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MEMORANDUM

DATE: June 1, 2018

TO: Governing Board
San Francisco Bay Restoration Authority

FROM: Matt Gerhart, Program Manager; Kelly Malinowski, Project Manager
San Francisco Bay Restoration Authority

SUBJECT: Lessons Learned from the First Grant Round and Proposed Revisions to the Grant Program Guidelines, Request for Proposals, and Grant Application Form

Staff requests feedback from the Governing Board on proposed revisions to the Grant Program Guidelines (Grant Guidelines), Request for Proposals (RFP), and Grant Application Form (Application). The proposed changes will be presented to the Governing Board for adoption at the Authority's September 2018 meeting, which along with this meeting and two associated items at Authority Advisory Committee public meetings, will constitute four public opportunities for comment over four months of review of the next year of grantmaking activities.

Background

The San Francisco Bay Restoration Authority (Authority) adopted amendments to the Grant Guidelines in June 2017. The Grant Guidelines are a summary of the requirements of the San Francisco Bay Restoration Authority Act (Restoration Act) and the language included in the San Francisco Bay Clean Water, Pollution Prevention, and Habitat Restoration Measure (Measure AA), as well as some explanation of how the Authority will apply them.

The Authority adopted and released an RFP and Application for the Measure AA grant program 1 in September 2017. The RFP and Application provide additional guidance on project eligibility and evaluation criteria.

Since that time, the Measure AA grant program has gone through its first grant cycle. Project proponents submitted applications, staff and members of the Advisory Committee (AC) reviewed applications, staff prepared recommendations, and the Governing Board approved grant awards in April 2018.

During the Authority’s first grant cycle this past year, staff tracked lessons learned and received input on suggested improvements to the grant program documents. Proposed revisions based on these are shown in the three attached, updated redline versions of the documents.

- Draft Grant Program Guidelines (Attachment 1)
- Round 2 Draft Request for Proposals (Attachment 2)
- Draft Round 2 Grant Application Form (Attachment 3)

Many of the lessons learned and comments received involved clarifications of eligibility requirements. The following sections present three overarching issues that came up repeatedly; a brief summary of additional edits made to clarify eligibility requirements; and a summary of two public comments received on the first grant round documents.

1. Key Issues

The three most critical issues that surfaced during the first grant cycle are:

- Acquisitions: Are acquisition projects eligible for funding?
- Mitigation: Are a restoration project’s mitigation requirements eligible for funding?
- Dredging and Beneficial Reuse: How should requests for funding the cost of beneficial reuse of dredged material in habitat restoration projects be evaluated?

Staff proposes to address these issue as described below.

Acquisition Projects

Although the San Francisco Bay Restoration Authority Act (Act) explicitly prohibits the Authority from owning real property, the Act does not explicitly prohibit or allow grants for acquisition projects. Acquisition is not included as an eligible project phase in the section of the Act that states that the Authority may fund all phases of planning, construction, monitoring, operation, and maintenance of eligible projects. However, the Act defines “eligible projects” to include those that protect or restore natural habitats and those that provide public access as part of a restoration project. In some situations, acquisition of real property is necessary to protect or restore wetlands or to provide public access. Therefore, staff proposes to interpret the Act as allowing an acquisition of real property interests to be an eligible project when necessary to protect habitat or provide access, and as allowing acquisition to be a phase of planning or construction of an eligible project. This is consistent with Measure AA, which broadly authorizes funding for projects that further the described programs without restrictions on the types of projects that can be funded. Therefore, staff is recommending that “acquisition” be added to the list of eligible project phases described on page 13-14 of the Grant Guidelines and added to the list of eligible project phases on page 4 of the RFP, with additional guidance specifying requirements for acquisitions to be considered eligible. Further, the application would be revised to request necessary information for these projects.

Staff received input on this proposal at the Authority’s Advisory Committee May 4th meeting, and has addressed comments and questions received regarding prioritization and assessment of the benefits of acquisition projects, as well as factors critical to their success in providing public benefits.

Authority staff recommend using the Conservancy's process for funding acquisitions with one exception: because the Authority cannot own property, the means of protecting the public interest in the property will be different than the Conservancy's, which relies upon the Conservancy obtaining a future interest in the property.

