



## 2020 LGRWRP Direct Credit Purchase Request for Proposal

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### What is it?

The Minnesota Board of Water and Soil Resources (BWSR), acting on behalf of the Minnesota Department of Transportation (MnDOT) has funds available to purchase wetland replacement credits from established wetland banks to offset wetland impacts resulting public road projects in Minnesota. BWSR is seeking to obtain wetland credits in the following bank service areas (BSAs):

Bank Service Area 2: Rainy River

Bank Service Area 4: Upper Red River of the North

Bank Service Area 5: Mississippi River Headwaters

Bank Service Area 7: Middle Mississippi River

Bank Service Area 9: Minnesota River

Proposals will be accepted for the following Circular 39 wetland credit types that have been approved by a local government unit under the Wetland Conservation Act (WCA) and by the U.S. Army Corps of Engineers under the Federal Clean Water Act: 2, 3, 6, 1, 7, and 4. The wetland credit types are listed in order of preference. BWSR is not seeking to purchase Circular 39 wetland types 5, 8, and credits designated as upland buffer under this request for proposal (RFP).

### Who can participate?

All wetland bank account holders who currently have the wetland credit types sought under this RFP in their account may submit a response to this RFP. BWSR is specifically seeking to purchase credits that are approved under the Wetland Conservation Act and by the U.S. Army Corps of Engineers under the Clean Water Act Section 404 permitting program. Replacement credits that are currently in transfer accounts are not sought under this RFP. Similarly, replacement credits that are part of the Minnesota Agricultural Wetland Bank are not sought under this RFP unless the credits were reviewed and approved as a standard wetland bank and can be moved out of an agricultural wetland bank account back into a standard banking account.

### How many credits will be purchased?

MnDOT has approximately \$2 million to acquire credits in state fiscal year 2020. BWSR may also seek to acquire credits for the Local Government Road Wetland Replacement Program (LGRWRP) if funding becomes available. Proposals received under this credit purchase RFP will be evaluated against other credit acquisition methods to identify the best value for the State based on the evaluation criteria identified in this RFP and the timing of need based on project schedules. Based on the availability of funds for the LGRWRP and MnDOT, it is possible that credit purchases may be done in two phases with an initial group of transactions completed in the second quarter of 2020 and a second group of transactions completed in the third quarter of 2020. To facilitate a phased approach, the application materials stipulate that per credit prices provided by the proposers remain valid for a period of 180 days from the closing date of this RFP.

## **Does project location matter?**

Yes, BWSR is restricting proposals to the following BSAs: 2, 4, 5, 7, and 9 (see map below). This includes all or portions of the following counties: Aitkin, Anoka, Becker, Beltrami, Benton, Big Stone, Blue Earth, Brown, Carlton, Carver, Cass, Chippewa, Clay, Clearwater, Cook, Cottonwood, Crow Wing, Dakota, Douglas, Faribault, Freeborn, Grant, Hennepin, Hubbard, Isanti, Itasca, Jackson, Kanabec, Kandiyohi, Koochiching, Lac qui Parle, Lake, Lake of the Woods, Le Sueur, Lincoln, Lyon, Mahnomon, Martin, McLeod, Meeker, Mille Lacs, Morrison, Murray, Nicollet, Norman, Otter Tail, Pipestone, Pope, Ramsey, Redwood, Renville, Rice, Roseau, Scott, Sherburne, Sibley, St. Louis, Stearns, Steele, Stevens, Swift, Todd, Traverse, Wadena, Waseca, Washington, Watonwan, Wilkin, Wright, and Yellow Medicine. You can determine if a wetland bank is in one of these areas by using the “Wetland Banking Interactive Web Map” at <http://maps.bwsr.state.mn.us/banking/>.

## **How much will the State pay?**

There is no set minimum or maximum amount that the State will pay for credits but credit price will be a factor in the selection process. Responses to the RFP must include a price per credit along with a quantity of credits offered. The State’s goal with this RFP is to maximize credit acquisition with available funds in order to meet the credit demand for MnDOT and, potentially, the LGRWRP. Respondents to the RFP will be asked to pay stewardship and withdrawal fees for the credits sold to the State and should include the fees in their proposals. Transfer fees will be the responsibility of the State and should not be included in the proposals.

