

REQUEST FOR INFORMATION
REGARDING AN INNOVATIVE PROJECT DELIVERY
APPROACH
FOR WETLAND MITIGATION BANKING

RFI Issuance Date: February 21, 2018

RFI Closing Date: March 13, 2018



Keystone Building
400 North Street
Harrisburg, PA 17120

**REQUEST FOR INFORMATION
WETLAND MITIGATION BANKING**

TABLE OF CONTENTS

| | |
|--|------------|
| CALENDAR OF EVENTS | iii |
| PART I – GENERAL INFORMATION | 1-4 |
| ATTACHMENT A – RESPONSE TEMPLATE | |
| ATTACHMENT B – TRADE SECRET/CONFIDENTIAL PROPRIETARY INFORMATION NOTICE | |

CALENDAR OF EVENTS

PennDOT will review responses to this RFI and re-evaluate assumptions specific to different procurement and delivery alternatives for the Project. This RFI does not commit PennDOT to any specific form of procurement, including a potential P3 procurement. However, it is the intent of this RFI to solicit ideas to inform PennDOT of how to best implement this Project.

| Activity | Responsibility | Date |
|---|-------------------|--|
| Please monitor the eMarketplace website for all communications regarding this RFI. www.eMarketplace.state.pa.us | Responding Entity | Ongoing |
| <p>An electronic version of the written response may be submitted via email to P3ChalfontWtIndMit@pa.gov no later than the date and time established on this Calendar of Events.</p> <p>Five paper copies and one electronic copy of the responses must be delivered to the Issuing Office no later than the date and time established on this Calendar of Events on or before the cutoff date and time.</p> <p>Pennsylvania Department of Transportation Office of Public Private Partnerships ATTN: Joe Gurinko, Deputy Director 400 North Street, 5th Floor Harrisburg, PA 17120 RE: P3 Office Request for Information – Wetland Mitigation Banking</p> <p>*Due to increased security requirements in the Commonwealth’s mail processing operation, all incoming mail to the Keystone Building is routed, scanned, and sorted at an off-site location prior to delivery. This includes overnight deliveries. Be aware when submitting response documents via overnight delivery services that there is no guarantee that response documents will be received in the Issuing Office when required. The Issuing Office reserves the right to reject or accept late submissions to this RFI. Receipts for all hand-delivered packages must be obtained and signed by the Issuing Officer or their designee to verify date and time of delivery.</p> | Responding Entity | No later than 1:00 PM on March 13, 2018 |

PART I

GENERAL INFORMATION

I-1 Purpose

The purpose of this Request for Information (“RFI”) is to provide general background information related to Wetland Mitigation Banking (the Project) and to generate industry feedback from individuals, firms, teams or organizations (hereinafter “responding entities”) regarding information and materials for the deliberative decision making of the Pennsylvania Department of Transportation (“PennDOT”) to consider the development of wetland mitigation banks, collectively, to serve transportation project needs at the state or district level and respective watershed and sub-watershed. PennDOT is looking to gather feedback and information related to development, design, construction, implementation, maintenance, operation and commercialization of wetland mitigation banking for crediting against unavoidable aquatic resource impacts.

I-2 Issuing Office

PennDOT’s Public Private Partnerships Office (P3 Office) has issued this RFI on behalf of the Commonwealth. The sole point of contact in the Commonwealth for the RFI shall be the Issuing Officer, Joseph Gurinko, Deputy Director, Public Private Partnerships Office, Commonwealth Keystone Building, 400 North Street, 5th Floor, Harrisburg, PA 17120, P3ChalfontWtIndMit@pa.gov. Please refer all inquiries to the Issuing Officer.

Electronic version of the written response (in a searchable format) may be sent via email to P3ChalfontWtIndMit@pa.gov. Five (5) paper copies and one electronic copy of the responses must be submitted on or before March 13, 2018. Responses should include the name and address of the respondent and the phrase “P3 Office Request for Information Response – Wetland Mitigation Banking” clearly indicated in the subject line of the email accompanying the electronic copy of the response and /or on the outside of a sealed envelope containing the five (5) paper copies and one electronic copy of the written response.

