

STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
Honolulu, Hawaii, 96813
April 4, 2018

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

HCDA Board Members:

SUBJECT:

Shall the Authority Adopt a Policy Providing Guidelines and Protocols Governing the Consideration of Proposals to Lease and/or Develop Property?

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 consideration is a draft of the first four policy elements governing leases:

1. Considerations for evaluating the duration of a lease;
2. Solicitation for proposals for the lease and/or development of property;
3. Consideration of Unsolicited Proposals to lease and/or develop property; and
4. Supplemental considerations for proposals offering below market terms.

The attached policies have been drafted as a board level policy and is intentionally written at a high-level to provide staff latitude in administration of the policies to avoid unintended or unforeseen consequences.

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 are not as restricted as other HCDA revenues, which 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 are 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 of public facilities, such as parks and roads; the maintenance of these public facilities are also partially funded by 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.

Board Consideration of DRAFT Policy

A draft of the leasing policy was presented to the board at its March 7, 2018 General Meeting. The major comment from the discussion at this meeting was how to determine or evaluate the duration for a lease. The discussion surrounding this comment highlighted the complexity and competing priorities of the HCDA, such as:

- Generating revenue to sustain operations and public facilities;
- Ensuring that interim uses do not interfere with the implementation of the community development plan; and
- Timing of a development project with regard to the community development plan.

Staff drafted a policy element on Considerations for Evaluating the Duration of a Lease, that is included in the current draft for board consideration.

Minor edits and clarifications to the policy were also proposed. Those changes have also been incorporated in the attached draft policy.

ANALYSIS:

Of HCDA's community development tools, leasing and management is the only tool that does not have a framework or structure. HCDA's other tools - development permits, improvement districts, reserved housing, etc. are founded in statute and further outlined in Hawaii

Administrative Rules (HAR). Consistent with the findings and recommendations of the task force, the absence of a framework is a serious omission given the impact of leasing and management on HCDA operations.

To achieve the legislative intent of HRS § 206E, codifying HCDA leasing and management under HAR would not be feasible given the rapid pace of change in the real estate industry. The powers granted under HRS § 206E-4 are purposely broad regarding real estate to pursue growth, innovation, and efficiencies. To be consistent with the legislative intent an ideal framework would require more flexibility.

A policy at the board level creates has the necessary flexibility that is not provided in HAR, while effectively establishing a framework for leasing and management. The policy would establish guiding principles and set standards for leasing and management decisions. By having a policy, the board and staff will have a firm foundation to make decisions upon, which may include the rejection of a proposal. This will help ensure that the decisions made are both responsible and strategic, with respect the implementation of the community development plan and ongoing HCDA operations.

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 to avoid unforeseen and unintentional consequences. The would set a standard that a proposal must meet for it to be presented for board consideration.

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

If approved the policies would go in to effect, making all new and subsequent proposals or solicitations subject to the requirements of the policy. The policy can later be amended to address any issues or concerns that may arise after implementation.

Leasing and management represents a significant tool for the HCDA relative to realizing a community development plan in each district. Having a policy to guide these decisions is essential to successfully achieving the HCDA's mission in the context of a community development plan that involves a number of complex factors.

RECOMMENDATION:

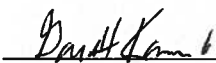
Adopting a leasing policy will help ensure that adequate information is provided to support a leasing decision and that HCDA assets are deployed in a strategic manner that is aligned with the community development plan for each district. Staff recommends the board adopt the leasing policy and monitor progress on implementation to ensure the policy meets board expectations.

Respectfully submitted,



Aedward Los Banos
Administrative Services Officer


APPROVED FOR SUBMITTAL:



Garrett Kamemoto, Interim Executive Director
Hawaii Community Development Authority

Attachments

Attachment 1 – DRAFT Leasing Policy

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

Objective

Establish guidelines and protocols for the solicitation, evaluation and presentation of a lease or development proposal 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 (re)develop 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 as an essential tool in implementing the community development plan in each district.

