

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawai'i 96813

May 22, 2020

Chairperson and Members
Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Board Members:

SUBJECT: DELEGATE AUTHORITY TO THE CHAIRPERSON TO APPROVE GRANT AWARDS FROM AVAILABLE FUNDS IN THE LAND CONSERVATION FUND—AS REQUESTED IN APPLICATIONS TO THE FISCAL YEAR 2020 LEGACY LAND CONSERVATION PROGRAM AND AS RECOMMENDED BY THE LEGACY LAND CONSERVATION COMMISSION—FOR THE OPERATION, MAINTENANCE, AND MANAGEMENT OF LANDS ACQUIRED BY WAY OF THE LAND CONSERVATION FUND

SUMMARY

The Division recommends that the Board delegate authority to the Chairperson to approve up to \$340,000 in Legacy Land Conservation Program Management Grant awards, from available funds in the Land Conservation Fund, as requested in applications to the Fiscal Year 2020 Legacy Land Conservation Program and as recommended by the Legacy Land Conservation Commission, for the operation, maintenance, and management of lands that were acquired using a land acquisition grant from the Land Conservation Fund. These grant awards contribute to important public-private stimulus packages that help reshape and diversify our economy and make Hawai'i more resilient to future economic downturns.

BACKGROUND

In 2012, the Board adopted regulations implementing the provisions of Chapter 173A, Hawai'i Revised Statutes (Haw. Rev. Stat.), Acquisition of Resource Value Lands, that include a delegation of authority to the Division of Forestry and Wildlife for the administration of the Legacy Land Conservation Program. *See* Section 13-140-3, Hawai'i Administrative Rules (Haw. Admin. R.) Section 173A-5(f), Haw. Rev. Stat., authorizes the Department to administer and manage the Land Conservation Fund. Under § 173A-5(h)(4), one of the four purposes that the Land Conservation Fund "shall be used for" is:

Costs related to the operation, maintenance, and management of lands acquired by way of this fund that are necessary to protect, maintain, or restore resources at risk on these lands, or that provide for greater public access and enjoyment of these lands; provided

that the costs related to the operation, maintenance, and management of lands acquired by way of this fund do not exceed five per cent of annual fund revenues of the previous year.

Pursuant to the Board's recent delegation of authority to the Chairperson (January 10, 2020, Item C-2) to approve, procure, award, sign, execute, amend, and extend contracts valued less than \$500,000 procured through Chapter 103D, Haw. Rev. Stat., the Department recently issued a request for competitive sealed proposals "for the Operation, Maintenance, and Management of Legacy Land Acquisitions" (Exhibit I) noting that "Approximately \$340,000 in Fiscal Year (FY) 2020 is available through this RFP" and "A maximum of \$99,000 may be requested for each property conserved with land acquisition grant awards." The Department issued the request for proposals, and submitted its recommendation for today's subject Board agenda item, in an attempt to secure fiscal year 2020 grant funds from the Land Conservation Fund for use by constituents of the Legacy Land Conservation Program, in the event that all of the \$3,300,000 in funding for the fiscal year 2020 land acquisition grants that the Board approved on April 24, 2020 (Item C-3) is not released for Program use.

In addition to Chapter 103D requirements, awards of Legacy Land management grants must also comply with Chapter 173A requirements that "[a]fter consultation with the senate president and speaker of the house of representatives, and subject to the approval of the governor, the board may make grants to state agencies, counties, and nonprofit land conservation organizations from available funds . . . for the operation, maintenance, and management of lands acquired under this chapter that are necessary to protect, maintain, or restore resources at risk on these lands, or that provide for greater public access and enjoyment of these lands." Haw. Rev. Stat. § 173A-9.

Operation, Maintenance, and Management of Lands Acquired by Way of the Land Conservation Fund

Haw. Admin. R. § 13-140-46 directs that "[a]pplicants for management grants shall submit requests for funding by the annual deadline, using the forms and instructions provided by the department as may be revised from time to time." The forms and instructions provided by the Department are encompassed by Chapter 173A, Haw. Rev. Stat.; Chapter 13-140, Haw. Admin. R.; and the request for proposals issued by the Department (Exhibit I). Similar to the governing authorities for land acquisition grants, the administrative rules specify the criteria that the Legacy Land Conservation Commission applies in advising the Department and the Board and making recommendations to the Board regarding grants of operations, maintenance, and management funds (*see* §§ 13-140-52, -53, and -54). As with land acquisition grants, a land management grant to a county or a nonprofit land conservation organization requires at least 25% matching funds for the total project cost (*see* § 13-140-44).

Evaluation Process

Under Section 103D-104, Haw. Rev. Stat., a member of the Legacy Land Conservation Commission (Commission) is an "employee" and is eligible to serve as a member of a proposal evaluation committee. In order to fulfill the requirements of both the State procurement code and the Legacy Land Conservation Program, the Commission plans to hold a public meeting on or about May 26, 2020 (Meeting 71), during which a quorum of the Commission, convened in executive session, will evaluate and review the proposals and applications received, resulting in a

selection of offerors under Chapter 103D and a recommendation for grant awards under Chapter 173A. Please see Exhibit II, Memorandum Opinion from the Office of Information Practices, Board Consideration of Matters Made Confidential by the Procurement Code (S RFO-G 4-12).

DISCUSSION

Management authority for the 33 properties that are eligible to benefit from a management grant from the Legacy Land Conservation Program is distributed as follows:

- 18 properties managed by one of thirteen nonprofit land conservation organizations;
- 9 properties managed one of three State agencies (Division of Forestry and Wildlife, 7; Division of State Parks, 1; and Office of Hawaiian Affairs, 1); and
- 6 properties managed by one of two counties (Hawai'i, 5 and Kaua'i, 1).

Given the ongoing uncertainty surrounding fiscal year 2020 spending authorizations and the reality of impending, end-of year fiscal deadlines, approving management grants at the Department level would greatly increase the possibility that funding for management grants could be approved by the Governor and encumbered before the end of the fiscal year. Actions funded by Legacy Land management grants would likely be similar to many of those now funded under the Board's recent delegation of procurement authority to the Chair (January 10, 2020, Item C-2). Also, approving management grants at the Department level would be consistent with the rationale provided for that recent delegation, such as increasing the efficiency and speed of the procurement process and reducing the volume of lower-cost procurement matters going to the Board.

In the event that the Governor releases all or part of the \$3,300,000 that the Board recently approved for land acquisition grants, the Department would cancel its 103D procurement process for land management grants, or limit the funding that it approves for land management grants to the difference (up to \$340,000) between the \$3,300,000 of funding that remains available for the fiscal year 2020 Legacy Land Conservation Program and the amount of funding that the Governor releases for land acquisition grants.

