

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

DECEMBER 8, 2022

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

SUBJECT: REQUEST FOR APPROVAL FOR THE USE OF A REQUEST FOR PROPOSALS FOR FOREST BIRD CAPTIVE PROPAGATION FACILITIES

AND

REQUEST APPROVAL FOR A DELEGATION OF AUTHORITY TO THE CHAIRPERSON TO AWARD, EXECUTE AND EXTEND AGREEMENTS WITH SUCCESSFUL PROVIDERS.

This Board Submittal requests approval to issue a Request for Proposals (see Exhibit A) as provided under Chapter 3-122 Section 4.5, and to delegate authority to the Chairperson to award, execute, and extend agreements with successful providers if any.

BACKGROUND:

Federally and state-endangered forest birds on Kauai and Maui have rapidly declined in the last 20 years and have reached perilously low numbers. In 2022, it was determined that expanded captive propagation facilities were needed to provide additional capacity for housing Hawaiian forest birds while landscape-level mosquito control programs are developed and implemented. The State has identified the Olinda Endangered Species Facility Site, Maui, to house these expanded facilities and needs to increase the capacity of the existing spaces to accommodate around 80 additional birds, including supporting facilities. The State has applied for and received federal funds to plan and construct captive propagation facilities for Hawaiian forest birds.

DISCUSSION:

Up to \$5 million in federal funding will be made available through a competitive request for proposals (RFP). Based on this procurement's requirements and special conditions, the Division of Forestry and Wildlife (Division) recommends that a competitive sealed

proposal process be used for source selection. Such an approach will be the most advantageous procurement process for the solicitation because:

1. Price is not the primary consideration for the determination of the awards for this project.
2. Oral or written discussions may need to be conducted with the applicants concerning the technical and price aspects of their proposals.
3. Applicants may need to be afforded the opportunity to revise their proposals, including price.
4. Awards may need to be based upon a comparative evaluation as stated in the RFP of differing prices, capabilities, services, and other contractual factors to determine the most advantageous offering to the State.

Pursuant to Hawaii Administrative Rules (HAR) §3-122-43, a determination by the Department procurement officer must be made for the use of the competitive sealed proposal process over the competitive sealed bidding process when the competitive sealed bidding process is neither practicable nor advantageous to the State. Additionally, pursuant to HAR §3-122-45, a determination must be made by the procurement officer that an evaluation committee, selected in writing by the procurement officer, shall evaluate the competitive sealed proposals. DOFAW recommends using an evaluation committee to select the proposals, which will allow for an objective review, evaluation, ranking, and selection of the most qualified proposals for the program. The evaluation committee must consist of at least three government employees with sufficient qualifications for the goods or services to be procured. The Division recommends the following individuals:

Lainie Berry, Wildlife Program Manager
Lindsey Nietmann, Forest Bird Recovery Coordinator
Jason Omick, Game Program Coordinator

To expedite the contracts for this procurement, the Division requests that the Board delegate authority to the Chairperson to award, execute and extend contracts for goods and services based on the recommendations of the evaluation committee and other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State including extending contracts as appropriate. Should any of the committee members be unable to serve, alternates with similar knowledge will be substituted and any changes and final make-up of the evaluation committee kept in the contract file.

CHAPTER 343, HAWAII REVISED STATUTES – ENVIRONMENTAL ASSESSMENT

Projects awarded funding through this competitive sealed proposal process will seek Land Board approval for a Declaration of Exemption from the preparation of an environmental assessment under the authority of Chapter 343, HRS, and Chapter 11-200-8, HAR. Activities and actions associated with each project are presumed to fall under the Exemption Classes and Descriptions included in the Exemption List for the Department of Land and Natural Resources (approved by the Environmental Council on

November 10, 2020). An environmental assessment or impact statement will be prepared if any action does not fall within the exemption list.