Balancing Public Facilities and Commercial Facilities

HCDA's mandate identifies the need for both for-profit commercial, and public facilities for the revitalization of a community development district. A proper balance is essential to revitalize a community development district, and to sustain growth and improvements.

While there is a significant public expectation for State land to be used for public facilities, public facilities oftentimes generate little or no revenue, while requiring funding for maintenance and operations.

Revenues received thru 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 community development districts (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

Fulfilling HCDA's mandate and realizing each community development plan requires the HCDA to strategically lease and develop the real property under its control in a strategic and responsible manner. The following policies provide structure and discipline over the leasing and management function.

1. Considerations for Evaluating the Duration of a Lease
2. Solicitation for Proposals to Lease and/or Development of Property
3. Consideration of Unsolicited Proposals to Lease and/or Develop Property
4. Supplemental Considerations for Proposals Offering Below Market Terms

	Considerations for Evaluating the Duration of a Lease	Policy No.: Lease-01
		Version: DRAFT
		Effective Date: Month Day, Year

Introduction

The Hawaii Community Development Authority (HCDA)'s leasing and management function is an essential tool in the implementation of the community development plan in each district. In the long-run, HCDA assets should ultimately be deployed to achieve the aspirations of the plan. In the interim, however, assets may be deployed for other purposes that advance the community development plan. Interim uses can contribute towards HCDA's mission of revitalization and are essential to:

- Generate revenue to support HCDA operations, including plan implementation, public facilities, and administrative expenses;
- Avoid costs that would otherwise be incurred to maintain and secure an asset;
- Activate an otherwise dormant area; and
- Fulfill an unmet community need in the district.

If assets are deployed for interim uses, timing is a significant factor to ensure that the sites are available for development, when needed to realize the long-range plan.

In determining a proper duration for a lease, location and proposal-specific factors should be considered. Planning is iterative, so as opportunities arise or are created, information on existing conditions as well as forecasted conditions should be considered to ensure that leasing decisions are made responsibly.

Policy

It is the policy of the HCDA to maximize the use of its property without compromising the completion of its community development plan for each district. The duration of its leases should reflect the priorities of the community development plan and interim uses should not interfere with any long-range plans.

Lease Duration

Given the long-range nature of a community development plan and changing landscape in the financing and development industries, evaluating a proposed duration in years can be misleading. For the purposes of this policy, long-term is defined as, a use or (re)development that aligns with the ultimate use, as identified in the community development plan for the location. Anything less would be considered an interim use.

Each community development plan should have an implementation plan that should be considered to better refine long-term or interim use determinations. In the absence of an

implementation plan, the staff recommendation should be based on location and proposal specific factors to support a long-term or interim use determination.

Location Factors

Generally, a parcel of land in an area where access and infrastructure improvements have been completed to support development and where surrounding landowners have started or completed improvements would be prime for a long-term lease for development as provided for in the community development plan. Whereas a parcel where these conditions are not present should be considered for an interim use, with a duration not to exceed the time frame for which improvements are planned or expected.

Planning is iterative so information on current conditions as well as forecasted conditions of the targeted site should be considered in evaluating the duration of a lease and may include:

- Location-specific considerations:
 - Location;
 - Parcel size;
 - Zoning; and
 - Highest/best use.
- District considerations:
 - Surrounding area development/development plans;
 - Market and demographic trends; and
 - Access and infrastructure.

Consideration of these factors do not supplant requirements for due diligence or an environmental assessment. This initial high-level review would be supplemented by these reports for final decision-making. The level and extent of work done in making a determination should be commensurate with the proposed duration of the lease.

Proposal Factors

Generally, proposals will state the duration of a lease being sought by the offeror who may have different motivations. For example, an entity may have grant funding which requires a minimum term for a lease, which is often the case with affordable housing, to meet HUD requirements. On the other end of the spectrum a developer may be only interested in a developer's fee, willing to sell or lease-back the project upon completion. Otherwise, it may be the desire of the HCDA/State to have a developer design, build, operate and maintain a project in the long-run, thru a public private partnership.