## **What criteria will BWSR use to select projects?**

BWSR will verify that all credits identified in proposals are both state and federally approved. Once confirmed, proposals received will be evaluated based on the following criteria:

- Bank service area (geographic location);
- Type of Credit (Wetland Plant Community Type)
- Price per credit;
- Amount of credits



## **What are the obligations of the account holder if selected?**

Account holders of selected proposals will be required to enter into a legal agreement with BWSR for the purchase of wetland banking credits. The account holder will be required to complete the following:

- Prepare and execute a purchase agreement with BWSR within 30 days of notification of selection and submit the agreement to BWSR (a sample agreement is provided in Attachment C);
- Pay withdrawal and stewardship fees associated with the sale of credits;
- Comply with the General Requirements section of this RFP;

## **How do I submit a proposal?**

Respondents must submit the proposal form when responding to this RFP along with a completed **Affidavit of Noncollusion (Attachment A)** and **Certification Regarding Lobbying (Attachment B)**. Responses to this request for proposal will be accepted until 2:30 pm on April 21, 2020.

## **When will decisions be made on selected proposals?**

BWSR has set the following schedule as a goal for selecting proposals for the initial purchase of wetland bank credits. The number and scope of the submittals could affect the schedule.

- April 21, 2020 – end of application period
- June 26, 2020 – screening and evaluation of proposals complete
- July 27, 2020 – notification and initiation of the purchase agreement process for selected proposals

A decision regarding a supplemental purchase of credits will be made as soon as possible after the initial purchase. Proposals selected during the supplemental purchase will be notified within 180 days of the close of the application period.

## **Further Questions?**

Contact BWSR Wetland Mitigation Coordinator Tim Smith at [tim.j.smith@state.mn.us](mailto:tim.j.smith@state.mn.us) or (651) 600-7554.

## **General Requirements**

### **Affidavit of Noncollusion**

Each responder must complete the attached **Affidavit of Noncollusion** in **Attachment A** and include it with the response.

### **Conflicts of Interest**

Responder must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this request for proposals. The list should indicate the name of the entity, the relationship, and a discussion of the conflict.

### **Proposal Contents**

By submission of a proposal, Responder warrants that the information provided is true, correct and reliable for purposes of evaluation for potential contract award. The submission of inaccurate or misleading information may be grounds for disqualification from the award as well as subject the responder to suspension or debarment proceedings as well as other remedies available by law.

### **Disposition of Responses**

All materials submitted in response to this RFP will become property of the State and will become public record in accordance with Minnesota Statutes, section 13.591, after the evaluation process is completed. Pursuant to the statute, completion of the evaluation process occurs when the government entity has completed negotiating the contract with the selected vendor. If the Responder submits information in response to this RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minnesota Statute § 13.37, the Responder must:

- clearly mark all trade secret materials in its response at the time the response is submitted,
- include a statement with its response justifying the trade secret designation for each item, and;
- defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the State, its agents and employees, from any judgments or damages awarded against the State in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the State's award of a contract. In submitting a response to this RFP, the Responder agrees that this indemnification survives as long as the trade secret materials are in possession of the State.

The State will not consider the prices submitted by the Responder to be proprietary or trade secret materials.

Notwithstanding the above, if the State contracting party is part of the judicial branch, the release of data shall be in accordance with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time.

### **Contingency Fees Prohibited**

Pursuant to Minnesota Statutes Section 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

### **Sample Agreement**

You should be aware of the State's standard agreement in preparing your response. A **sample agreement** is attached for your reference (**Attachment C**). Much of the language reflected in the agreement is required. If you take exception to any of the terms, conditions or language in the contract, you must indicate those exceptions in your response to the RFP; certain exceptions may result in your proposal being disqualified from further review and evaluation. Only those exceptions indicated in your response to the RFP will be available for discussion or negotiation.

### **Organizational Conflicts of Interest**

The Responder warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons, a vendor is unable or potentially unable to render impartial assistance or advice to the State, or the vendor's objectivity in performing the contract work is or might be otherwise impaired, or the vendor has an unfair competitive advantage. The responder agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the Assistant Director of the Department of Administration's Materials Management Division ("MMD") which must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organization conflict of interest is determined to exist, the State may, at its discretion, cancel the contract. In the event the responder was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to MMD, the State may terminate the contract for default. The provisions of this clause must be included in all subcontracts for work to be performed similar to the service provided by the prime contractor, and the terms "contract," "contractor," and "contracting officer" modified appropriately to preserve the State's rights.

### **Certification Regarding Lobbying**

Federal money will be used or may potentially be used to pay for all or part of the work under the contract, therefore the Proposer must complete the attached **Certification Regarding Lobbying** provided as **Attachment B** and submit it as part of its proposal.