Chapter 343, Hawai'i Revised Statutes, Environmental Review

The Board's delegation of authority for the Chairperson to approve, procure, award, sign, execute, amend, and extend contracts valued less than \$500,000 procured through Chapter 103D, Haw. Rev. Stat. (January 10, 2020, Item C-2) also includes authorization for "the Chairperson to declare a project covered by this request exempt from the preparation of an EA [Environmental Assessment] or to approve an EA and issue a FONSI [Finding of No Significant Impact], if appropriate, and authorize the Chairperson to sign the necessary documents pertaining to the individual project to make such a declaration."

RECOMMENDATIONS

That the Board:

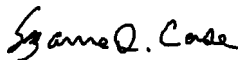
- 1) Authorize the Chairperson to approve awards of land management grants to State agencies from the Land Conservation Fund, using not more than \$340,000 from beneath the Fiscal Year 2020 spending ceiling for the Legacy Land Conservation Program, and to encumber funds for these grants, subject to the availability of funds, the approval of the Governor, compliance with Chapter 173A, HRS, and the normal process and procedures for the management of lands by the State.
- 2) Authorize the Chairperson to approve awards of land management grants to county agencies and non-profit land conservation organizations from the Land Conservation Fund, using not more than \$340,00 from beneath the Fiscal Year 2020 spending ceiling for the Legacy Land Conservation Program, and to enter into agreements and encumber funds for these grants, subject to:
 - a. compliance with Chapter 173A, Hawai'i Revised Statutes;
 - b. compliance with Chapter 343, Hawai'i Revised Statutes;
 - c. execution of a Grant Agreement with the Board;
 - d. approval of the Grant Agreement by the Department of the Attorney General;
 - e. the availability of funds;
 - f. the approval of the Governor; and
 - g. such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



DAVID G. SMITH, Administrator

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

EXHIBITS:

- Exhibit 1: RFP NO. LLCP2020 (DRAFT)
Exhibit 2: Memorandum Opinion from the Office of Information Practices, Board
Consideration of Matters Made Confidential by the Procurement Code (S RFO-G
4-12).

Exhibit I

NOTICE TO OFFERORS
(CHAPTER 103D)

The Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife (DOFAW), Legacy Land Conservation Program, seeks to fund State agencies, county agencies, and nonprofit land conservation organizations that have acquired lands using a land acquisition grant from the Land Conservation Fund for management grants for the operation, maintenance, and management of those lands. A copy of the Request for Proposals (RFP LLCP2020) may be downloaded from the State Procurement Office (SPO) website <https://hands.ehawaii.gov/hands/opportunities>. Governing authorities for Legacy Land management grants include Chapter 173A, Hawai‘i Revised Statutes, and Chapter 13-140, Hawai‘i Administrative Rules.

Based on the requirements and special conditions of this procurement, a competitive sealed proposal process will be used for source selection. Such an approach will be the most advantageous procurement process for the solicitation because the primary consideration for the determination of the awards for this Request For Proposals (RFP) is not price. Awards may need to be based upon a comparative evaluation as stated in the Request For Proposals of differing price, quality, services and other contractual factors in order to determine the most advantageous offering to the State.

Sealed proposals will be received by the Division of Forestry and Wildlife via email to legacyland@hawaii.gov and must be received by 10:00 am (Hawai‘i Standard Time-HST) on May 18, 2020. Anything received after this time and date will not be considered. Notification of grant award or denial will be made according to dates outlined in the RFP. This expedited time between the opening date and the receipt of public offers will provide adequate public notice because the pool of eligible applicants is limited by the requirements of the grant and these applicants will be notified when the RFP is posted.

The State reserves the right to cancel or modify this RFP at any time and reject any and all proposals or to waive any defect, when in its opinion, such cancellation, rejection or waiver will be in the best interests of the State of Hawai‘i. The State of Hawai‘i assumes no financial responsibility in the preparation of any responses to this RFP.

Written (mail or email) inquiries regarding this RFP should be directed to David Penn at the Division of Forestry and Wildlife by phone at 808-286-7697, or email legacyland@hawaii.gov. The deadline to submit written questions regarding this RFP is May 7, 2020.

Suzanne D. Case, Chairperson and Chief Procurement Officer
Department of Land and Natural Resources

Department of Land and Natural Resources

Division of Forestry and Wildlife
Legacy Lands Conservation Program
1151 Punchbowl Street, Room 325
Honolulu, HI 96813

Legal Ad Date: May 1, 2020

**REQUEST FOR PROPOSALS (RFP)
NO. LLCP2020**

**SEALED PROPOSALS for the
OPERATION, MAINTENANCE, AND MANAGEMENT OF LEGACY LAND
ACQUISITIONS**

WILL BE RECEIVED UP TO 10:00 AM (HST) ON

May 18, 2020

BY THE

State Department of Land and Natural Resources, Legacy Lands Conservation Program via
email at legacyland@hawaii.gov.

Timely receipt of offers shall be evidenced by the date and time registered by the State of Hawaii
email system.

Suzanne D. Case, Chairperson and Chief Procurement Officer
Department of Land and Natural Resources

RFP Registration and Inquiries

If you intend to respond to this request for proposals, please email legacyland@hawaii.gov to register your organization otherwise you will not receive notification of any changes or addendums. Provide a contact name, phone number, and email address. The deadline to submit written questions regarding this RFP is May 7, 2020 via email to legacyland@hawaii.gov.

1. INTRODUCTION AND PURPOSE OF SOLICITATION

The Hawai'i Department of Land and Natural Resources, Legacy Land Conservation Program seeks to fund State agencies, county agencies, and nonprofit land conservation organizations that have acquired lands using a land acquisition grant from the Land Conservation Fund for management grants for the operation, maintenance, and management of those lands. Multiple awards will be made under this request for proposals. Final awards are subject to the availability of funds or State budget restrictions and procedures.

Approximately \$340,000 in Fiscal Year (FY) 2020 is available through this RFP. **A maximum of \$99,000 may be requested for each property conserved with land acquisition grant awards.**

2. CANCELLATION

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

3. RFP SCHEDULE AND SIGNIFICANT DATES

The following table represents the State's best estimate of the schedule that will be followed. If a component of this schedule is delayed, the rest of the schedule will likely be shifted by the same number of days. The approximate schedule is as follows:

Advertising of Request for Proposals	May 1, 2020
Deadline for Written Questions	May 7, 2020
State's Response to Written Questions	May 12, 2020
Proposals Due and Opened	May 18, 2020
Estimated Notification of Award	June 15, 2020
Estimated Contract Start Date	August 1, 2020

4. SCOPE OF WORK

Management grant funds may be awarded for operation, maintenance and management costs that: (1) Are necessary to protect, maintain, or restore resources at risk on lands that have been acquired using a land acquisition grant from the fund; or (2) Provide for greater public access and enjoyment of lands that have been acquired using a land acquisition grant from the fund.