RECOMMENDATIONS:

That the Board:

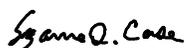
1. Approve the use of:
 - a. A competitive sealed proposal for a solicitation for the forest bird captive propagation facilities.
 - b. An evaluation committee comprised of the individuals identified above (or alternates with similar knowledge) to evaluate the competitive sealed proposals and select the winning proposal.
2. Delegate authority to the Chairperson to:
 - a. Award, execute, and extend contracts for goods and services, subject to annual availability of funding, annual budget procedures and approvals, and approval as to form by the Department of the Attorney General.

Respectfully submitted,



DAVID SMITH, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



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

Attachments:

1. Draft Request for Proposals

REQUEST FOR PROPOSALS (RFP)

No. DOFAW-Forest bird captive propagation facilities

SEALED PROPOSALS TO COMPLETE

Design, planning, site preparation, and construction of captive propagation facilities for endangered Hawaiian forest birds

PROPOSALS WILL BE RECEIVED UP TO 4:00 PM
(HST) ON
JANUARY 17, 2023

A digital copy of proposals may be submitted via email to Lainie Berry at lainie.berry@hawaii.gov, labeled with the subject line “RFP DOFAW-Forest bird captive propagation facilities” by the above deadline. Timely receipt of email offers shall be evidenced by the date and time registered by the State of Hawaii email system time when the file is sent.

RFP Registration and Inquiries: If you intend to respond to this Request for Proposals, please contact Lainie Berry at lainie.berry@hawaii.gov to register your organization, otherwise you will not receive notification of any changes or addendums. Provide a contact name, address, phone number, and email address.

SECTION ONE: OVERVIEW

INTRODUCTION

Federally and state endangered forest birds on Kauai and Maui have rapidly declined in the last 20 years and have reached perilously low numbers. In 2022, it was determined that expanded captive propagation facilities were needed to provide additional capacity for housing Hawaiian forest birds while landscape-level mosquito control programs are developed and implemented. The State has identified the Olinda Endangered Species Facility Site, Maui, to house these expanded facilities.

TERM OF CONTRACT

A single award will be made under this RFP.

Final award is subject to the availability of funds and is also subject to budget restrictions and procedures implemented under the Fiscal Year 2022-23 Executive Biennium Budget Instructions.

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.

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, such as "Proposal Due" date is delayed, the rest of the schedule will likely be shifted. The tentative schedule is as follows.

Advertising of Request for Proposals	December 16, 2022
Deadline to Submit Written Questions	5 days after posting
State's Response to Written Questions	10 days after posting
Proposals Due and Opened	January 17, 2023
Proposal Evaluations	January 23, 2023
Contract Start Date	February 1 2023

SECTION TWO: SCOPE OF WORK AND SPECIFICATIONS

SCOPE OF WORK

The State of Hawai'i Department of Land and Natural Resources, Division of Forestry and Wildlife (DLNR-DOFAW) seeks to fund the completion of design, planning, environmental compliance, site preparation and construction of captive propagation facilities and support facilities for approximately honeycreepers at the Olinda Endangered Species Facility Site on the island of Maui.

DLNR-DOFAW is seeking an Offeror to prepare, process, and finalize design, planning and compliance documents and complete the site preparation and construction of aviary facilities and supporting facilities to house around 80 Hawaiian honeycreepers at the Olinda Endangered Species Facility Site on the island of Maui. All work shall be technically and legally defensible and in full compliance with the requirements of:

The aviaries must be mosquito-proof and suitable design for housing and propagating Hawaiian honeycreepers. Supporting facilities may include facilities provide food for the honeycreepers.