Note: Due to increased security requirements in the Commonwealth’s mail processing operation, all incoming mail to the Keystone Building is routed, scanned, and sorted at an off-site location prior to delivery. This includes overnight deliveries. Be aware when submitting response documents via overnight delivery services that there is no guarantee that response documents will be received in the Issuing Office when required. The Issuing Office reserves the right to reject or accept late submissions to this RFI. Receipts for all hand-delivered packages must be obtained and signed by the Issuing Officer or their designee to verify date and time of delivery.

I-3 Response Instructions

Responding entities are asked to complete and submit *Attachment A, Response Template*. Responding entities may submit additional information that they determine to be relevant.

This RFI is for information only; it does not initiate a formal procurement process or present a commitment to issue a Request for Qualifications (RFQ), a Request for Proposals (RFP), or any other solicitation. Responding to this RFI is not a prerequisite for future participation in the procurement process and those who respond (or do not respond) will be treated impartially in any subsequent procurement process related to the Project. The Commonwealth will not pay for the preparation of any response or information submitted to the Commonwealth or for the Commonwealth's use of such information. The Commonwealth may, in its sole discretion, use information provided in response to the RFI. It is not, however, obligated to use any information so received.

I-4 Confidentiality

- A. Confidential Information. PennDOT is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of this RFI. Accordingly, except as provided herein, responders should not label submissions as confidential or proprietary or trade secret protected. Any responder who determines that it must divulge such information as part of its response must submit a signed written statement described in Part C, Public Disclosure, below and must additionally provide a redacted version of its submission, which removes only the confidential proprietary information and trade secrets, for required public disclosure.
- B. Commonwealth Use. All material submitted in response to the RFI shall be considered the property of the Commonwealth of Pennsylvania and may be returned only at PennDOT's option. The Commonwealth, including PennDOT, shall have the right to use any or all ideas and/or concepts not protected by intellectual property rights that are presented in any submission in response to this RFI, regardless of whether or not the relevant responder participates in the RFQ and RFP process in the future, if applicable, and regardless of whether the relevant ideas become part of or are incorporated in the Project. Notwithstanding any responder's copyright designations contained in the submission in response to this RFI, the Commonwealth shall have the non-exclusive right to reproduce and to distribute responses internally and to comply with public record or other disclosure requirements under the provisions of any Commonwealth or United States statute or regulation, or rule or order of any court of competent jurisdiction.
- C. Public Disclosure. All materials submitted by respondents under this RFI will be subject to (i) Pennsylvania's P3 law with respect to records requests (see, e.g. 74 Pa. C.S.A. § 9111); (ii) Pennsylvania's Right-to-Know Law(65 P.S. §§ 67.101, *et*

seq. (“RTKL”)), and (iii) any other laws or regulations applicable to the disclosure of documents submitted under this RFI. If a proposal submission contains CPI, information protected by intellectual property rights or trade secrets, a signed written statement to this effect must be provided with the submission in accordance with 65 P.S. § 67.707(b) for the information to be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests under the Right-to-Know Law. ***Attachment B – Trade Secret/Confidential Proprietary Information Notice***, is attached hereto and should be utilized for any designations.

In addition to the interplay between Sections 707(b) and 708(b)(11) of the Right-to-Know Law, records protected by a privilege, federal or state law or regulations or judicial order or decree are exempt from the presumption that a record in PennDOT’s possession is a “public record.” 65 P.S. §§ 67.305 and 67.102. Furthermore, conflicting federal or state law, *e.g.* the Pennsylvania Uniform Trade Secret Act set forth at 12 Pa. C.S. §§ 5301 through 5308, is preeminent to the Right-to-Know Law. 65 P.S. § 67.3101.1.

Each person submitting information in response to this RFI should familiarize itself with the provisions of the P3 Law and the RTKL and should make its own determination as to whether any of the information submitted in response to the RFI will be subject to public disclosure at some point during or after the process. In no event shall PennDOT or any of its representatives, consultants, or employees be liable to a respondent for the disclosure of any materials or information submitted in response to this RFI.

