

Requested Action:

Review and comment on the Biological Terrestrial Mitigation Contractor Procurement checklist of items to be completed before issuing the Request for Qualifications.

Detailed Description/Background:

As the Authority prepares for Project construction, staff are preparing to implement the mitigation measures in the Project's Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) and those measures expected in the Project's key permits. The Project's largest construction mitigation cost is expected to be compensatory mitigation for terrestrial biological resources. Per prior discussions, the Authority will be inviting interested and qualified mitigation providers via a Request for Qualifications (RFQ) to submit Statements of Qualifications (SOQ) to provide the entirety of the Project's Compensatory Biological Terrestrial Mitigation under a single contract (Mitigation Contract). Following an evaluation of SOQs, the Authority will short-list the RFQ respondents and issue a request for proposals (RFP) to the shortlisted firms the Board determines to be best qualified. Following review of the detailed proposals, it is envisioned that the Authority would then award the Mitigation Contract to the mitigation contractor deemed to provide the best value for the Project. The subject of this report covers the necessary preparations and Board input needed to issue the RFQ. A separate discussion item will cover the preparations for the RFP upon the shortlist being formed.

In preparation for this process, staff have prepared a checklist of items that the Authority will complete prior to issuing the RFQ and RFP. Working through the checklist is expected to provide staff with the policy guidance necessary for conducting the procurement. Staff recommends that the Board delegate oversight of these preparations to the EPP Workgroup and that this group be empowered to direct staff on the specific process to be used and key elements of the requirements to be placed on the mitigation contractor. The Board's concurrence with this approach is requested today and Staff will come back to the Board with the preparation checklist completed to the satisfaction of the EPP

Workgroup prior to releasing the RFQ, which is anticipated to occur later this year.

It is important to note that the Authority Board and Reservoir Committee have already established precedent and policies/procedures as part of the Reservoir Construction Manager At Risk contract that will be followed in this solicitation and award of the Mitigation Contract. These items are not included in the checklist but include the following for reference:

- Construction Workforce Policy.
- Definition of self-perform vs subcontracting scope – although the applicability of this is likely to be adjusted to the appropriate level for this scope.
- Updated Procurement Policy.
- Reservoir Committee/Authority Board role in the procurement and negotiation process.

Following is the preparation checklist including the policy questions where Staff proposes to seek concurrence from the EPP Workgroup and example areas of potential impacts from these decisions.

- Defining mitigation contract terms that properly assign implementation risks and performance guarantees.
 - Policy Question: How to structure the contract to receive the best value for the Authority while: (1) addressing the uncertainty of possible changes in mitigation needs as design and construction progresses; (2) establishing early cost certainty for the Authority; (3) considering implementation risk related to interaction of the mitigation activity with the construction progress activity, e.g. identifying the mitigation contractor responsibilities for financial assurances in the event that mitigation is not approved prior to construction actions; (4) proper assignment of performance risk and identification of performance guarantees, bonding and insurance; (5) addressing mitigation contractor responsibility for obtaining permits and undertaking environmental review specific to implementing compensatory terrestrial mitigation activities; and (6) preserving the Authority's ability to provide substantive input on the required mitigation endowments, including who holds the endowments and how they are secured and funded by the mitigation contractor.

- Impacts: Draft Mitigation Contract – general conditions and special conditions. Risk register for mitigation.
- Ensuring cost effective delivery of mitigation that incorporates the critical stacking assumptions and assignment of long-term permit requirements
 - Policy Question: How will the structure of the mitigation contract ensure the Authority is getting competitive pricing and at what point will payment be made? Identify the approach and process being taken to secure pricing and stay ahead of the construction activity. Also how to address the appropriate risk allocation for long term mitigation success and compliance with permit terms.
 - Impacts: Contractual payment structure and quality assurance approach through updates of the Mitigation Strategy, permit compliance - when will the units be considered delivered relative to the extended duration associated with the permit compliance cycle.
- Application of any locational preferences or other Authority implementation preferences
 - Policy Question: What are implications on land use within Project Area and Local Area from the developed for Sites mitigation? How involved does the Authority feel it needs to be in the long-term implementation of the mitigations for continued permit compliance and brand maintenance? What is desired breakdown of permittee developed level of mitigation vs mitigation bank credit purchases.
 - Impacts: Sites effect on local economy, Phase 3/4/5 Authority organization and staffing.
- RFQ/RFP selection criteria.
 - Policy Question: Which technical and managerial considerations should be considered most important to the Authority when establishing evaluation criteria and weights?
 - Impacts: RFQ, selection of evaluation committee members, contract negotiation, delegation of authority.

Prior Authority Board Action:

March 2025: Reviewed and commented on the continued development of components of the contracting strategy for terrestrial biological mitigation.

Concurrence to prepare a checklist of items for Authority to compete prior to release of RFQ.

May 2024: Reviewed and commented on the draft contracting strategy for terrestrial biological mitigation.

Fiscal Impact/Funding Source:

Implementation of the mitigation checklist for terrestrial biological mitigation can be completed within the total budget of the Amendment 3 Work Plan.

Staff Contact:

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Primary Service Provider:

Cox Castle

Attachments:

None