5. TERM OF CONTRACT

The maximum time of performance for the grant agreement shall be two years, unless an extension is approved by the department in writing. Applicants must request an extension in writing no later than ninety days prior to the deadline for performance. Extensions may be granted at the discretion of the department and the department may reject requests for extensions. The maximum time the contract can be extended is for not more than an additional twenty-four

(24) month period.

6. PROPOSAL FORMAT AND CONTENT

See Attachment A for format.

7. EVALUATION CRITERIA AND CONTRACTOR SELECTION

Proposals will be ranked by an evaluation committee consisting of a quorum of the Legacy Land Conservation Commission and the Contract Administrator, convened in an executive session. The awards will be made to the responsible Offeror(s) whose proposal is/are determined to be the most advantageous to the State based on the evaluation criteria listed in this section.

Priorities:

- (1) Lands having exceptional value due to the presence of:
 - (A) Unique aesthetic resources;
 - (B) Unique and valuable cultural or archaeological resources; or
 - (C) Habitats for threatened or endangered species of flora, fauna, or aquatic resources;
- (2) Lands that are in imminent danger of development;
- (3) Lands that are in imminent danger of being modified, changed, or used in a manner to diminish its value;
- (4) Lands providing critical habitats for threatened or endangered species that are in imminent danger of being harmed or negatively impacted;
- (5) Lands containing cultural or archaeological sites or resources that are in danger of theft or destruction; and
- (6) Lands that are unique and productive agricultural lands.

Criteria	Max # of points
(1) Completeness of the management grants application.	5
(2) Operation, maintenance and management of land having a value as a resource to the State for the preservation of the following: (A) Watershed protection; (B) Coastal areas, beaches, and ocean access; (C) Habitat protection (D) Cultural and historical sites; (E) Recreational and public hunting areas; (F) Parks; (G) Natural areas; (H) Agricultural production; and (I) Open spaces and scenic resources;	10
(3) Linkage of protected acreage of similar resources;	5

(4) Cost of proposed operations, maintenance, and management activities;	10
(5) Proportion of matching funds being leveraged;	5
(6) Urgency of need for proposed operations, maintenance, or management activities;	10
(7) Feasibility of achieving proposed objectives;	5
(8) Short-term and long-term efficacy of proposed actions;	5
(9) Community support for the proposed activities;	5
(10) Feasibility of mitigating any environmental hazards;	5
(11) Role and necessity of the proposed activities in: (A) Achieving the protection, maintenance, or restoration of resources at risk, or (B) In providing for greater public access and enjoyment;	20
(12) Status and adequacy of management planning;	5
(13) Presence and role of activity in existing plans or the ability of organization to implement any planning activities that are funded;	5
(14) Benefit of the proposed activity to the region.	5
TOTAL NUMBER OF POINTS	100

8. MONITORING

Any time prior to the disbursement of management grant funds to an awardee, the department may require status reports from the awardee regarding the completion of the awardee's commitments under the grant agreement. Awardee shall respond to any such requests from the department within sixty days. Site visits may be requested by the contract administrator, to be coordinated with the Grantee.

1. Quarterly Narrative Report (See Attachment B for format)

Quarterly reports are due one month after the end of each quarter in which work is performed. For example, if work begins January 1, 2020, the first report is due April 30, 2020.

- April 30
- July 31
- October 31
- January 31

2. Final Narrative Report (See Attachment C for format)

The Final Narrative Report is due at the end of the project period or with the final invoice. The final 10% payment cannot be made until an adequate Final Report is received. Final Reports will be made available to the public.

9. COMPENSATION AND PAYMENT

For management grant payments, incremental payments may be made to the awardee on a quarterly basis, upon receipt of reports that meet the requirements of the grant agreement. Reimbursement shall be the default method of payment. Requests for advance payment shall be made using a form supplied by the department. The department may deny advance payments for any reason. The department may withhold any portion of the payment until all commitments are verified as complete to the satisfaction of the department.

Invoices need to contain the following:

- **Contract or Purchase Order (PO) number**
- **Service period**
- **The statement “This is an original invoice”**
- **An original signature in blue ink**

The final invoice must be marked as “Final.” Please check with your individual fiscal officer to confirm internal deadlines for invoices. All final invoices need to be accompanied by the Certificate of Vendor Compliance from Hawaii Compliance Express.

Invoices should be sent to:

David Penn, Program Specialist
Division of Forestry and Wildlife, Department of Land and Natural Resources
1151 Punchbowl Street, Room 325 Honolulu, HI 96813

SPECIAL PROVISIONS

1. SCOPE. All proposals shall be in accordance with this RFP, including the special provisions in this section, the Scope of Work specified herein, and the General Conditions (GC), included by reference and available at <http://spo.hawaii.gov/wp-content/uploads/2014/02/103D-General-Conditions.pdf>

2. RESPONSIBILITY OF OFFERORS. Pursuant to §103D-328, HRS, selected Offeror shall be required to submit evidence of tax clearance by providing a Hawaii Compliance Express certificate dated within one month of the notice of award. Please see <http://vendors.ehawaii.gov> to acquire a "Certificate of Vendor Compliance." The HCE provides current compliance status as of the issuance date. The "Certificate of Vendor Compliance" indicating that vendor's status is compliant with the requirements of §103D-310(c), HRS, shall be accepted for both contracting purposes and final payment. Vendors that elect to use the new HCE services will be required to pay an annual fee of \$15.00 to the Hawaii Information Consortium, LLC (HIC). This certificate will also indicate compliance with the Hawaii State Department of Labor and Industrial Relations (DLIR) regulations.

Compliance with Section §103D-310(c)(1) and (2), HRS. The Hawaii Compliance Express Certificate also shows compliance with the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division (BREG).

Timely Submission of all Certificates. The above certificate should be applied for and submitted to DOFAW as soon as possible. If a valid certificate is not submitted on a timely basis for award of a contract, an offer otherwise responsive and responsible may not receive the award.

Final Payment Requirements. Contractor is required to submit a Hawaii Compliance Express Certificate for final payment on the contract.

3. OFFEROR QUALIFICATIONS. Offeror shall meet all of the qualifications required by this RFP. Failure to meet the qualifications as specified will likely have an adverse effect on Offeror's proposal evaluation.

4. TERM OF CONTRACT. Successful Offeror shall be required to enter into a formal written contract to commence work on this project. The initial term of the contract shall be for funds allocated in the FY2020 period starting on the official commencement date of the Notice to Proceed. The contract may be extended for up to twenty-four (24) months or any portion thereof, if mutually agreed upon in writing prior to contract expiration. The Contractor or State may terminate the extended contract period at any time upon one month's prior written notice.