I-5 Background

PennDOT often requires wetland mitigation for its projects undertaken within its Districts. The conventional approach is to develop a single project specific mitigation site satisfying the specific wetland impacts of a given transportation improvement project. Therefore, PennDOT often is required to develop its own Permittee Responsible Mitigation (“PRM”) projects. A traditional PRM project can be very expensive due to contracting requirements and the requirements of the various environmental agencies involved. There are also no economies of scale with singular project specific PRM projects because each project requires its own design, construction and long-term maintenance. In addition, there are significant project delivery and schedule risks associated with singular project specific mitigation projects since the mitigation plans for a transportation improvement project with environmental impacts could be delayed by the permitting process resulting in an overall delay to the project letting.

Mitigation banking can provide on-demand mitigation credits for projects that have environmental impacts. After a mitigation bank is permitted by the regulatory agencies such as the United States Army Corps of Engineers (“USACE”) and/or the United States Fish and Wildlife Service (“USFWS”), mitigation credits are released to the mitigation

bank. PennDOT and private developers submit their environmental permits to the regulatory agencies while also paying a fee to the mitigation bank to purchase credits. The mitigation bank in turn provides the required credits and is responsible for maintaining the land associated with the credits in perpetuity.

Regulatory changes have made it increasingly difficult for PennDOT to satisfy its own mitigation needs. Given the greater risks and non-project specific costs associated with wetland banking, there have not been any PennDOT wetland mitigation banks permitted since 2008. This is mainly due to the operation and maintenance of a banking site not being a core service of PennDOT.

PennDOT is exploring opportunities for public-private partnerships (“P3”) related to wetland mitigation bank services delivered to PennDOT statewide or at the district level, respective to the watershed, and with more innovative and efficient solutions.

I-6 Meetings

Responding entities shall indicate whether they are willing to participate in a face-to-face meeting with PennDOT to provide additional feedback, information and materials that may assist PennDOT personnel in their decision making. If a responding entity is willing to participate in a face-to-face meeting, it will be solely responsible for all costs associated with travel and attendance. Meetings will be scheduled as soon as possible following the submission deadline, and as a general guideline, subject to change, within four (4) weeks of that deadline. PennDOT reserves the right to meet with any or all responding entities that indicates that they are willing to participate in a face-to-face meeting.

ATTACHMENT A – RESPONSE TEMPLATE

| Question No. | Topic | Response |
|--------------|--|----------|
| 1 | What do you feel are the most important components for a successful wetland mitigation banking site? | |
| 2 | What is your approach to selecting a site/property for mitigation banking? | |
| 3 | When evaluating potential sites, how do you approximate the type and quantity of mitigation credits that could be created? Do you use a “rule-of-thumb” factor applied to total acreage for quick assessments? | |
| 4 | What factors do you consider when estimating the open market value for mitigation credits within the service area? | |
| 5 | Do you have established relationships with regulatory agencies or key stakeholders for developing the mitigation banking instrument? | |
| 6 | What is your approach to estimating market credit demand for a given site area and who do you typically see purchase credits from established banks outside of transportation agencies? | |
| 7 | What length of time do you use when estimating a schedule from conceptual layout through execution of a mitigation banking instrument? | |
| 8 | What duration of time do you typically estimate from mitigation bank instrument execution until the first credits are released to the bank? | |
| 9 | When planning a mitigation bank, what is a typical timeline for the operational life until all available credits are exhausted? | |
| 10 | When planning a wetland site, do you consider collocating other mitigation measures such as stream restoration, stormwater/MS4 or threatened and endangered species? How is this accomplished? | |

