



BRIEFING: JANUARY 13, 2015 BOARD MEETING AGENDA ITEM #5

TO: Chairman Richard and Board Members

FROM: Mark McLoughlin, Director of Environmental Services

DATE: January 13, 2015

RE: Consider Providing Approval to Issue a Request for Proposals for Fresno to Bakersfield Habitat Mitigation Services

Background

Staff seeks the Board's approval for the issuance of a Request for Proposals (RFP) to procure Habitat Mitigation services pursuant to the Board's policy on the issuance of RFPs. The Board previously approved Resolution #HSRA 13-31 delegating authority to the Chief Executive Officer, or his designee, to finalize and execute contracts to implement the Lazy K Mitigation Proposal, which presented the Authority with a unique opportunity to fulfill regulatory requirements (preconditions to the regulatory agencies issuing permits and approvals) on a single site for Construction Package 1 (CP 1). Staff expects to execute all Lazy K Mitigation Proposal contracts within the next month and a half and to receive all required environmental permits for CP 1 no later than the end of February.

This RFP for Habitat Mitigation will fulfill regulatory requirements that are necessary preconditions to the regulatory agencies issuing permits and approvals for Construction Packages 2-3 and 4 (CP 2-3 and CP 4). This RFP will meet a number of biological mitigation obligations contained in the Fresno to Bakersfield Project Section Environmental Impact Report/Environmental Impact Statement (EIR/EIS), and will fulfill the high-priority preservation of wildlife habitat required under the California Endangered Species Act, the federal Endangered Species Act, the California Fish and Game Code for lake and streambed alteration, and the federal Clean Water Act.

Discussion

Mitigation Proposal Description

This RFP will result in the delivery of turnkey mitigation. After successful completion of the work to be performed pursuant to the contract resulting from this RFP, the Authority will receive all regulatory agency environmental permits and approvals necessary to commence and continue construction of CP 2-3 and CP 4. Unlike CP 1, where a single property fulfilled the mitigation requirements, CP 2-3 and CP 4 will require the implementation of restoration and/or

preservation measures on several properties. To promote competition and innovative approaches to achieve the required mitigation, this RFP requires proposers to develop a scope of work and corresponding milestones to ensure fulfilment of all required mitigation by the regulatory deadline of December 2015. (The current CP 2-3 and CP 4 mitigation requirements are set forth in the tables attached hereto as Attachment 1.)

The proposed scopes of work must identify: (1) the amount of mitigation the proposer presumes will satisfy the Authority's mitigation need (the final mitigation need will be identified in the permits issued to the Authority); and, (2) the mitigation properties proposed to achieve the habitat mitigation requirements. To assist the proposers in developing these scopes of work, the RFP provides them with a list of ten (10) properties that the Authority and partner resource agencies have evaluated and found to be generally suitable as part of an overall mitigation solution for impacts resulting from the Fresno to Bakersfield portion of the high-speed rail program.

The RFP also allows proposers to utilize any combination of these properties in achieving the mitigation needed. However, proposers are not restricted to the properties previously evaluated. To strengthen competition, proposers are encouraged to find and evaluate alternative properties suitable for use as part of an overall mitigation solution. It will be the Proposer's responsibility to justify the suitability of any proposed mitigation properties not previously evaluated and eventually ensure CEQA/NEPA coverage and resource agency permits for any properties utilized. The successful proposer will be the one that meets the minimum qualifications and receives the highest combined technical score (30%) and cost proposal score (70%). The technical score will focus on the proposer's proposed scope of work and team experience.

Management Objectives

Execution of the contract resulting from the Fresno to Bakersfield Habitat Mitigation Services RFP and implementation of the ultimate scope of work therein will satisfy environmental approvals and federal and State permit requirements for off-site mitigation for impacts to special status species and waters and wetlands associated with construction and operation of Permitting Phase 1 of the Fresno to Bakersfield portion of the FCS/CP 2-3 and CP 4, specifically:

- Section 7 Federal Endangered Species Act Biological Opinion, U.S. Fish and Wildlife Service
- Section 404 Clean Water Act Individual Permit, U.S. Army Corps of Engineers
- Section 401 Clean Water Act Water Quality Certification, State Water Resources Control Board
- Section 2081 Fish and Game Code Incidental Take Permit, California Department of Fish and Wildlife
- Section 1602 Fish and Game Code Master Streambed Alteration Agreement, California Department of Fish and Wildlife

Authority staff has also identified the apparent best value team for the design-build contract for CP 2-3 and plans to award the contract in early 2015. The CP 2-3 design-build procurement requires that the Authority deliver mitigation sufficient to allow the design-builder to start

construction within 180 days after the last permit is delivered. Permits for CP 2-3 are on schedule to be issued in June 2015, which drives the mitigation procurement deadline of December 2015. The issuance of this RFP in January 2015, and the award of the resulting contract in April 2015, will allow the Authority to meet its mitigation procurement deadline of December 2015 and allow the CP 2-3 construction to remain on schedule. Staff anticipates that the term of the contract resulting from the RFP will be five (5) years with a not to exceed amount between \$44,116,200.00 and \$53,919,800.00.