5. CONTRACT ADMINISTRATOR. For the purposes of this contract, Emma Yuen, (808) 366-4788, or authorized representative, is designated the Contract Administrator.

6. OVERVIEW OF THE RFP PROCESS.

a) The RFP is issued pursuant to Subchapter 6 of HAR Chapter 3-122, implementing HRS Section 103D-303.

b) The procurement process begins with the issuance of the RFP and the formal response to any written questions or inquiries regarding the RFP. Changes to the RFP will be made only by Addendum.

c) Proposals shall not be opened publicly, but shall be opened in the presence of two (2) or more procurement officials. The register of proposals and Offerors' proposals shall be open to public inspection after posting of the award. All proposals and other material submitted by Offerors

become the property of the State and may be returned only at the State's option.

d) The Legacy Land Conservation Commission and the Contract Administrator shall evaluate the proposals in accordance with the evaluation criteria. The proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable.

e) Proposals may be accepted on evaluation without discussion.

f) If during discussions there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate such clarification or change. Addenda to the RFP shall be distributed only to priority listed Offerors who submit acceptable or potentially acceptable proposals.

g) The evaluation committee will make its recommendation. The Procurement Officer will award the contract to the Offeror(s) whose proposal is determined to be the most advantageous to the State taking into consideration price and the evaluation factors.

j) The contents of any proposal shall not be disclosed during the review, evaluation, discussion, or negotiation process. Once award notice is posted, all proposals, successful and unsuccessful, become available for public inspection. Those sections that the Offeror and the State agree are confidential and/or proprietary should be identified by the Offerors and shall be excluded from access.

k) The Procurement Officer or an evaluation committee reserves the right to determine what is in the best interest of the State for purposes of reviewing and evaluating proposals submitted in response to the RFP. The Procurement Officer or an evaluation committee will conduct a comprehensive, fair and impartial evaluation of proposals received in response to the RFP.

l) The RFP, any addenda issued, and the successful Offeror's proposal shall become a part of the contract. All proposals shall become the property of the State of Hawaii.

7. CONFIDENTIAL INFORMATION. If a person believes that any portion of a proposal, offer, specification, protest, or correspondence contains information that should be withheld as confidential, then the Procurement Officer named on the cover of this RFP should be so advised in writing and provided with justification to support confidentiality claim. Price is not considered confidential and will not be withheld. An Offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data considered confidential. Such data shall accompany the proposal, be clearly marked, and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Pursuant to HAR Section 3-122-58, the head of the purchasing agency or designee shall consult with the Attorney General and make a written determination in accordance with HRS Chapter 92F. If the request for confidentiality is denied, such information shall be disclosed as public information, unless the person appeals the denial to the Office of Information Practices in accordance with HRS Section 92F-42(12).

8. REQUIRED REVIEW. Offeror shall carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and questionable or objectionable matter **must be made in writing and should be received by the Department of Land and Natural Resources, Division of Forestry and Wildlife prior to the deadline for written questions as stated in the RFP Schedule and Significant Dates.** This will allow issuance of any necessary corrections and/or amendments to the RFP. It will help prevent the opening of a defective solicitation and exposure of Offeror's proposal upon which award could not be made. Any exceptions taken to the terms, conditions, specifications, or other requirements listed herein,

must be listed in the Exceptions section of the Offeror's proposal, if the exception is unresolved by the Proposal due date.

9. QUESTIONS PRIOR TO OPENING OF PROPOSALS. All questions must be submitted in writing and directed to David Penn, Division of Forestry and Wildlife, LegacyLand@hawaii.gov. The State will respond to written questions by the date indicated in the RFP Schedule and Significant Dates, or as amended.

10. CANCELLATION OF RFP AND PROPOSAL REJECTION. The State reserves the right to cancel this RFP and to reject any and all proposals in whole or in part when it is determined to be in the best interest of the State, pursuant to HAR Section 3-122-96 through 3-122-97.

11. OFFER ACCEPTANCE PERIOD. The State's acceptance of offer, if any, will be made within one-hundred and twenty (120) calendar days after the opening of proposals. Prices or commissions quotes by the Offeror shall remain firm for a one-hundred and twenty (120) day period.

12. PROPOSAL AS PART OF THE CONTRACT. This RFP and all or part of the successful proposal will be incorporated into the contract.

13. CONTRACT MODIFICATIONS - UNANTICIPATED AMENDMENTS. During the course of this contract, the Contractor may be required to perform additional work that will be within the general scope of the initial contract. When additional work is required, the Contract Administrator will provide the Contractor a written description of the additional work and request the Contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work. Changes to the contract may be modified only by written document (contract modification) signed by the Department of Land and Natural Resources and Contractor personnel authorized to sign contracts on behalf of the Contractor. The Contractor will not commence additional work until a signed contract modification has been issued.

14. PROTEST. A protest shall be submitted in writing 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 shall be submitted in writing prior to the date set for receipt of offers. Further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract. The notice of award, if any, resulting from this solicitation shall be posted on the Procurement Awards, Notices and Solicitations (PANS), which is available on the SPO website: <http://spo.hawaii.gov/vendors/contract-awards/awards/>. Any protest pursuant to §103D-701, HRS, and Section §3-126-3, HAR, shall be submitted in writing to the Procurement Officer, Department of Land and Natural Resources, 1151 Punchbowl St., Honolulu, HI 96813.

15. GOVERNING LAW: COST OF LITIGATION. The validity of this contract and any of its terms or provisions, as well as the rights and duties of the parties to this contract, shall be governed by the laws of the State of Hawai'i. Any action at law or equity to enforce or interpret the provisions of this contract shall be brought in a state court or competent jurisdiction in Honolulu, Hawai'i. In case the State shall, without any fault on its part, be made a part to any litigation commenced by or against the Contractor in connection with this contract, the Contractor, shall pay all costs and expenses incurred by or imposed on the State, including attorneys' fees.

16. SUBMISSION OF PROPOSAL. The submission of a proposal shall constitute an incontrovertible representation by the Offeror of compliance with every requirement of the RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey reasonable

understanding of all terms and conditions of performance of the work. Before submitting a proposal, each Offeror must:

- (1) Examine the solicitation documents thoroughly. Solicitation documents include this RFP, any attachments, plans referred to herein, and any other relevant documents or web links.
- (2) Become familiar with State, local, and federal laws, statutes, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work.

