

**May 2017 Proposals for Mitigation Credits
Cape Fear, Watauga, and Yadkin
Questions and Answers**

Q1. Would any circumstance preventing the release and ultimate sale of the specified credits give the State the opportunity to declare the Banker in default?

A1. Yes

Q2. What is the penalty in the event milestones are not achieved?

A2. The only milestone is the sale of released credits. There is no penalty other than the default of contract if credits are not delivered.

Q3. Could the Surety Company remedy default by purchasing credits from DMS?

A3. The Surety Company or Provider can request credits from DMS.

Q4. Would the Surety Company have rights to the contract balance to offset purchase of credits and/or additional costs to NCDOT?

A4. The Surety would be entitled to payment, up to the contract balance, for credits satisfactorily released, less any sums that may be due NCDOT for the default.

Q5. Bond requirement could be eliminated based on NCDOT's review of banker's financials (Contract Section 5(a)). What are the benchmark or target financial requirements to qualify for this option?

A5. There are no benchmarks or target financial requirements. The contract requires financial proof "acceptable to NCDOT". The type of information required is summarized below.

Financial Statements – *If requested by the State*, the Vendor shall provide evidence of financial stability with its response to this RFP as further described herein below. As used herein, Financial Statements shall exclude tax returns and compiled statements.

a) For a publicly traded company, Financial Statements for the past three (3) fiscal years, including at a minimum, income statements, balance sheets, and statement of changes in financial position or cash flows. If three (3) years of financial statements are not available, this information shall be provided to the fullest extent possible, but not less than one year. If less than 3 years, vendor must explain the reason why they are not available.

b) For a privately held company, when certified audited financial statements are not prepared: a written statement from the company's certified public accountant stating the financial condition, debt-to-asset ratio for the past three (3) years and any pending actions that may affect the company's financial condition.

c) The State may, in its sole discretion, accept evidence of financial stability other than Financial Statements for the purpose of evaluating Vendors' responses to this RFP. The State reserves the right to determine whether the substitute information meets the requirements for Financial Information sufficiently to allow the State to evaluate the sufficiency of financial resources and the ability of the business to sustain performance of the contract award. Scope Statements

issued may require the submission of Financial Statements and specify the number of years to be provided, the information to be provided, and the most recent date required.

Q6. Contract Section 5: Performance and Default: Could the banker be held responsible for a delay in the NCDOT project which the credits apply?

A6. No.

Q7. Will NCDOT award contracts for Cold SMUs to compensate for Cool/Warm SMU needs?

A7. This is decided on a case by case basis by the regulatory agencies in lieu of a formal policy. Typically, cold water mitigation is allowed for cool water impacts but not for warm water impacts. Cool water mitigation is allowed for warm water impacts. Warm water mitigation is not accepted for cool or cold water impacts. Cool water mitigation is not accepted for cold water impacts. NCDOT will accept proposals that follow this scheme.

Q8. Will NCDOT award contracts for Cool SMUs to compensate for Warm SMU needs?

A8. This is decided on a case by case basis by the regulatory agencies in lieu of a formal policy. Typically, cold water mitigation is allowed for cool water impacts but not for warm water impacts. Cool water mitigation is allowed for warm water impacts. Warm water mitigation is not accepted for cool or cold water impacts. Cool water mitigation is not accepted for cold water impacts. NCDOT will accept proposals that follow this scheme.

Q9. All mitigation banks in North Carolina must provide a performance bond to guaranty the implementation of the construction work and a monitoring bond that both generate the mitigation credits per USACE Wilmington District requirement for an executed MBI.

Consequently, NCDOT does not need to require an additional level of guaranty for delivery of mitigation credits from a bank with an executed MBI.

A9. NCDOT requires a guaranty for mitigation credits because we are not pursuing other avenues for credit delivery during the contract period for the contracted credits.

Q10. Proposed mitigation banks (without an executed MBI) are subject to much greater risk in their ability to provide credits and the proposed timing of that credit delivery. Consequently, they should be required to provide a guaranty consistent with current NCDOT contract template guidelines. Upon execution of an MBI then the guaranty should be specific to the forward contract dollar amount of the unreleased credits only.

A10. NCDOT requires a guaranty for mitigation credits because we are not pursuing other avenues for credit delivery during the contract period for the contracted credits. The contract allows for reduction of the bond with the consent of NCDOT.

Q11. A mitigation bank with an executed 'umbrella' mitigation banking instrument comprised of multiple sites each with a site specific mitigation plan should be considered one mitigation bank for the purpose of the RFP response.

A11. The RFP and contract allows for submittals that are part of an UMBI but requires each site to be submitted separately.

Q12. On page 9 of the RFP it should be made clear that the “transfer of liability form” is the standard USACE form, not an additional form specific to NCDOT.

A12. NCDOT will clarify the language to indicate the requested form is the USACE standard transfer of liability form.

Q13. Performance and Default language in section 5 of the template contract should be amended bond so that it is clear that the liability of the credit provider for default shall be contained to the value of the mitigation credits not provided and shall not include the cost of the NCDOT road project or delays to it.

A13. NCDOT will clarify the contract language indicating that the liability is contained to the mitigation credits contracted.

Q14. Performance and Default language in section 5 of the template contract should be amended so that there is an ability to remedy a possible default. This would be done by adding a requirement for first serving notice to the provider that unless full remedy is provided within a thirty day period from said notice only then would the bond be ‘called’.

Q14. NCDOT will clarify the language in the contract about the terms and remedy of default.

Q15. Performance and Default language in section 5 of the template contract should language that NCDOT would allow payment to the DMS as a remedy for any shortfall of the provider for credits not delivered.

Q15. The Surety Company or Provider can request credits from DMS.