



Memorandum

To: Neal Foster, Co-Chair
House Finance Committee

From: Rena Miller, Special Assistant

Date: April 10, 2023

Re: Responses to House Finance Committee questions on House Bill 49, Carbon Offset Program on State Land

Please find below responses to questions or requests for information from the March 31, 2023, House Finance Committee hearing on House Bill 49, Carbon Offset Program on State Land. The Department of Natural Resources (DNR) would also appreciate this opportunity to clarify that the bill proposes an exemption from the state procurement code only for contracts the Department enters to carry out state projects under Section 6 of the bill; the exemption would not apply to state land leases to third parties for carbon purposes under Section 4 of the bill.

1. Provide a description of the state procurement code focused on best value vs. best price processes.

The State Procurement Code (AS 36.30) includes provisions for both value-based solicitations (evaluated both on values and costs) and cost-based solicitations (evaluated purely on cost).

Value-based solicitations can be of two types:

- Request for Proposals (RFP) (procurements valued at \$100K or more), or
- Informal Request for Proposals (IRFP) (procurements valued less than \$100K).

The award method for the RFP and IRFP is based on two parts, evaluation of a cost proposal and a technical proposal. The technical proposal is comprised of multiple evaluation criteria categories specific to the goods or services being procured. The cost proposal can be waived if in the state's best interest and approved by the Department of Administration, Office of Procurement and Property Management.

Cost-based solicitations also can be of two types:

- Invitation to Bid (ITB) (procurements valued at \$100K or more), or
- Request for Quotations (RFQ) (procurements valued less than \$100K).

The award method for the ITB and RFQ is based solely on the lowest bid (cost) submitted.

The Department anticipates three main types of contracts under HB 49. Contracts with a registry or for subject matter expertise could fall under either RFP or IRP types.

Contracts with a project developer or for longer-term subject matter expertise (such as legal or commercial review of multiple projects) may be greater than \$100,000 and thus meet the RFP type.

As discussed in HB 49 testimony, the Department shares the House Finance Committee's goal of fostering competition and, assuming the bill passes with the procurement code exemption, expects to advance that goal by publicly soliciting interest generally from all parties interested in carbon offset projects on state lands. Because that interest is expected to vary in terms of location, acreage, protocol, development terms, and returns to the state, project proposals would be evaluated less against each other and more against the state's goals to generate revenue; maximize development of all resources; and protect existing public access to state lands. A broad initial scope would enable the Department to consider projects on a case-by-case basis and ensure they are compatible with those goals. The Department would commit to projects based on evaluation criteria established in regulation as required under Section 6 of House Bill 49, rather than on a cost or value-competitive basis. The Department believes such widely varying proposals would not invite reasonable evaluation against one another in a traditional procurement process.

2. How much revenue is being generated by Michigan's DNR carbon offset projects

The State of Michigan has receipted \$2,163,480.15 in net revenue from its first project, Big Wild Forest Carbon Project, since the first credit issuance in August 2022 (as of April 2023). Project revenue derives from a 10-year credit offtake agreement with DTE Energy. A second project, Wolverine-Copper Country Forest Carbon Project, is under development and not yet generating credits/revenue. Revenue from the projects is directed into Michigan's Forest Development Fund and Game and Fish Fund.

3. Have other states followed a competitive process in awarding contracts for carbon project development?

The State of Michigan's DNR employed a standard contracting process and issued a Request for Proposals with the state's Department of Technology, Management and Budget in contracting with Bluesource (now Anew Climate) for the first project. The RFP for the Big Wild project specified the location for an initial project as well as the specific protocol and registry to be used, and required commission-based pricing. The exclusive right to additional carbon projects (at Michigan DNR's discretion) was specified in the initial RFP and is included in the state's contract with Anew Climate.

DNR has inquired about the procurement process and development plans of the State of Washington and State of Ohio natural resource agencies which we understand are pursuing carbon offset projects on state land. We are still awaiting a response.

4. How long has Deputy Commissioner Brent Goodrum served as Director of Lands?

Deputy Commissioner Brent Goodrum has served as Director of Lands and as Deputy Commissioner for more than 4 years. He has served almost 12 years in the Department of Natural Resources. As discussed during the March 31 bill hearing, the Director of Lands language in HB 49 is consistent with the Alaska Land Act (AS 38.05). The DNR Commissioner names a Deputy Commissioner to serve as Director of Lands.

5. Are there prohibitions or restrictions on elected officials participating in state programs like land leases, other state contractual ventures?

DNR does not restrict or prohibit elected officials from participating in programs like state land leases or from bidding on state contracts. However, elected officials are subject to ethics rules or laws at the level of government at which they serve.

From the Alaska Department of Law: "The Legislative Ethics Act, AS 24.60.040(a), bars a state elected official "or a member of the [elected official's] immediate family" from having "an interest in a . . . lease" of state land unless one of the following exceptions apply: (1) the lease is less than \$5,000; (2) the lease was entered into under the procurement code or a process similar to the procurement code; or (3) the lease was "a standardized . . . lease that was developed under publicly established guidelines and is generally available to the public at large." The first exception likely won't apply to most AS 38.05.081 leases. The second exception will not apply to AS 38.05.081 leases.

Depending on the facts, an AS 38.05.081 lease could satisfy the third exception in part due to the best interest finding and public notice requirements. See Attorney General

Opinion, “Proposed contract with Alaska Business Development Center,” 1985 WL 70178 (noting the complications of a state agency applying the third exception.). Assuming the third exception applied to an AS 38.05.081 lease, the elected official would still need to comply with AS 24.60’s disclosure requirements.”

We defer to municipal and federal officials for expertise on ethics requirements for municipal or federal elected officials.