17. PROPOSAL PREPARATION

a) **TRANSMITTAL AND OFFER FORM.** Proposals shall be submitted using Offeror's **exact legal name as registered with the Department of Commerce and Consumer Affairs**, if applicable; and to indicate exact legal name in the appropriate spaces on the Transmittal and Offer Form. Failure to do so may delay proper execution of the contract. **This offer will be submitted via email, however, once the intent to award has been sent to an Offeror, the Offeror must submit the complete original copy and it must be received at the above address within five (5) working days.** The authorized signature on the first page of the Offer Form shall be an original signature in ink. If unsigned or the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.

b) **Offer Guaranty.** An offer guaranty is NOT required for this RFP.

c) **Tax Liability.** Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. Vendors are advised that they are liable for the Hawaii GET at the current 4% rate and the applicable use tax at the current 1/2% rate. If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.

d) **Taxpayer Preference.** For evaluation purposes, pursuant to HRS §103D-1008, the Offeror's tax-exempt price offer submitted in response to an IFB shall be increased by the applicable retail rate of general excise tax and the applicable use tax. Under no circumstance shall the dollar amount of the award include the aforementioned adjustment.

e) **Original Proposal and Copies to be Submitted.** Offeror shall submit one (1) original proposal to LegacyLand@hawaii.gov.

f. Costs for developing the Proposal are solely the responsibility of the Offeror, whether or not any award results from this solicitation. The State of Hawaii will not reimburse such costs.

g. All proposals become the property of the State of Hawaii.

h. Copies of documents transmitted by Offerors via facsimile machines shall be limited to the modifications or withdrawal of an offer pursuant to HAR Sections 3-122-108 and 3-122-28, respectively.

18. SUBMISSION OF PROPOSAL. Offers shall be received at the Department of Land and Natural Resources, Division of Forestry and Wildlife, 1151 Punchbowl St, Rm. 325, Honolulu, HI 96813 via email to LegacyLand@hawaii.gov no later than the date and time stated in Significant Dates, as amended. Timely receipt of offers shall be evidenced by the date and time registered by the State of Hawaii electronic mail system clock. Offers received after the deadline shall be returned unopened.

19. PRICING. Pricing shall include labor, materials, supplies, all applicable taxes, **except the GET, currently 4%, which may be added as a separate line item and shall not exceed the**

current rate, and any other costs incurred to provide the specified services. **The pricing shall be the all-inclusive cost, except the GET, to the State and no other costs will be honored.**

20. ECONOMY OF PRESENTATION. Proposals shall be prepared in a straightforward and concise manner, in a format that is reasonably consistent and appropriate for the purpose. Emphasis will be on completeness and clarity and content. If any additional information is required by the State regarding any aspects of the Offeror's proposal, it shall be provided within four (4) business days.

21. PROPOSAL OPENING. Proposals will be opened at the date, time, and place specified, or as amended. Proposals shall not be opened publicly, but shall be opened in the presence of two or more procurement officials. The register of proposals and Offeror's proposals shall be open to public inspection after all parties sign the contract.

22. EVALUATION OF PROPOSALS. A quorum of the Legacy Land Conservation Commission and the Contract Administrator ("committee") shall evaluate proposals in an executive session. The evaluation will be based solely on the evaluation criteria set out in Section 8 of this RFP. Proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable. Discussion 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 such discussions. The objective of these discussions is to clarify issues regarding the Offeror's proposals before the best and final offer, if necessary. If numerous acceptable and potentially acceptable proposals are submitted, the evaluation committee may rank the proposals and limit the priority list to the responsive, responsible Offerors who submitted the highest-ranked proposals.

23. DISCUSSION WITH PRIORITY LISTED OFFERORS. Discussions by the committee may be conducted with priority listed Offerors pursuant to HAR §3-122-53, to discuss their proposal and ensure thorough, mutual understanding. However, proposals may be accepted without such discussions. The State in its sole discretion shall schedule the time and location for these discussions, normally within the timeframe indicated in the RFP schedule.

24. CANCELLATION OF RFP AND PROPOSAL REJECTION. The State reserves the right to cancel this RFP and to reject any and all proposals in whole or in part when it is determined to be in the best interest of the State, pursuant to HAR §3-122-96 through §3-122-97. The State shall not be liable for any costs, expenses, loss of profits or damages whatsoever, incurred by the Offeror in the event this RFP is cancelled or a proposal is rejected.

25. ADDITIONAL TERMS AND CONDITIONS. The State reserves the right to add terms and conditions during the contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluation.

26. CONTRACT EXECUTION. Successful Offeror receiving award shall enter into a formal written contract. No performance or payment bond is required for this contract. No work is to be undertaken by the Contractor prior to the commencement date. The State of Hawaii is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to the official starting date. If an option to extend is mutually agreed upon, the Contractor shall be required to execute a supplement to the contract for the additional extension period. The Contractor or the State may terminate the extended contract at any time without cause upon six (6) weeks prior written notice.

27. PAYMENT. Incremental payments shall be made to the awarded Contractor upon receipt of

reports that meet the expectations of the RFP. The receipt of reports shall be due based on the timeline submitted by the Contractor in the proposal, or as amended. HRS §103-10, provides that the State shall have thirty (30) calendar days after receipt of invoice or satisfactory completion of contract to make a payment. For this reason, the State will reject any offer submitted with a condition requiring payment within a shorter period. Further, the State will reject any offer submitted with a condition requiring interest payments greater than that allowed by HRS §103-10, as amended. The State will not recognize any requirement established by the Contractor and communicated to the State after award of the contract, which requires payment within a shorter period or interest payment not in conformance with statute. **If an advance payment is requested it must be stated in the budget section of the proposal.**

28. AWARD - Method of Award. The award will be made to the responsive, responsible Offeror(s) whose proposal is/are determined to be the most advantageous to the State based on the evaluation criteria. **Responsibility of Offeror(s).** Reference HRS Chapter 103D-310(c). Contractor is required to submit a "Certificate of Vendor Compliance" after the Notice of Award is received and before a contract can be processed. Businesses can register online at <http://vendors.ehawaii.gov>. **Final Payment Requirements.** Contractor is required to submit a "Certificate of Vendor Compliance" with the invoice for final payment on the contract. If a valid certificate is not submitted on a timely basis for award of a contract, an offer otherwise responsive and responsible may not receive the award.

29. CONTRACT INVALIDATION. If any provision of this contract is found to be invalid, such invalidation will not be construed to invalidate the entire contract.

30. NON-DISCRIMINATION. The Contractor 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 Contractor or in participation in the benefits of any program or activity funded in whole or in part by the State.

31. CONFLICTS OF INTEREST. The Contractor represents that neither the Contractor, nor any employee or agent of the Contractor, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the Contractor's performance of this contract.

32. WAIVER. The failure of the State to insist upon the strict compliance with any term, provision or condition of this contract shall not constitute or be deemed to constitute a waiver or relinquishment of the State's right to enforce the same in accordance with this contract.