Federal:

- National Environmental Policy Act
- National Historic Preservation Act
- Endangered Species Act
- and other applicable federal legislation and regulation

State:

- Chapter 343, Hawai'i Revised Statutes Chapter 11-200, Hawai'i Administrative Rules
- "Guidelines for Assessing Cultural Impacts" adopted by the Environmental Council, State of Hawai'i, Nov. 19, 1997
- Chapters 6D and 6E, Hawai'i Revised Statutes
- Chapters 13-198, 275 to 284, and 300, Hawai'i Administrative Rules Chapter 195D, Hawai'i Revised Statutes
- Chapters 171, 205A, and 226, Hawai'i Revised Statutes
- and other applicable state and county legislation, regulation, and policy

County

- All applicable County codes

PERIOD OF PERFORMANCE

February 1, 2023 - December 31, 2025, with the possibility of up to three one-year extensions

PROPOSAL FORMAT AND CONTENT

Submit proposals **VIA E-MAIL ONLY** to lainie.berry@hawaii.gov. Please use page numbering. All proposals must use the following format:

1. Transmittal and offer form (can also be submitted on business letterhead)
2. Proposal Scope of Work
3. Budget and budget justification, including details on all salary, fringe, supplies, equipment, contractual, travel, other, and overhead costs.
4. Evidence of Experience: Submit a brief Statement of the contractor's qualifications to accomplish program objectives and tasks as described in this RFP; a statement of these qualifications should be supported by a resume(s) identifying how the contractor's qualifications meet these requirements. The offeror shall provide verification that it possesses a minimum of three (3) years of experience in planning and constructing similar endangered species projects, and evidence that the offeror is an established organization with the ability to plan and oversee the construction of endangered bird facilities in Hawaii. Previous experience, capability, and proficiency in such projects will be reviewed. Additionally, the offeror shall include a list of key personnel who will be dedicated to this project and information on their background

SPECIAL PROVISIONS

The successful Offeror must be able to leverage funds by securing additional non-DLNR funds to match the offer by a minimum of 11%, of which 1/4 must be cash match to purchase needed equipment, supplies, contractual costs, and other costs for the work, the remainder can be in-kind such as staff salary. Additional cash or in-kind match is also encouraged and will be evaluated.

The offeror shall specify the amount of potential matching funds, and source and explain how these funds will be procured and applied to the program.

See attachment 1- Special Provisions for additional requirements on the proposal.

The work must be carried out in compliance with the Buy America provision (see Special Provisions #19)

TRANSMITTAL and OFFER LETTER

Can also be submitted on business letterhead.

Contact:

Address: Phone/ Email:

TO: Lainie Berry, lainie.berry@hawaii.gov

Department of Land and Natural Resources, Division of Forestry and Wildlife
1151 Punchbowl Street Rm 325, Honolulu HI 96813

The undersigned has carefully read and understands the terms and conditions specified in RFP No. N **DOFAW-Forest bird captive propagation facilities**, the Special Provisions attached hereto, and in the current Hawaii Attorney General's General Conditions, by reference made a part hereof and available upon request; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof.

The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Proposal Title: **DOFAW-Forest bird captive propagation facilities**: *(include organization name after the colon)*

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

Fiscal Entity No.1

Name

Amount

Requested

Fiscal Entity No.2 (not required) Name

Amount

Requested

A separate budget page has been submitted for each fiscal entity. Sincerely,

Offeror Signature

Date

Print Name

Title

SECTION 3: EVALUATION PROCESS

The award will be made to the responsive, responsible Offeror whose proposal is determined to be the most advantageous to the State based on the below evaluation criteria. All complete proposals submitted before the deadline will be considered. All proposals will be selected on a competitive basis, based on the evaluation criteria identified, and reviewed by an evaluation committee familiar with endangered species facilities. For those proposals listed as “priority listed offerors” pursuant to section 3-122-53, the RFP administrator may contact the Offeror with any clarifying questions regarding the proposal (however, proposals may also be accepted without discussion).

The evaluation process is designed to award the contract not necessarily to the Offeror with the lowest price but rather to the Offeror that will provide the highest quality product. Evaluation criteria reflect both the purpose and priorities for the accomplishment of the project: planning, compliance and construction.