Staff proposes to make the following revision on page 13-14 of the Grant Guidelines:

“According to the Restoration Act, grant funds may be used to support “all phases of a project including planning, construction, monitoring, operation, and maintenance” of [eligible projects].” The Authority interprets "all phases of planning [and] construction" of a project" to include acquisition, planning, design, environmental studies, permitting, construction, monitoring and evaluation, operation, scientific studies as part of the project to guide adaptive management, and maintenance. In addition, an acquisition may be considered an eligible project.

The Authority will consider funding acquisitions (fee and/or less-than-fee (e.g. easement) interests in land where demonstrably significant opportunity exists to either protect existing natural baylands resources from loss, degradation or development or to meaningfully enhance or restore baylands resources and/or provide habitat-related public access and flood benefits. In general, the Authority will seek to fund the least costly, most efficient and effective method of securing the long-term benefits of site tenure; acquisitions will therefore be judged on the tangibility, significance and likelihood of success of the eventual restoration or enhancement opportunity. In addition to the eligibility and prioritization criteria for any other Measure AA-funded project, eligible acquisitions must:

- Be transacted with willing sellers;
- Be for no more than fair market value as determined in an approved appraisal pursued at or above USPAP standards;
- Have legal access to the property and be acceptably free and clear of defects of title;
- Be free of contamination that could impact the projected use and benefits of the property, as demonstrated through a Phase I environmental assessment or higher-level site analysis;
- Be secured in perpetuity for the Measure AA-purposes. For any acquisition by a private entity, a third-party public entity must partner to secure the public's interest in the acquisition.
- If an easement, include terms sufficient to achieve the protection, restoration, or public access purposes of the easement.”

Also added via a footnote on Page 13: “Please include details of the protection and restoration benefits of the project in the project description section of the application.”

Staff proposes to make the following revision on page 4 of the RFP:

“Eligible project phases include acquisition, planning, design, environmental studies, permitting, construction, monitoring and evaluation, operation, scientific studies as part of the project to guide adaptive management, and maintenance.”

Add a footnote: “If your project is an acquisition, please include details of the restoration benefits in the project description section of the application. The Authority will consider funding acquisitions (fee and/or less-than-fee (e.g. easement) interests in land where demonstrably significant opportunity exists to either protect existing natural baylands resources from loss, degradation or development or to meaningfully enhance or restore baylands resources and/or provide habitat-related public access and flood benefits. In general, the Authority will seek to fund the least costly, most efficient and effective method of securing the long-term benefits of site tenure; acquisitions will therefore be judged on the tangibility, significance and likelihood of success of the eventual restoration or enhancement opportunity. In addition to the eligibility and prioritization criteria for any other Measure AA-funded project, eligible acquisitions must:

- Be transacted with willing sellers;
- Be for no more than fair market value as determined in an approved appraisal pursued at or above USPAP standards;
- Have legal access to the property and be acceptably free and clear of defects of title;
- Be free of contamination that could impact the projected use and benefits of the property, as demonstrated through a Phase I environmental assessment or higher-level site analysis;
- Be secured in perpetuity for the Measure AA-purposes. For any acquisition by a private entity, a third-party public entity must partner to secure the public’s interest in the acquisition.
- If an easement, include terms sufficient to achieve the protection, restoration, or public access purposes of the easement.”

Also, in the Application, staff proposes to add a checkbox on Page 1 for “acquisition” projects, as well as to add a question #15 on acquisitions:

“15. Acquisitions. For acquisition projects, please address the following:

- i. What type of acquisition are you proposing, why are you structuring the acquisition the way that you propose, and why is this type of acquisition the best approach?
- ii. What are the benefits of pursuing an acquisition in this location? Please speak to the significance of this land, in either protecting existing natural baylands resources, or meaningfully enhancing or restoring baylands.
- iii. How do you plan to manage and steward the land?
- iv. Where are you in the negotiation process?
- v. Specifically:
 1. Are you acquiring the land from a willing seller?

2. Will the land be purchased at no more than fair market value (as described in an approved appraisal pursued at or above USPAP standards)?
3. Will you have legal access to the property, and will this land be acceptably free and clear of defects of title?
4. Is there any known contamination on site? Has any site investigation been undertaken to date?"