Understanding the offeror's motive, financing circumstance or other circumstances can assist in making an informed decision on the duration of a lease, or potentially negotiating for a duration that may work within HCDA's community development plans.

The leasing practices of the private sector relative to the classification and location of the property should also be considered in evaluating a proposed lease term.

Consideration of these factors do not supplant evaluation criteria specific to an RFP or evaluation criteria for an unsolicited proposal. This initial high-level review would be supplemented by these criteria for final decision-making.

HCDA Procedures

The HCDA Executive Director shall appoint qualified staff to:

1. Compile the information relative to the location-specific factors;
2. Identify lease duration requirements of a proposal; and
3. Develop a recommendation relative to the duration of the lease, identifying whether the lease is an interim or long-term use.

The level of work done should be commensurate with the proposed duration of the lease. For example, a lease with a duration of a two-year interim use in an undeveloped area may only have a nominal amount of work done.

In addition to compiling the necessary information, staff shall develop a recommendation for review and approval of the Executive Director. The recommendation should identify:

1. Whether a long-term or interim use is recommended;
2. If any flexibility should be incorporated into the structure of the lease duration; and
3. All key information and factors considered.

For interim uses, in addition to the items listed above, the staff recommendation should also identify:

1. Benefits of the interim use relative to HCDA's mission;
2. That the term of the lease for an interim use would not interfere with the implementation of the community development plan; and
3. All key information and factors considered.

Relative to structuring flexibility into the way the lease duration is structured, the following mechanisms may consider incorporating measures, such as:

- Breaking up the overall lease term with openings and options to extend;
- An early termination clause provided adequate notice; and
- Liquidated damages for failure to comply with the expiration or termination of a lease.

	Solicitation for Proposals to Lease and/or Development of Property	Policy No.: Lease-02
		Version: DRAFT
		Effective Date: Month Day, Year

Introduction

A Request for Proposals (RFP) is a formal solicitation issued by the Hawaii Community Development Authority (HCDA). RFPs generally include specific evaluation criteria on which proposals will be scored on.

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, 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.

This process is an ideal model for the HCDA, that is copacetic with the implementation of a community development plan. These advantages/benefits include:

- Advanced planning;
- Enhanced transparency;
- Access to a broad range of opportunities;
- Obtain terms favorable to the HCDA thru competition; and
- 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 the solicitation is issued publicly or privately, the RFP process as described herein would be similar.

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 district;
3. Identifies an expected timeframe for the RFP, including significant milestones;
4. Proposes criteria for how proposals will be evaluated;
5. Identifies an HCDA staff person who will be responsible for the solicitation and serve as the agency point of contact; and
6. Provides market information and/or expectations, which may be discussed in Executive Session, pursuant to Hawaii Revised Statutes § 92-5.

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 to inform recommendations or rank proposals. 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. Proposal organization to incent offerors to present all required information in a manner that facilitates 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 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.

On an appointed date and time, identified in the RFP, the evaluation committee will meet to officially unseal proposals. 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 discuss and 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 Chair 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.

	Consideration of Unsolicited Proposals to Lease and/or Develop Property	Policy No.: Lease-03
		Version: DRAFT
		Effective Date: Month Day, Year

Introduction

An Unsolicited Proposal is a written proposal submitted to the Hawaii Community Development Authority (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 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 staff 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.

	Supplemental Considerations for Proposals Offering Terms Below Market Value	Policy No.: Lease-04
		Version: DRAFT
		Effective Date: Month Day, Year

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.

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

To further mitigate its exposure, the HCDA should also consider sanctions or liquidated damages resulting from non-compliance with a mitigation measure.

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;
2. Establish a baseline market rent; and
3. Develop a recommendation on the rent proposal.

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.