Evaluation Committee

An evaluation committee, selected by the Procurement Officer, will make all decisions regarding the evaluation, the acceptability of proposals, and selection of a proposal, if any. The committee will consist of at least three (3) qualified state employees. The following individuals have been selected for the evaluation committee for this RFP:

Lainie Berry, DOFAW, Wildlife Program Manager
Lindsey Nietmann, DOFAW, Forest Bird Recovery Coordinator
Jason Omick, DOFAW, Game Program Coordinator

Should any of the committee members above be unable to participate, alternates with similar knowledge will be substituted.

Opening of Proposals and Confidentiality of the Evaluation Process

Proposals will not be publicly opened. Only members of the evaluation committee or State of Hawai'i personnel having legitimate interest in the RFP will be provided access to the proposals and evaluation results during the evaluation period. All proposals, evaluation worksheets and subsequent Best and Final Offer (BAFO), if any, and including documentation, correspondence, and meetings, will be kept confidential until after the contract is awarded. All proposals will be made public only after the review and selection process is completed.

Compliance with Minimum Criteria

Proposals will be reviewed for conformance with the instructions and requirements of the RFP. The proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable. All responsible Offerors who submit acceptable or potentially acceptable proposals are eligible for a priority list. Discussions will be limited to only “priority-listed” offerors.

Acceptance/Rejection of Proposals

The evaluation committee will review all proposals that meet the minimum criteria listed above then rank them according to the comparative criteria evaluation listed below. The committee will then enter into discussions with the Offeror that submitted the highest ranked proposal to verify and clarify said proposal and to discuss the final terms and conditions of the Agreement.

Modification or Withdrawal of Proposals

A modification of a proposal already received will be accepted by the State only if the modification is received prior to the proposal due date, or is made via addendum issued by the State. All modifications shall be made in writing and submitted in the same form and manner as the original proposal. An Offeror may withdraw a proposal already received prior to the proposal due date by submitting a written request to the State for withdrawal executed by the Offeror's authorized representative. This provision for modifications and withdrawals of proposals may not be utilized by an Offeror to submit a late proposal and, as such, will not alter the State's right to reject a proposal.

COMPARATIVE CRITERIA EVALUATION

The total number of points used to score this proposal is 100.

1) Technical capability and approach for meeting performance requirements (35 points)

The evaluation committee will review the description of the methods and approach the Offeror intends to use to prepare the strategic management plan, Environmental Assessments, and related regulatory compliance documents and evaluate whether the proposal:

- Meets quality standards in terms of content (i.e., will it effectively identify and analyze environmental and/or cultural impacts, potential project alternatives, and mitigation measures);
- meets quality standards in terms of integration with existing and planned efforts (i.e., can the strategic management plan, Environmental Assessments, and related regulatory compliance documents be easily integrated with each other?);
- will be completed on a timely basis (i.e., the likelihood that the Offeror's schedule meets DLNR's schedule and completes the Environmental Assessments and related regulatory compliance documents within twelve (12) months).

2) Managerial capability: Previous experience and expertise (35 points)

- Has the Offeror met or exceeded minimum qualifications?
- Has the Offeror provided information demonstrating their experience and expertise in similar work, both in the Hawai'i archipelago and the island of Maui?

3) Leveraged support (15 points)

Experience and ability to leverage programs funds with documentation to demonstrate, in the detailed budget, that program funds from the State DLNR will be matched equally by other sources (minimum of 11% match, of which 1/4 must be cash to purchase items

necessary for the completion of the work, the remainder can be in-kind such as staff salary). The highest points will be awarded to the applicant that offers the most cash match and utilizes the fewest state dollars. (15 points)

4) Pricing (15 points)

- Reasonableness (i.e., does the proposed pricing accurately reflect the Offeror's effort to meet requirements and objectives)
- Affordability (i.e., the ability of the Division to finance the proposal)
- 5 of the 15 points allocated to pricing shall be allocated to cost.