| | | |
|----|---|--|
| 11 | Does your company have experience with taking over maintenance and operations of existing wetland bank sites not designed/constructed by your company? Can you elaborate on any examples? | |
| 12 | What experience does your company have with public agency partnerships for wetland banking? Do you have preferences for cost-sharing as well as revenue-sharing with a public partner? | |
| 13 | If your company has P3 experience with mitigation banking, do you have examples where the public partner already owned the property to be converted into a bank? | |
| 14 | What is your experience with wetland mitigation banking and where in the United States are you currently operating bank sites? | |
| 15 | During planning and design, do you coordinate with regulatory agencies to develop solutions that focus on watershed-wide goals or needs? | |
| 16 | Would you define the service area of the bank based on the PA State Water Plan Subbasin Service Areas? If not, how would you determine the service area of the bank? | |
| 17 | How do you plan or manage for changes in environmental regulations that may affect wetland bank sites or the method how credits are calculated? | |
| 18 | What is your company's approach to long-term stewardship after the operational life has closed? | |
| 19 | Can you identify any existing wetland mitigation banks currently operating in the areas identified as PennDOT Districts 4, 5, or 6? | |

ATTACHMENT B

Trade Secret/Confidential Proprietary Information Notice

Instructions:

The Commonwealth may not assert on behalf of a third party an exception to the public release of materials that contain trade secrets or confidential proprietary information unless the materials are accompanied, at the time they are submitted, by this form or a document containing similar information.

It is the responsibility of the party submitting this form to ensure that all statements and assertions made below are legally defensible and accurate. The Commonwealth will not provide a submitting party any advice with regard to trade secret law.

Name of submitting party:

Contact information for submitting party:

Please provide a brief overview of the materials that you are submitting (e.g. bid proposal, grant application, technical schematics, STD-21, STD-26, STD-28):

Please provide a brief explanation of why the materials are being submitted to the Commonwealth (e.g. response to bid #12345, application for grant XYZ being offered by the Department of Health, documents required to be submitted under law ABC, such as STD-21, STD-26 and STD-28 required by the nondiscrimination/sexual harassment clause in state contracts and grants, under Executive Order 2006-2 and 4 Pa Code 1.511-1.514):

Please provide a list detailing which portions of the material being submitted you believe constitute a trade secret or confidential proprietary information, and please provide an explanation of why you think those materials constitute a trade secret or confidential proprietary information. Also, please mark the submitted material in such a way to allow a reviewer to easily distinguish between the parts referenced below. (You may attach additional pages if needed)

Note: The following information will not be considered a trade secret or confidential proprietary information:

- Any information submitted as part of a vendor's cost proposal
- Information submitted as part of a vendor's technical response that does not pertain to specific business practices or product specification
- Information submitted as part of a vendor's technical or disadvantaged business response that is otherwise publicly available or otherwise easily obtained
- Information detailing the name, quantity, and price paid for any product or service being purchased by the Commonwealth

| <u>Page Number</u> | <u>Description</u> | <u>Explanation</u> |
|--------------------|--------------------|--------------------|
|--------------------|--------------------|--------------------|

Acknowledgment

The undersigned party hereby agrees that it has read and completed this form, and has marked the material being submitted in accordance with the instructions above. The undersigned party acknowledges that the Commonwealth is not liable for the use or disclosure of trade secret data or confidential proprietary information that has not been clearly marked as such, and which was not accompanied by a specific explanation included with this form.

The undersigned agrees to defend any action seeking release of the materials it believes to be trade secret or confidential, and indemnify and hold harmless the Commonwealth, its agents and employees, from any judgments awarded against the Commonwealth in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives so long as the Commonwealth has possession of the submitted material, and will apply to all costs unless and until the undersigned provides a written statement or similar notice to the Commonwealth stating that it no longer wishes to exempt the submitted material from public disclosure.

The undersigned acknowledges that the Commonwealth is required to keep all records for at least as long as specified in its published records retention schedule.

The undersigned acknowledges that the Commonwealth reserves the right to reject the undersigned's claim of trade secret/confidential proprietary information if the Commonwealth determines that the undersigned has not met the burden of establishing that the information constitutes a trade secret or is confidential. The undersigned also acknowledges that if only a certain part of the submitted material is found to constitute a trade secret or is confidential, the remainder of the submitted material will become public; only the protected information will be removed and remain nonpublic.

If being submitted electronically, the undersigned agrees that the mark below is a valid electronic signature.

Signature

Title

Date