Mitigation Funding

Environmental mitigation measures for CP 2-3 and CP 4 are included in the funding plan for construction of the Initial Operating Section. This plan allocates funds from the American Recovery and Reinvestment Act (ARRA) grant, as well as Proposition 1A bond proceeds and Cap and Trade Funds. Funding for the contract resulting from this RFP would consist of monies from the ARRA grant and State matching funds.

Cost of Mitigation

In a study for the American Association of State Highway and Transportation Officials (AASHTO), the nationwide environmental mitigation costs associated with transportation projects in existing disturbed right-of-way averaged 8.2 percent of the total cost of construction and averaged 8.7 percent of the total cost of construction in new undisturbed right-of-way.¹

The scope of work in the contract resulting from the RFP will cover impacts associated with CP 2-3, CP 4 and the construction of the Bakersfield Station. The maximum estimated contract amount of \$53,919,800 is approximately 2.7 percent of the CP 2-3 contract (\$1.2 billion) and the current estimated CP 4 contract (\$700-\$900 Million). Authority staff anticipates that overall mitigation, which will add agricultural mitigation, traffic mitigation, and voluntary emissions reduction, associated with CP 2-3 and CP 4 will total between 5 and 7 percent of overall CP 2-3 and CP 4 construction costs, slightly below the national average. This is in line with expected mitigation costs for large, multi-year infrastructure projects such as the high-speed rail, which unlike small projects (which constitute the bulk of the national average) are able to benefit from the extended planning and construction periods to integrate mitigation with other planning efforts, reduce impacts, and implement a proactive, systematic, and multifunctional mitigation approach.

Recommendation

For the reasons stated in the discussion section above, staff recommends that the Board direct the CEO, or a designee of the CEO, to issue the Fresno to Bakersfield Habitat Mitigation Request for Proposals.

¹ Macek, Nathan M., "Right-of-Way and Environmental Mitigation Costs – Investment Needs Assessment." 2006. Arlington, Virginia.

Attachments

- CP 2-3 and CP 4 Required Mitigation Tables
- Draft RFP for Mitigation Services
- Resolution #HSRA 15-02

Attachment 1

CP 2-3 and CP 4 Required Mitigation Tables

CP 2/3 and 4 - Impacts on Aquatic Resources under Jurisdiction of CWA Sections 404 and 401

Impact Type	Watershed of Impact	Impact Type	Total Impacts
Emergent Wetlands	Tulare–Buena Vista Lakes HUC 6 (180300)	Direct Permanent	0.01
		Indirect Bisect	--
Seasonal Wetlands	Tulare–Buena Vista Lakes HUC 6 (180300)	Direct Permanent	1.556
		Indirect Bisect	--
Vernal Pools and Swales	Tulare–Buena Vista Lakes HUC 6 (180300)	Direct Permanent	5.63
		Indirect Bisect	11.53
Seasonal Riverine	Tulare–Buena Vista Lakes HUC 6 (180300)	Direct Permanent	2.08
		Indirect Bisect	--
Canals/Ditches	Tulare–Buena Vista Lakes HUC 6 (180300)	Direct Permanent	52.43
		Indirect Bisect	--
Retention/Detention Basins	Tulare–Buena Vista Lakes HUC 6 (180300)	Direct Permanent	36.90
		Indirect Bisect	--

NOTE: Exact mitigation requirements will be specified in the permits.

CP 2/3 and 4 - Proposed Compensatory Mitigation to Offset Impacts on Wildlife

Resource Type	Project Impacts (BO Max.)	Project Impacts	Proposed Compensation Strategy	Proposed Mitigation Acreage
Vernal pool fairy shrimp	29.77 ac direct 103.52 ac indirect	4.20 ac direct 27.26 ac indirect	2:1 Preservation	62.80 ac
Vernal pool tadpole shrimp	0.004 ac direct 0.056 ac indirect	0.004 ac direct 0.056 ac indirect	2:1 Preservation	0.12 ac
California tiger salamander (lacustrine)	18.7 ac	11.88 ac	0.1:1	1.19 ac
California tiger salamander (upland)	18.3 ac	8.94 ac	3:1	26.82 ac
Blunt-nosed leopard lizard	98.06 ac	36.41 ac	3:1	109.23 ac
Swainson's hawk	N/A	2,057.83 ac	Following guidance of 1994 Staff Report	1,492.91 ac
San Joaquin antelope squirrel	N/A	62.03 ac	3:1	186.09 ac
Tipton kangaroo rat	453.85 ac	148.95 ac	3:1	446.85 ac
San Joaquin kit fox	5,351.23 ac	3,449.82 ac	See Table 2 of the BO	1,547.07 ac

NOTE: Exact mitigation requirements will be specified in the permits.