**Attachment A**  
**Affidavit of Noncollusion**  
 State of Minnesota  
 Request for Proposals

**Instructions:** Please return your completed form as part of the response submittal.

**I swear (or affirm) under the penalty of perjury:**

1. That I am the Responder (if the Responder is an individual), a partner in the company (if the Responder is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Responder is a corporation).
2. That the attached proposal submitted in response to the <insert name> Request for Proposals has been arrived at by the Responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Responder of materials, supplies, equipment, or services described in the Request for Proposals, designed to limit fair and open competition.
3. That the contents of the proposal have not been communicated by the Responder or its employees or agents to any person not an employee or agent of the Responder and will not be communicated to any such persons prior to the official opening of the proposals.
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

**Authorized Signature**

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Responder's firm name: \_\_\_\_\_

Print authorized representative name: \_\_\_\_\_ Title: \_\_\_\_\_

Authorized signature: \_\_\_\_\_ Date (mm/dd/yyyy): \_\_\_\_\_

**Notary Public**

Subscribed and sworn to before me this:  
 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
 Notary Public signature

\_\_\_\_\_  
 Commission expires (mm/dd/yyyy)

## **ATTACHMENT B**

### **CERTIFICATION REGARDING LOBBYING**

For State of Minnesota Contracts and Grants over \$100,000

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
Organization Name

\_\_\_\_\_  
Name and Title of Official Signing for Organization

By: \_\_\_\_\_  
Signature of Official

\_\_\_\_\_  
Date



## Attachment C

**State of Minnesota**  
**Board of Water and Soil Resources**  
**WETLAND BANK CREDIT PURCHASE AGREEMENT**

This Wetland Bank Credit Purchase Agreement (“Agreement”) is made and entered into by and between XXXXXXXXXX (collectively, “Grantor”) and the State of Minnesota, by and through the Board of Water and Soil Resources (“BWSR”).

WHEREAS, BWSR is directed pursuant to Minn. Stat. § 103G.222, subd. 1(m) to replace wetlands drained or filled by local government public transportation authorities for work on existing roads throughout the State of Minnesota; and

WHEREAS, BWSR has, through a Request for Proposals (“RFP”) solicitation, identified wetland bank credits owned by Grantor meeting the wetland replacement requirements of the Wetland Conservation Act of 1991 (Laws 1991, chapter 354, as amended) (the “WCA”) and Section 404 of the Clean Water Act (the “CWA”) (as administered by the Saint Paul District U.S. Army Corps of Engineers) (the “Corps”); and

WHEREAS, BWSR and Grantor desire to enter into this Agreement for wetland bank credits to be acquired by BWSR to use as replacement.

NOW, THEREFORE, in accordance with WCA, and in consideration of the mutual promises and obligations contained in this Agreement, Grantor and BWSR agree as follows:

**A. SALE OF CREDITS.**

Grantor agrees to sell to BWSR, and BWSR agrees to purchase from Grantor, (*amount*) of (*type*) wetland bank credits (“Credits”).

**B. EFFECTIVE DATE; TERM.**

1. This effective date of this Agreement shall be the date it is fully executed by Grantor and BWSR.
2. This Agreement shall automatically terminate upon the earlier to occur of: (i) Grantor receiving payment from BWSR pursuant to Section C below, (ii) upon notice of cancellation of the Agreement in accordance with Section F below, or (iii) one hundred eighty days from the effective date of this Agreement.

**C. TERMS OF PAYMENT.**

Under this Agreement, BWSR will purchase from the Grantor the Credits at a price per Credit of \$XXXXX which includes the withdrawal and stewardship fees as established in the BWSR 2017 Wetland Banking Fee Policy, as amended. The total purchase amount under this agreement shall be \$XXXXX. BWSR will make payment in full to Grantor once the BWSR form Minnesota Wetland Bank Form of Transfer (“Transaction Form to Transfer Credits”) has been signed by the Grantor and BWSR and a check for the withdrawal and stewardship fees payable to BWSR has been provided.

**D. GRANTOR OBLIGATIONS AND REPRESENTATIONS.**

1. Grantor represents and warrants that Grantor owns the Credits subject to this Agreement free and clear of all encumbrances, has the right and authority to sell the Credits to BWSR, has not entered into any other agreements for the sale of the Credits, and has no knowledge of any existing or threatened litigation relating to Grantor's Credits.
2. Grantor shall verify that all Credits to be transferred under this Agreement are approved and available for transfer and subsequent use under WCA and the Section 404 CWA Regulatory Program administered by the Corps, and that all such Credits are not obligated to any other individuals or entities per a previously executed purchase agreement.
3. Grantor shall complete and submit to BWSR a correct, signed Transaction Form to Transfer Credits within 15 days of the effective date of this Agreement.
4. Grantor shall pay all withdrawal and stewardship fees associated with the Credit sale per the BWSR fee schedule in place on the effective date of this Agreement.

