the community; and
- Not be in advance of a known agency proposal that can be acquired by competitive methods.

## **Receipt of Unsolicited Proposals**

The receipt of an unsolicited proposal shall not bind the HCDA in any way. No statement by HCDA staff or authority members shall be construed as legally binding unless approved by a vote by the applicable Authority.

The HCDA, at its sole discretion, reserves the right to reject an unsolicited proposal at any time and proceed to a competitive process, when a competitive process would benefit the community and the State of Hawaii.

## **Agency Point of Contact**

Preliminary contact with agency personnel may be appropriate before providing a detailed unsolicited proposal and may save considerable time and effort. Offerors may contact HCDA's Administrative Services Officer who may provide guidance on preferred methods of submitting an unsolicited proposals and information sources on agency objectives and areas of potential interest.

Offerors are encouraged to review HCDA's plans and rules at <http://dbedt.hawaii.gov/hcda/plans-rules/>.

Only the Authority has the authority to bind the HCDA by vote of the applicable Authority.

## **Content of Unsolicited Proposals**

Unsolicited proposals should contain the following information:

1. A statement on how the Unsolicited Proposal is unique and innovative and how it will benefit the people of the State of Hawaii. Explain why the Unsolicited Proposal presents a unique opportunity that would not be available in a competitive bid process.
2. A reasonably complete discussion stating the objectives of the Unsolicited Proposal, its anticipated results, and the manner in which the proposal will support the mission of HCDA.
3. Financial forecast, including estimated project costs, any revenues, and whether the HCDA is expected to participate in any expenses, or will receive any revenues.
4. The method of funding of the Unsolicited Proposal and whether HCDA is expected to assist in funding the proposal.
5. Identification of Offeror. Provide the complete name and address of Offeror's firm. Provide the name, mailing address, email address, telephone number, and fax number of the primary contact for the Unsolicited Proposal. Identify the key members of the Offeror's team by position and expertise. Provide the associated resumes of the Offeror's team and consultants, joint ventures or limited partners, and number of years in business.
6. Previous relevant project experience by Offeror and project team with brief descriptions of previous projects, relevant photographs, dates, locations, concepts, land uses, sizes, and construction costs.
7. Satisfactory evidence that Offeror has the financial capability to develop the proposed Unsolicited Proposal.
8. At least four references for the Offeror identifying name, contact address, telephone number and email address.

Any information submitted to HCDA may be disclosed to the public pursuant to Chapter 92, Hawaii Revised Statutes. Should the Offeror mark any information confidential, or as a trade secret, HCDA will make its best effort to honor the request; however, HCDA may be required to disclose such information under state law.

### **Submission Procedures**

One (1) original and six (6) copies of any Unsolicited Proposals shall be submitted to HCDA's offices at 547 Queen Street, Honolulu, HI, 96813.

### **HCDA Procedures**

Upon the receipt of an Unsolicited Proposal, HCDA's Executive Director shall appoint a three-member committee to review and evaluate each Proposal.

The committee shall determine whether the Proposal:

1. Is a valid Unsolicited Proposal as outlined in this policy;
2. Is related to HCDA's mission;
3. Is a proposal that is unique and innovative, and therefore not subject to a competitive bid process;
4. Offeror has the requisite qualifications, capabilities, and experience that leads the committee to believe the Unsolicited Proposal can be executed; and,
5. Financial forecast is realistic and whether the Offeror has the financial capability to execute the Proposal.

Ex-parte communications with the committee prior to its recommendation to lobby or otherwise curry favor to advance an Unsolicited Proposal may be deemed as a reason to terminate the pursuit of the Proposal by HCDA.

The committee will make a recommendation to the Executive Director on whether the proposal should be forwarded to the applicable Authority for further discussion. Should the Executive Director determine the Unsolicited Proposal merits further discussion, he or she shall forward the recommendation to the Chairman of the Authority who will decide whether the proposal should be placed on a future agenda and the time and place of such a public meeting.

Should a public meeting be held, the applicable Authority will determine whether to direct the Executive Director to enter into exclusive negotiations with the Offeror or to terminate further discussions.

The Offeror may withdraw its proposal at any time by written notice to the HCDA.

Any decision of the applicable Authority shall not bind the Authority to any further action. Ultimate acceptance of the Unsolicited Proposal is subject to exclusive negotiations and a further vote(s) of the applicable Authority, as necessary.