The proposal offering the lowest cost will be automatically allocated 5 points. The number of points assigned to other proposals will be determined using the following formula:

$$\frac{\text{Lowest price (\$)} \times 5 \text{ points (maximum)}}{\text{Offeror's proposal (\$)}} = \text{points}$$

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ATTACHMENT 1: 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** - Offeror is advised that if awarded a contract under this solicitation, Offeror shall, upon award of the contract, furnish proof of compliance with the requirements of §103D-310(c), HRS within 120 days of the award date:
 1. Chapter 237, tax clearance;
 2. Chapter 383, unemployment insurance;
 3. Chapter 386, workers' compensation;
 4. Chapter 392, temporary disability insurance;
 5. Chapter 393, prepaid health care; and
 6. Chapter 103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.

Refer to the Award of Contract provision herein for instructions on furnishing the documents that are acceptable to the State as proof of compliance with the above-mentioned requirements.

3. **OFFEROR QUALIFICATIONS** - Offeror shall meet all the qualifications required by this RFP. Failure to meet the qualifications as specified in the section Experience and Capabilities will likely have an adverse effect on Offeror's proposal evaluation.
4. **TERM OF CONTRACT** - Successful Offeror shall be required to enter a formal written contract to Commence work on this project. The initial term of the contract shall be for funds allocated in the FY2023 period starting on the official commencement date of the Notice to Proceed. The contract may be extended for up to twelve (12) 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, Lainie Berry, Wildlife Program Manager, 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 the 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 Procurement Officer, or an evaluation committee selected by the Procurement Officer, 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. However, if deemed necessary, prior to entering discussions, a "priority list" of responsible Offerors submitting acceptable and potentially acceptable proposals shall be generated. The priority list may be limited to a minimum of three responsible Offerors who submitted the highest-ranked proposals. The objective of these discussions is to clarify issues regarding the Offeror's proposal before the BAFO is tendered.
 - 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) Following any discussions, Priority Listed Offerors will be invited to submit their BAFO, if required. The Procurement Officer or an evaluation committee reserves the right to have

- additional rounds of discussions with the top three (3) Priority Listed Offerors prior to the submission of the BAFO.
- h) The date and time for Offerors to submit their BAFO, if any, is indicated in the RFP Schedule and
 - i) Significant Dates. If Offeror does not submit a notice of withdrawal or a BAFO, the Offeror's immediate previous offer shall be construed as its BAFO.
 - j) After receipt and evaluation of the BAFOs in accordance with the evaluation criteria, the Procurement Officer or an evaluation committee will make its recommendation. The Procurement Officer will award the contract to the Offeror whose proposal is determined to be the most advantageous to the State taking into consideration price and the evaluation factors.
 - k) 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.
 - l) 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.
 - m) 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 by email and directed to Lainie Berry, Department of Land and Natural Resources, Division of Forestry and Wildlife, at lainie.berry@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 an offer, if any, will be made within ninety (90) calendar days after the opening of proposals. Prices or commissions quotes by the Offeror shall remain firm for a ninety (90) day period.