**E. BWSR OBLIGATIONS.**

1. BWSR will transfer the approved Credits to a BWSR wetland bank account when the Transaction Form to Transfer Credits has been signed by both parties.
2. BWSR will disburse payments directly to Grantor as calculated pursuant to Section C of this Agreement.

**F. CANCELLATION.**

BWSR may, at any time prior to the transfer of the Credits into a BWSR account, cancel this Agreement without liability if BWSR determines the Grantor has not fully complied with the terms and conditions of this Agreement. If BWSR elects to cancel this Agreement, it shall give written notice to Grantor. Grantor shall have fifteen days from the date of postmark of the mailing of BWSR's cancellation notice to cure its defaults, which shall be determined at the sole discretion of the BWSR. If Grantor does not timely cure its defaults, then cancellation of this Agreement shall be final and BWSR shall have no further obligations to Grantor under this Agreement. If BWSR cancels the Agreement after payment has been made to Grantor, Grantor shall promptly refund the full payment to BWSR.

**G. ADDITIONAL PROVISIONS:**

1. Each party will be responsible for their own acts and the results thereof to the extent authorized by law, and shall not be responsible for the acts of the others and the results thereof.
2. This Agreement shall be binding upon the parties and their respective successors and assigns provided, however, that the Grantor may not assign any of its rights or obligations under this Agreement without the prior written consent of BWSR. No change or modification of the terms or provisions of this Agreement shall be binding on any party unless such change or modification is in writing and signed by an authorized official of the party against which such change or modification is to be imposed.

3. Neither the failure by any party, in any one or more instances, to insist upon the complete and total observance or performance of any term or provision hereof, nor the failure by any party to exercise any right, privilege, or remedy conferred herein, or afforded by law, shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. In addition, no delay on the part of any party in exercising any right or remedy herein shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof, or the exercise of any other right or remedy.
4. This Agreement embodies the entire agreement between the parties, and there are no other agreements, either oral or written, between the parties on the subject matter hereof.
5. If any term or provision of this Agreement is finally judged by any court of competent jurisdiction to be invalid, the remaining terms and provisions shall remain in full force and effect, and they shall be interpreted, performed, and enforced as if said invalid provision did not exist.
6. Under Minn. Stat. § 16C.05, subd. 5, the Grantor's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Contract.
7. Government data practices. The Grantor and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. ch. 13, (or, if the State contracting party is part of the Judicial Branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantor under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. ch. 13, by either the Grantor or the State.

If the Grantor receives a request to release the data referred to in this clause, the Grantor must immediately notify and consult with the State's Authorized Representative as to how the Grantor should respond to the request. The Grantor's response to the request shall comply with applicable law.

8. Data disclosure:  
Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the Grantor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Grantor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.
9. In addition to any notice required under applicable law to be given in another manner, any notices required herein, must be in writing and shall be sent by U.S. Mail to the appropriate

address as specified herein below, or such different address as may hereafter be specified, by written notice to the others.

To Grantor:  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXX  
XXX, MN 5XXXX

To BWSR:  
Board of Water and Soil Resources  
520 Lafayette Road North  
St. Paul, MN 55155  
Attn: Tim Smith

- effect shall of 10. This Agreement shall be governed by the laws of the State of Minnesota without giving to the conflicts-of-laws principles thereof, and any action brought under this Agreement be brought exclusively in the Minnesota District Court for the County of Ramsey, State Minnesota.

(THE REMAINING PORTION OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, Grantor and BWSR have caused this Agreement to be duly executed.

**GRANTOR(S) SIGNATURE(S)**

\_\_\_\_\_  
Print name: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Print name: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
me this )  
COUNTY OF \_\_\_\_\_ ) ss.

The foregoing instrument was acknowledged before  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

by \_\_\_\_\_  
(Notary Stamp or Seal)

Notary Signature  
\_\_\_\_\_

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**BWSR SIGNATURE**

STATE OF MINNESOTA, BOARD OF WATER  
AND SOIL RESOURCES

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_

STATE OF MINNESOTA )  
me this )  
COUNTY OF RAMSEY ) ss.

The foregoing instrument was acknowledged before  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

by \_\_\_\_\_, known to me to be the \_\_\_\_\_ of the Board of Water  
and Soil Resources.  
(Notary Stamp or Seal)

Notary Signature \_\_\_\_\_

**Approved as to form and execution:**

By: \_\_\_\_\_  
Department of Administration

Date: \_\_\_\_\_