33. SEVERABILITY. In the event that any provision of this contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this contract.

34. CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS. It has been determined that funds for this contract have been appropriated by a legislative body. Therefore, Offeror, if awarded a contract in response to this solicitation, agrees to comply with HRS §11-205.5, which states that campaign contributions are prohibited from a State and county government contractor during the term of the contract if the contractor is paid with funds appropriated by a legislative body.

35. ADDITIONS, AMENDMENTS AND CLARIFICATIONS. Approvals. Any agreement arising out of this offer may be subject to the approval of the Department of the Attorney General

as to form, and is subject to all further approvals, including the approval of the Governor, required by statute, regulation, rule, order, or other directive. Cancellation of Solicitations and Rejection of Offers. The solicitation may be cancelled or the offers may be rejected, in whole or in part, when in the best interest of the purchasing agency, as provided in HAR §3-122-95 through §3-122-97. Confidentiality of Material. All material given to or made available to the Contractor by virtue of this contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE. All information, data, or other material provided by the Offeror or the Contractor to the State shall be subject to the Uniform Information Practices Act, HRS Chapter 92F. The Offeror shall designate in writing to the Procurement Officer those portions of its un-priced offer or any subsequent submittal that are trade secrets or other proprietary data that the Offeror desires to remain confidential, subject to HAR §3-122-58, in the case of an RFP, or HAR §3-122-30, in the case of an IFB. The Offeror shall state in its written communication to the Procurement Officer, the reason(s) for designating the material as confidential, for example, trade secrets. The Offeror shall submit the material designated as confidential in such manner that the material is readily separable from the offer in order to facilitate inspection of the non-confidential portion of the offer. Price is not confidential and will not be withheld. In addition, in the case of an IFB, makes and models, catalogue numbers of items offered, deliveries, and terms of payment shall be publicly available at the time of opening regardless of any designation to the contrary. If a request is made to inspect the confidential material, the inspection shall be subject to written determination by the Department of the Attorney General in accordance with HRS Chapter 92F. If it is determined that the material designated as confidential is subject to disclosure, the material shall be open to public inspection, unless the Offeror protests under HAR Chapter 3-126. If the request to inspect the confidential material is denied, the decision may be appealed to the Office of Information Practices in accordance with HRS §92F-15.5. Nondiscrimination. No person performing work under this Agreement, including any subcontractor, employee, or agency of the Contractor, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law. Records Retention. The Contractor and any subcontractors shall maintain the books and records that relate to the Agreement and any cost or pricing data for three (3) years from the date of final payment under the Agreement.

Competency of Offeror. Prospective Offeror must be capable of performing the work for which offers are being called. Either before or after the deadline for an offer, the purchasing agency may require Offeror to submit answers to questions regarding facilities, equipment, experience, personnel, financial status or any other factors relating to the ability of the Offeror to furnish satisfactorily the goods or services being solicited by the State. Any such inquiries shall be made and replied to in writing; replies shall be submitted over the signatures of the person who signs the offer. Any Offeror who refuses to answer such inquiries will be considered non-responsive.

TRANSMITTAL and OFFER LETTER RFP LLCP2020

Name of Point of Contact:

Phone:

Email:

Legacy Land Conservation Program
Department of Land and Natural Resources, Division of Forestry and Wildlife
1151 Punchbowl Street, Room 325
Honolulu, Hawaii 96813

The undersigned has carefully read and understands the terms and conditions specified in RFP LLCP2020, the Special Provisions attached hereto, and in the current Hawaii Attorney General's General Conditions, by reference made a part hereof and available at <http://spo.hawaii.gov/wp-content/uploads/2014/02/103D-General-Conditions.pdf> and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price submitted was independently arrived at without collusion.

Proposal Title: _____

Total Amount of Proposal: \$ _____

If awarded a grant, the contract or purchase order with the State would be made with the following entity (please use the **exact legal name** as registered with the Dept. of Commerce and Consumer Affairs):

Legal name of organization

Address (Contract and Billing Address must be the same)

State Tax ID No.(GE)

Federal Tax ID No.

Offeror Signature

Date

Print Name

Title

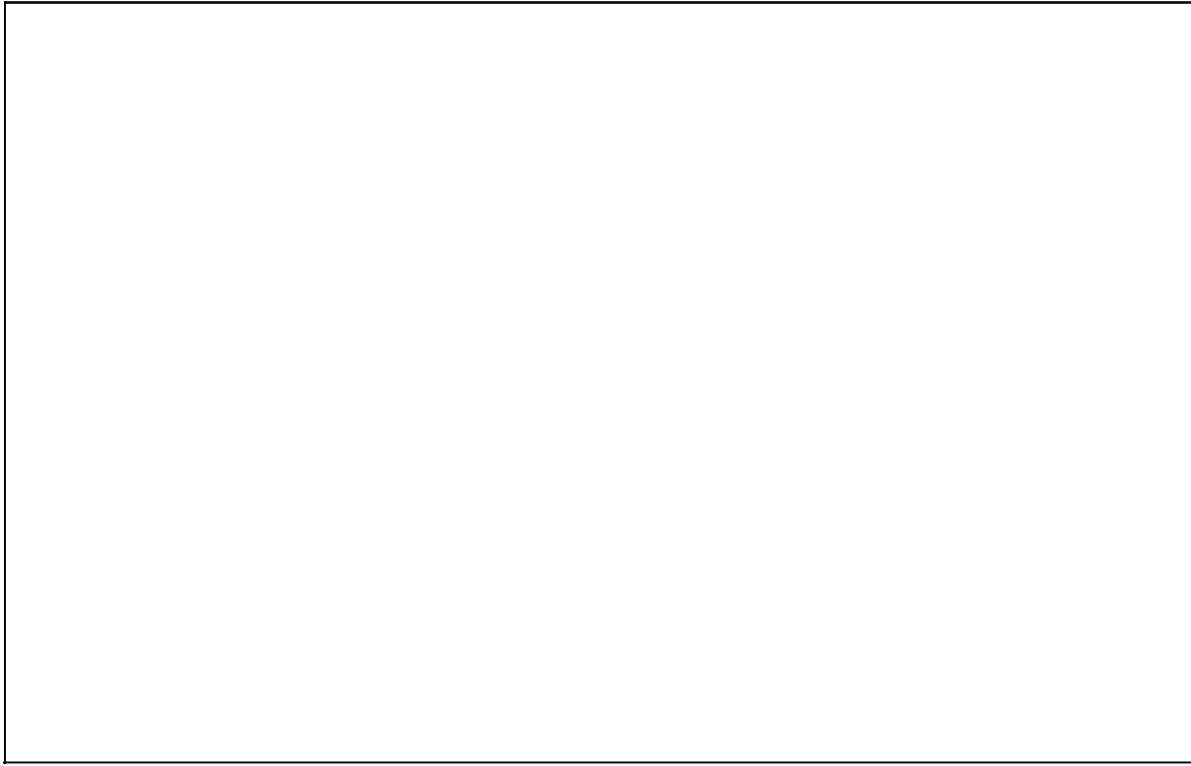
PROPOSAL

SCOPE OF WORK – NARRATIVE

1) Background on property and current management to date (200 words maximum).