	<b>Supplemental Considerations for Proposals Offering Terms Below Market Value</b>	<b>Policy No.:</b> Lease-03
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## **Introduction**

The focus of HCDA's mission relative to real property is not solely revenue generation and also includes the development and management of public facilities in alignment with each district's community development plan. Making these facilities available for public benefit often requires HCDA to forego highest and best use. As a steward of State land, including existing or planned public facilities, the HCDA is often approached with proposals for nominal leases which may prove detrimental to the agency in the long-run.

## **Policy**

It is the policy of the HCDA to provide the necessary services, public facilities, and amenities to advance its mission as articulated in its plans and rules. Where providing these services and/or amenities require a rent subsidy to operate, the HCDA may consider proposals which provides a rent at a rate below the prevailing market rate. In these circumstances the HCDA should reconcile the difference in rates and consider measures to mitigate its exposure under such proposals, by applying additional considerations.

In the preparation of a solicitation where lease terms are expected to be below market, the board may consider directing staff to prepare a preliminary analysis for board concurrent consideration with an RFP. The supplemental considerations should otherwise be applied to unsolicited proposals.

## **Below Market Rate Proposals**

A below market rate proposal is a proposal where compensation after consideration of value provided under the proposal, net of any value that must be contributed by the HCDA results in a rate that is below a range supported by the market for the same space and the difference is readily apparent. In determining a market rate, the HCDA may consider the comparables, recent results from a competitive solicitation, other publicly available resources of market data, or the results of an appraisal.

## **Reconciling Rent Differences**

Quantitative and qualitative factors should be considered to reconcile the difference between the proposed and market rent rates to verify whether a proposed rate is actually below-market or may be otherwise justified.

Quantitative factors:

- Difference between the rate offered and prevailing market rates and net difference on annual basis.

- The residual fair value of any proposed improvements at the end of the proposed lease term, to the extent that these improvements have value to the HCDA.
- Avoided costs as the result of proposed lease.
- Additional costs incurred resulting from the proposed lease.

**Qualitative factors:**

- The proposed lease term should also be considered against prevailing market conditions.
- Consistency of the proposed use with the community development plan, the need for the proposed operation in the surrounding area, public benefit.
- Ability of the potential lessee to pay market rents.
- Impact of the proposed lease on other uses and future improvement plans.
- Unique characteristics of the proposed operations that are site specific.

**Mitigating Exposure**

Consideration should be given to measures to minimize HCDA exposure on leases that are below-market, that include, but is not limited to:

- Ensure that the lease would provide for any operating expenses associated with the proposed lease. If the lessee will cover these costs, specify a standard at which the facility or site must be maintained at to avoid fines or large deferred maintenance costs.
- For leases of vacant land and/or involve (re)development, limit leased areas to space requirements, establishing common areas or non-exclusive access rights.
- Restrict uses under the lease to the proposed use to avoid abuse and ensure the intended public benefit is provided.
- Participation in any for any approved activities unrelated to the permitted use under the proposed lease.
- Lease structure that would increase rent over time commensurate with the operating plans of the potential lessee.
- Allow for at a minimum, annual site visit and audit of the on-site operations to monitor compliance.
- A discounted rate structure that the potential lessee could afford based on its revenue stream that would be more than nominal.

**HCDA Procedures**

The Executive Director shall appoint qualified staff to review the proposal to:

1. Identify the key quantitative and qualitative factors contained in the proposal for evaluation; and
2. Establish a baseline market rent.

Staff identified would depend on the nature of the proposal to facilitate and effective review.

The final staff review should summarize its findings relative to the quantitative and qualitative factors identified. The staff review should also contain recommendations on:

1. Where additional information may be needed; and
2. Potential measures to mitigate HCDA exposure under the proposal.

Further action on the proposal would be subject to the applicable policy thru which the proposal was received.

The first step in the process of the investigation is to identify the problem. This is done by gathering information about the situation and the people involved. The next step is to analyze the information and determine the cause of the problem. This is done by looking at the data and trying to find patterns. The third step is to develop a plan to solve the problem. This is done by brainstorming ideas and choosing the best one. The fourth step is to implement the plan. This is done by putting the plan into action. The fifth step is to evaluate the results. This is done by looking at the data and seeing if the problem has been solved. If not, the process starts over.

