

Staff Report 38

PARTY:

California State Lands Commission

PROPOSED ACTION:

Solicit by appropriate procurement methods for consultant services, negotiate fair and reasonable prices, and award and execute agreements for the preparation of a Risk Assessment and Liability Report of State Lands and to train staff to use strategies to minimize risk and liability.

BACKGROUND:

The Commission is responsible for the surface and subsurface management of all sovereign and school lands in California. This includes the identification, location, and evaluation of the state's interest in these lands, their leasing, and management. Sovereign lands encompass approximately 4 million acres which include over 120 rivers and sloughs, 40 lakes, as well as tidelands and submerged lands along the more than 1,130 miles of coastline and offshore, from the ordinary high-water mark to 3 geographic miles offshore. School lands are generally located in the California desert and are what remain of the nearly 5.5 million acres granted to California by Congress in 1853 to benefit public education.

The Commission manages over 3,900 leases throughout the state with improvements ranging from recreational docks and mooring buoys, commercial marinas, pipelines and utilities, to industrial marine oil terminals. While such improvements are in use, repair and maintenance costs are borne by the lessee; however, there are times when a lessee defaults on their lease and abandons these improvements. During the initial lease negotiations, Commission staff attempt to mitigate liability to the state by requiring adequate insurance coverage for the lease improvements, indemnification of the state for the use of the property, and bond or other surety to ensure that critical lease obligations, including but not limited to restoration of the lease premises upon termination or expiration of the lease, are met in the event of a default.

Over the past 5 years, the Commission has seen an increase in lease defaults. The most visible of which have been associated with major oil and gas operations going into bankruptcy. Other significant issues include the recent default of a lease that contained a restaurant, a commercial marina, a boat repair facility, and several appurtenant facilities. Following several cascading issues, the lessee allowed the infrastructure to become significantly degraded and then was unable to repair the deferred maintenance and continue the operation. When the Commission sought to mitigate the loss of the lessee, by seeking a new operator, the economics did not pencil out and a new lessee could not be found. This left the Commission, on behalf of the state, with the need to remove substantial infrastructure from sovereign lands at costs exceeding the value of the operation and the associated security. Because these issues and their respective risks are somewhat new and risk analysis takes specialized knowledge, the Commission lacks the expertise and experience to conduct risk analyses. Without this knowledge, staff is unable to accurately determine insurance levels and bonding/security requirements for the various uses of state land.

Establishing adequate insurance and bond/security to be borne by lessees will greatly minimize the legal liability from the use of the land and the financial burden to the State if lessees are unable to meet their lease obligations regarding removal of improvements and restoration of the lease premises. Staff contends that appropriately placing the burden of responsibility for insurance and bond/surety on the user/lessee of the state land benefits the state and the general public. The insurance requirements would protect against any liability incurred by the use of the leased land and bond/surety would mitigate costs associated with lease obligations, including restoration of the lease premises to its natural condition.

PROJECT DESCRIPTION:

The Risk Assessment will identify the comprehensive liability associated with the Commission's permitted facilities and operations on leased lands, then establish criteria and develop a framework to help staff calculate appropriate levels of insurance and bonding/security for leases. The Assessment Report will also lay the groundwork for Commission staff to negotiate appropriate levels of insurance and bond/surety to minimize the State's liability and financial burden by providing recommendations and strategies for assessing bond and insurance levels for various improvements. While a report on the State's liability in and of itself would be valuable; without a strategy to value appropriate levels of insurance and bond, the State will remain in the same position it is currently.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6106, 6216, and 6301; Government Code section 19130; Public Contract Code sections 6106 and 10335 et seq.; State Contracting Manual, vol. 1, ch. 5, section 5.25 (Secondary RFP) ch. 3, section 3.04 (Leveraged Procurement Agreements) and ch. 1, section 1.05, 6 (Consulting Services) (rev. 04/22);

STATE'S BEST INTERESTS:

The Commission's mission is to provide the people of California with effective stewardship of the lands, waterways, and resources entrusted to its care through preservation, restoration, enhancement, responsible economic development, and promotion of public access. The Commission is fully committed to its roles as land and resource trust managers. It is vigilant in the preservation and protection of its assets and dedicated to making sound policy, economic, and environmentally responsible judgements in the best interests of the State's beneficiaries – the people of California.

Upon approval staff would undertake the competitive bid process to contract with a consultant with expertise in this field to conduct the report. It is anticipated that the Risk Assessment will take 6-12 months. Upon completion of the report, the consultant will conduct training for staff to start utilizing the framework outlined to set appropriate levels of insurance and bond/surety. Depending on the nature of the application for lease or permit, some elements of the report may be implemented prior to a final report.

OTHER PERTINENT INFORMATION:

1. The recommended authorization is a discretionary action by the Commission. Each time the Commission approves or rejects an action, it exercises legislatively delegated authority and responsibility as authorized by law.
2. The Risk Assessment fully supports the Commission's mission, values, and guiding principles and aligns with the strategic focus areas in the Commission's 2021-2025 Strategic Plan, specifically "Prioritizing social, economic, and environmental justice to incorporate where feasible, lease requirements that ensure meaningful benefits to the regional community to protect public trust and school land resources" and "Meeting evolving public trust needs by ensuring informed decision-making for Commission actions by augmenting decision criteria and

maintain fiscal integrity through transparency by addressing current and future risk and liabilities.”

3. Authorization to solicit proposals is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

RECOMMENDED ACTION:

It is recommended that the Commission:

1. Find that the tasks within the project scope are highly specialized and intermittent in nature and hiring such industry-specific specialties would not be cost effective, are not available in civil classifications, are of limited duration and are of such urgent, temporary, and occasional nature that the delay in their implementation under civil service would frustrate their purpose as specified in Government Code section 19130, subdivisions (b)(3) and (10).
2. Find that the services contracted for are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system, as specified in Government Code section 19130, subdivision (b)(4).
3. Find that the selection of consultants under this process does not affect small businesses as defined in California Government Code section 14837, subdivision (d)(1)(B) because they will be accorded equal opportunity to submit statements of qualifications and performance data.

AUTHORIZATION:

Authorize the Executive Officer or designee, in accordance with applicable Public Contract Code and State contracting laws and regulations, to solicit offers for consultant contractor services, negotiate fair and reasonable prices, award and execute agreements, and take any other steps reasonably necessary to secure professional services to conduct a Risk Assessment and Liability Report of State Lands and to train staff to use strategies to minimize risk and liability.