2) Description of proposed activities and justification of need (500 words maximum).

- 3) List of deliverables and timeframe for completion (500 words maximum).



- 4) Maps: Insert maps for on the ground actions showing the specific location where all proposed activities listed in Scope of Work will take place. More than one Scope of Work item can be combined in a single map if it is legible and clear where all actions will take place. Include property ownership, and TMK numbers on all maps.

BUDGET

Applicants shall supply evidence of costs and expenditures, including documentation demonstrating that a reasonable price has been secured for any goods or services, to the satisfaction of the department prior to distribution of the grant.

- 1) Matching funds.
- a) Where the awardee of a management grant is a county agency or nonprofit land conservation organization, the board shall require additional matching funds of at least **twenty-five per cent** of the total project costs. Matching funds may be in the form of:
 - i) Direct moneys;
 - ii) A combination of public and private funds;
 - iii) Land value donation;
 - iv) In-kind contributions; or
 - v) Any combination of the above.
 - b) Qualifying entities shall supply evidence of the matching funds to the satisfaction of the

- department prior to distribution of the grant.
- c) For management grants, matching funds costs shall be determined by the department and limited to the following:
 - i) Equipment;
 - ii) Maintenance and repair;
 - iii) Materials and supplies;
 - iv) Professional services to prepare a management plan; and
 - v) Professional services to prepare an environmental assessment.
 - d) Qualifying entities shall supply evidence of matching funds sources and expenditures to the satisfaction of the department prior to distribution of the grant.
 - e) Matching fund expenditures must be reasonable and necessary for accomplishing project objectives and the purpose of the program.
 - f) Qualifying entities must demonstrate the basis and method for valuation of in-kind contributions. Donated services must be provided by skilled professionals. In-kind contributions must be an integral and necessary part of the approved project.
 - g) In cases where the actual total project costs at time of payment are less than the estimated total project costs stated in the project application, the department shall require awardees to maintain the same proportion of matching funds to awarded funds that is set forth in the project application.

**LLCP2020
Proposed
Budget**

**GRAND TOTAL
REQUESTED**

**Please round amounts to
the nearest dollar.**

Budget Category	Budget	Match	Match Source*	Match Category**
Salary and Wages	\$	\$		
Fringe Benefits	\$	\$		
Equipment	\$	\$		
Materials & Supplies	\$	\$		
Travel	\$	\$		
Training	\$	\$		
Utilities and Communications	\$	\$		
Print & Publication	\$	\$		
Contracts	\$	\$		
Rentals	\$	\$		
Other	\$	\$		
Subtotal Direct Cost	\$	\$		
Indirect Cost	\$	\$		
Total	\$	\$		
			*Choose from list:	**Choose from list:
			Direct moneys	Equipment
			Land value donation	Maintenance and Repair
			In-kind contributions	Materials and supplies
				Professional services to prepare an Environmental Assessment
			Professional services to prepare a management plan	

What entities are providing the matching funds and what is the status (secured; pledged; pending, e.g. application submitted; aspirational) (150 words maximum)?

How much of budget is requested as an advance payment (if any?) and why is an advance requested (150 words maximum)? Any approved advances shall be limited to fifteen per cent of the approved award, or the minimum amount needed, whichever is less. Awardees must demonstrate that the requested advance funds are urgently needed to protect, restore, or maintain resources at risk.

Attachment B
Quarterly Report Template

Quarterly Narrative Report
[Name of Grantee]

Submitted on [Date]

Grant Information

Report Period: FY Q

Award Amount: \$

Contract/PO#:

Quarterly Report

1. Tasks completed during the quarter
 - a. Share any notable milestones or accomplishments
2. Tasks not completed during the quarter
 - a. Explain why certain deliverables were not fulfilled. Indicate where, what, why
3. Any revision to proposed deliverables or budget?
 - a. If a budget change is requested, please reference the Budget Change Request Guidelines
4. Upcoming projects that require special attention
 - a. i.e.: Prepping compliance docs for a new fence, etc.

Attachment C
Final Report Template

Final Narrative Report

[Name of Grantee]

Submitted on [Date]

Grant Information

Report Period:

Award Amount: \$

Contract/PO#:

Final Report

Proposed Goal:

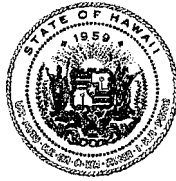
Explain what you did to accomplish each goal. Were you able to accomplish your goals? What challenges did you encounter, etc.?

Tell me your program's biggest accomplishment during the project period (1-2 sentences).

Include photos.

Include any additional information (updates on staffing, etc.)

Exhibit II



NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LIEUTENANT GOVERNOR

STATE OF HAWAII
OFFICE OF THE LIEUTENANT GOVERNOR
OFFICE OF INFORMATION PRACTICES

NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
Telephone: (808) 586-1400 FAX: (808) 586-1412
E-MAIL: oiip@hawaii.gov
www.hawaii.gov/oiip

CHERYL KAKAZU PARK
DIRECTOR

The Office of Information Practices (OIP) is authorized to administer and to advise government boards and the public about compliance with the Sunshine Law, Part I of chapter 92, Hawaii Revised Statutes (HRS), pursuant to sections 92-1.5 and 92F-42(18), HRS. This is a memorandum opinion and will not be relied upon as precedent by OIP in the issuance of its opinions or decisions.

MEMORANDUM OPINION

Requester: Mr. Paul Conry, Administrator
Board: Department of Land and Natural Resources
Division of Forestry and Wildlife
Legacy Land Conservation Commission
Date: July 9, 2013
Subject: Board Consideration of Matters Made Confidential by the
Procurement Code (S RFO-G 12-4)

Request for Opinion

Requester asked for an opinion on whether Legacy Land Conservation Commission (LLCC) may enter into executive meetings under Sunshine Law to make recommendations on procurement proposals submitted in accordance with the Procurement Code, chapter 103D, HRS.

Unless otherwise indicated, this opinion is based solely upon the facts presented in Requester's letter to OIP dated May 14, 2012; telephone conversations with Ms. Molly Schmidt, Coordinator, Legacy Land Conservation Program, on July 5 and 8, 2013; and e-mail from Ms. Schmidt dated July 5, 2013.