12. PROPOSAL AS PART OF THE CONTRACT - This RFP and all or part of the successful proposal may 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 with 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 a written document (contract modification) signed by the Department of Land and Natural Resources, Division of Forestry and Wildlife 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 the award of the contract. The notice of award, if any, resulting from this solicitation shall be posted in the Procurement Reporting System, which is available on the SPO website: <http://www.hawaii.gov/spo2/source/>. 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 Hawaii. 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, Hawaii. In case the State shall, without any fault on its part, be made a part of 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 a reasonable understanding of all terms and conditions of performance of the work. Before submitting a proposal, each Offeror must:
 - a) Examine the solicitation documents thoroughly. Solicitation documents include this RFP, any attachments, plans referred to herein, and any other relevant documents.
 - b) Become familiar with State, local, and federal laws, statutes, ordinances, rules, and regulations that may in any manner affect the 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 indicate the exact legal name in the appropriate spaces on the Transmittal and Offer Form. Failure to do so may delay the proper execution of the contract. 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 guarantee 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 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, the 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 §1030-1008, 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. The offeror shall submit one (1) original proposal marked "ORIGINAL". DO NOT SUBMIT MORE THAN ONE ORIGINAL.
 - f) Costs for developing the Proposal are solely the responsibility of the Offeror, whether 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, at lainie.berry@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 e-mail system time when the file is sent. Use RFP DOFAW-Forest bird captive propagation facilities in the subject line. Offers received after the deadline shall be returned unopened. If the Offeror chooses to deliver its offer by United States Postal Service (USPS), please be aware that the USPS does not deliver directly to the Department of Land and Natural Resources, Division of Forestry and Wildlife, but to a central mailroom. This may cause a delay in receipt by the Department of Land and Natural Resources, Division of Forestry and Wildlife, and the offer may reach the Division of Forestry and Wildlife after the deadline, resulting in automatic rejection.
19. **Buy America Provision:** The work must be carried out in compliance with the Buy American Provision - Required Use of American Iron, Steel, Manufactured Products, and Construction Materials for Infrastructure As required by Section 70914 of the Infrastructure Investment and Jobs Act (Pub. L. 117-58), on or after May 14, 2022, none of the funds under a federal award that are part of a Federal financial assistance program for infrastructure may be obligated for a project unless all the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. Recipients must include the requirements in this section all subawards, including all contracts and purchase orders for work or products under this program.

None of the funds provided under this award may be used for a project for infrastructure unless:

- a) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States,
- b) All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation, and
- c) all construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

This Buy America preference only applies to articles, materials, and supplies consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

20. **PRICING-** Pricing shall include labor, materials, supplies, all applicable taxes, except the GET, 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.
21. **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.
22. PROPOSAL OPENING- Proposals will be opened at the date, time, and place specified in Section One, 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 the Offeror's proposals shall be open to public inspection after all parties sign the contract.
 23. EVALUATION OF PROPOSALS- The Procurement Officer or an evaluation committee of at least three (3) qualified state employees selected by the Procurement Officer shall evaluate proposals. The evaluation will be based solely on the evaluation criteria set out in Section Four 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 for being selected for the 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 three responsive, responsible offerors who submitted the highest-ranked proposals.
 24. DISCUSSION WITH PRIORITY-LISTED OFFERORS - Priority-listed offerors shall have a discussion with the evaluation committee to discuss their proposal to ensure thorough, mutual understanding. The State in its sole discretion shall schedule the time and location for these discussions, normally within the timeframe indicated in the RFP schedule.
 25. 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. 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 canceled, or a proposal is rejected.
 26. 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.
 27. CONTRACT EXECUTION - Successful Offeror receiving the award shall enter 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.
 28. 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 Section 103-10, provides that the State shall have thirty (30) calendar days after receipt of the invoice or satisfactory completion of a contract to make 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 awarding of the contract, which requires payment within a shorter period or interest payment not in conformance with statutes. If an advance payment is requested, it must be stated in the budget section of the proposal.
 29. 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 Lowest Responsive Offeror(s). Reference HRS Chapter 103D-310(c). If compliance documents have not been submitted to the Department of Land and Natural Resources, Division of Forestry and Wildlife prior to award, the lowest responsive offeror(s) shall produce documents to the procurement officer to demonstrate compliance with this section.

30. HRS Chapter 237 tax clearance requirement for award. Instructions are as follows:
Pursuant to HRS §103D-328, the lowest responsive Offeror(s) shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate. It must be valid on the date it is received by the Department of Land and Natural Resources, Division of Forestry and Wildlife.