Opinion

The Procurement Code expressly exempts “discussions, deliberations, or decisions required to be conducted or made confidentially under” the Procurement Code from the Sunshine Law. HRS § 103D-105 (2012). Whenever the LLCC is engaged in discussions, deliberations, or decisions that are required to be confidentially conducted or made under the Procurement Code, it is not required to follow the Sunshine Law.

Statement of Reasons for Opinion

The Department of Land and Natural Resources (DLNR) Division of Forestry and Wildlife (DOFAW) Legacy Land Conservation Program provides grants to entities seeking to purchase and protect lands with unique and rare valuable resources. These resources include watersheds, parks, coastal areas and beaches, habitats, agricultural lands, cultural and historical sites, open spaces and scenic resources, and recreational and public hunting areas. Grants from the Land Conservation Fund¹ are available to the State and counties, and non-profit land conservation organizations seeking funding to acquire property that has value as a resource to the State. See <http://hawaii.gov/dlnr/dofaw/llcp>, accessed July 5, 2013.

The LLCC was established to, among other things: (1) advise DLNR and the Board of Land and Natural Resources (BLNR) on public or private proposals for acquisition of any interest or rights in land having value as a resource to the State; (2) advise DLNR and BLNR on requests for grants from the Land Conservation Fund to a qualifying state or county agency or nonprofit land conservation organization for the preservation of lands having value as a resource to the State; and (3) make recommendations to DLNR and BLNR on the acquisition of interests or rights in certain lands having value as a resource to the State. HRS § 173A-2.5 (2011).

Pursuant to its statutory authority, the LLCC would like to begin reviewing and making recommendations on proposals received in response to requests for proposals for management fund grants for the operation, maintenance, and management of lands acquired with legacy land grants. The LLCC acknowledges it is a “board”² subject to the Sunshine Law. Requester asked whether the LLCC may enter into executive meetings to review proposals for management of legacy lands and asked how the confidentiality provisions of the Procurement Code apply.

¹ The Land Conservation Fund is established in section 173A-5, HRS.

² A “board” is an “agency, board, commission, authority, or committee of the State or its political subdivisions which is created by constitution, statute, rule, or executive order, to have supervision, control, jurisdiction or advisory power over specific matters and which is required to conduct meetings and to take official actions.” HRS § 92-2 (2012).

I. The Procurement Code Exempts Boards From the Sunshine Law's Requirements During Discussions, Deliberations, or Decisions That Must be Confidential Under the Procurement Code

The Procurement Code allows government agencies to solicit competitive sealed proposals "to procure goods, services, or construction that are either not practicable or not advantageous to the State to procure by competitive sealed bidding." HRS § 103D-303(a) (2012). The Procurement Code contains the following confidentiality provisions regarding competitive sealed proposals:

(d) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of evaluation. A register of proposals shall be prepared and shall be open for public inspection after contract award.

...

(f) Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably likely to be selected for a contract award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

HRS § 103D-303(d) and (f).

The Sunshine Law generally requires that government boards hold meetings open to the public, and contains other requirements including, but not limited to, filing public meeting notices, allowing for public testimony, and keeping of minutes. HRS §§ 92-3; -7; and -9 (2012). However, the Procurement Code states that "[p]art I of chapter 92 shall not apply to discussions, deliberations, or decisions required to be conducted or made confidentially under this chapter." HRS § 103D-105 (2012). OIP previously noted that this section of the Procurement Code allows boards otherwise subject to the Sunshine Law to not follow the Sunshine Law in limited circumstances relating to procurement. OIP Op. Ltr. No 03-07 at 8. Accordingly, when the LLCC is considering proposals submitted in response to a request for proposals made in accordance with the Procurement Code, it need not follow the

Sunshine Law when its discussions, deliberations, or decisions are required to be confidential under the Procurement Code.³

The LLCC could, however, still voluntarily choose to file a notice in accordance with section 92-7, HRS, informing the public when it will be discussing, outside of a public meeting, matters made confidential by the Procurement Code. The LLCC does not have a legal obligation under the Sunshine Law to provide notice when section 103D-105, HRS, applies, but notice in such instances could stave off possible complaints by the public by making clear from the outset what the LLCC is doing. If such notice is provided, it must not disclose the contents of proposals during the process of evaluation. HRS § 103D-303.

II. Boards May Hold Executive Meetings to Discuss Matters That Are Confidential By Law

Requester asked for guidance on whether the LLCC may enter into executive meetings to “produce recommendations on proposals resulting from a Request for Proposals” under the Procurement Code. The Sunshine Law allows boards to hold executive meetings closed to the public in accordance with section 92-4, HRS. Section 92-5(a), HRS, sets forth instances when boards may hold executive meetings, one of which is applicable here. Section 92-5(a)(8), HRS, allows executive meetings “[t]o deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order.”

Subsections 103D-303(d) and (f), HRS, as set forth above, are laws that require certain information about requests for proposals under the Procurement Code be kept confidential. As such, the LLCC may invoke section 92-5(a)(8), HRS, should it choose to enter into an executive meeting to make recommendations on requests for proposals. OIP again notes that the Procurement Code itself exempts boards from the Sunshine Law during discussions, deliberations, or decisions required by the Procurement Code to be confidentially conducted or made. HRS § 103D-105. As such, it does not appear that the LLCC would be legally obligated to comply with the Sunshine Law’s usual procedural requirements for holding an executive meeting when discussing matters made confidential by the Procurement Code.

As a final note, OIP always reminds boards to keep in mind the Sunshine Law’s policy of openness. Boards should not enter executive meetings unless necessary. OIP Op. Ltr. No 03-07 at 7. And, it must be determined on a case by case basis

³ DOFAW submitted to the State Procurement Office a “Notice of and Request for Exemption from Chapter 103D, HRS” dated October 27, 2010, which was approved by the Chief Procurement Officer on April 18, 2011. It is possible that the exemption could have affected this opinion; however, OIP is informed that the exemption was never used. The exemption has expired as it was only approved through March 31, 2013.

whether a board may discuss expenditures of public funds in executive meetings.
Id.

Right to Bring Suit to Enforce Sunshine Law and to Void Board Action

Any person may file a lawsuit to require compliance with or to prevent a violation of the Sunshine Law or to determine the applicability of the Sunshine Law to discussions or decisions of a government board. HRS § 92-12 (2012). The court may order payment of reasonable attorney fees and costs to the prevailing party in such a lawsuit. Id.

Where a final action of a board was taken in violation of the open meeting and notice requirements of the Sunshine Law, that action may be voided by the court. HRS § 92-11 (2012). A suit to void any final action must be commenced within ninety days of the action. Id.

OFFICE OF INFORMATION PRACTICES



Carlotta Amerino
Staff Attorney

APPROVED:



Cheryl Kakazu Park
Director