The tax clearance certificate shall be obtained on the State of Hawaii, DOTAX *TAX CLEARANCE APPLICATION* Form A-6 (Rev. 2003) which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website, and by mail or fax:

DOTAX Website (Forms & Information): http://www.hawaii.gov/tax/a1_1alphalist.htm

DOTAX Forms by Fax/Mail: (808) 587-7572
1-800-222-7572

Completed tax clearance applications may be mailed, faxed, or submitted in person to the Department of Taxation, Taxpayer Services Branch, to the address listed on the application. Facsimile numbers are: DOTAX:(808) 587-1488

IRS: (808) 539-1573

The application for clearance is the responsibility of the Offeror and must be submitted directly to the DOTAX or IRS and not to the Department of Land and Natural Resources, Division of Forestry and Wildlife. However, the tax clearance certificate shall be submitted to the Department of Land and Natural Resources, Division of Forestry and Wildlife.

HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements for an award. Instructions are as follows:

Pursuant to HRS §103D-310(c), the lowest responsive Offeror shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (OUR). The certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by the [Dept/Agency]. A photocopy of the certificate is acceptable to the [Dept/Agency].

The certificate of compliance shall be obtained from the State of Hawaii, OUR APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH HAR SECTION 3-122-112, Form LIR#27 which is available at <http://hawaii.gov/labor/formsall.shtml> or at the neighbor island OUR District Offices. The OUR will return the form to the Offeror who in turn shall submit it to the [Dept/Agency].

The application for the certificate is the responsibility of the Offeror and must be submitted directly to the OUR and not to the [Dept/Agency]. However, the certificate shall be submitted to the [Dept/Agency]. Compliance with Section 103D-310(c), HRS, for an entity doing business in the State. The lowest responsive Offeror shall be required to submit a CERTIFICATE OF GOOD STANDING (Certificate) issued by the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division (BREG). The Certificate is valid for six months from the date of issue and must be valid on the date it is received by the [Dept/Agency]. A photocopy of the certificate is acceptable to the [Dept/Agency].

To obtain the Certificate, the Offeror must first be registered with the BREG. A sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the certificate. Online business registration and the Certificate are available at www.BusinessRegistrations.com register or to obtain the Certificate by phone, call (808) 586-2727 (M-F 7:45 to 4:30 HST). Offerors are advised that there are costs associated with registering and obtaining the Certificate.

Final Payment Requirements. The contractor is required to submit a tax clearance certificate for final payment on the contract. A tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract.

In addition to the tax clearance certificate, an original "Certification of Compliance for Final Payment" (SPO Form-22), attached, will be required for final payment. A copy of the Form is also available at www.spo.hawaii.gov. Select "Forms for Vendors/Contractors" menu.

Hawaii Compliance Express. Alternately, instead of separately applying for these paper certificates at the various state agencies, vendors may choose to use the Hawaii Compliance

Express (HCE), which allows businesses to register online through a simple wizard interface at <http://vendors.ehawaii.gov> to acquire a "Certificate of Vendor Compliance." The HCE provides the current compliance status as of the issuance date. The "Certificate of Vendor Compliance" indicating that the vendor's status is compliant with the requirements of HRS Chapter 1030-310(c), 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). Vendors choosing not to participate in the HCE program will be required to provide the paper certificates as instructed in the prior sections.

Timely Submission of all Certificates. The above certificates should be applied for and submitted to the Dept. of Land and Natural Resources/Division of Forestry and Wildlife as soon as possible. If a valid certificate is not submitted on a timely basis for the award of a contract, an offer otherwise responsive and responsible may not receive the award.

- 31. CONTRACT INVALIDATION-**If any provision of this contract is found to be invalid, such invalidation will not be construed to invalidate the entire contract.
- 32. 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.
- 33. 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.
- 34. 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.
- 35. SEVERABILITY-** If 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.
- 36. 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 Section 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.
- 37. 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.
- 38. Cancellation of Solicitations and Rejection of Offers.** The solicitation may be canceled, 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.
- 39. 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.
- 40. 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 unpriced 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 a manner that the material is readily separable from the offer 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.

- 41. 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.
- 42. 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.
- 43. 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.