Mitigation

During the first grant round, a question arose about whether the mitigation requirements of a restoration project are eligible for funding. The grant guidelines already state that “The Authority will not fund mitigation requirements of a project that will result in net damages to habitat elsewhere.” However, if mitigation is required for a project that will achieve the purposes of the Restoration Authority Act and Measure AA, staff recommends that it be eligible for Measure AA funding. The following edits will be made to the Grant Guidelines, the RFP, and the Application regarding mitigation projects:

Staff proposes to make the following revision on page 17 of the Grant Guidelines:

“The Restoration Authority will primarily fund voluntary habitat restoration projects. The Authority will not fund project impacts that are not compensated on-site as part of the restoration project (e.g. through private mitigation banks or other off-site mitigation actions). However, the Authority may fund the on-site compensatory requirements of a project that will result in is eligible for Measure AA funds and that demonstrates net damages to habitat elsewhere positive benefits. The Authority may contribute to a project that is making use of mitigation funds, but the Authority's share of the funds must pay for an incremental improvement beyond compensation for damages ~~elsewhere.~~ that may have occurred elsewhere as part of the mitigation requirements.”

Staff proposes to add this section under “d. Eligible Types and Activities” on page 6 of the RFP:

“Additional Eligibility Considerations

Mitigation projects are generally not eligible for Measure AA funds. Please refer to the Grant Program Guidelines for eligibility requirements for mitigation projects.”

Staff proposes to add question #14 on page 5 of the Application:

“Permitting and Mitigation. If your project has progressed to this phase, please describe the status of your permits, as well as the general nature of any mitigation requirements. If your project has not yet reached the permit phase, do you anticipate any particular permitting or mitigation challenges?”

Beneficial Reuse of Dredge Material in Restoration Projects

The Authority received several applications for funding some or all of the cost of bringing dredged material to subsided restoration sites, but reviewers encountered difficulty in interpreting a series of issues related to the efficacy, suitable costs, and eventual benefits of these proposals. The staff recommends that additional guidance be developed before encouraging the submittal of such proposals, including clarifying the need for an application to be tied to a specific restoration site.

Staff has sought additional guidance from the Advisory Committee and will be working with participants in the working groups of the *Long-Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region (LTMS)* on how to evaluate such applications when comparing them to other restoration project applications that do not need dredged material, and how to compare various types of reuse with one another.

No revisions related to these issues are proposed at this time.

2. Summary of Additional Edits Made to Clarify Eligibility Requirements

Proposed Edits to the Grant Guidelines:

- Adjusted release date.
- Fixed spacing.

Proposed Edits to the RFP:

- Adjusted release date.
- Added page numbers.
- Fixed spacing.
- Noted, on page 15, that the application [link will be added before final version for the September 21, 2018 SFBRA Board Meeting.]
- Under V.a, changed language to read that “Grant applications will be initially ~~reviewed~~ screened by Authority staff for completeness.”

Proposed Edits to the Application:

- Adjusted release and due dates.
- Added a note at the top of Page 1 that “*Application instructions can be deleted to allow for full use of the page limits.”
- Added clarification to the “Acres” box on Page 2, to indicate either habitat acreage to be restored, or land to be acquired.
- Added clarification to the “Trail Miles” box on Page 2, to include “length” after “trail.”
- Added clarification to the “Shoreline length” box on Page 2, to include “miles.”
- Added additional check boxes for further clarification on CEQA on page 1-2:
 - i. “~~For implementation projects, is~~ What are the CEQA completed? requirements for your project?
 - i. Not a project under CEQA
 - ii. Exempt from CEQA (statutorily or categorically)
 - iii. ND
 - iv. MND

- v. EIR
 - ii. If required, has the CEQA document been approved and filed?
 - i. Yes
 - ii. No
 - iii. If yes, date filed; if no, expected filing month/year: _____
- Edited “Cost” to read “Costa” for “Contra Costa” under “Location Information.”
- Edited “answer” to read “answers” under Question #11 on page 4.
- Added clarification to Question #11. Environmental Review, regarding CEQA, to match edits made on pages 1-2:
 - i. “The proposed project (select the appropriate answer(s)):
 - i. Is exempt under CEQA. Provide the CEQA Guidelines exemption number and specify how the project meets the terms of the exemption.
 - ii. Requires a Neg Dec, MND, or EIR. Specify which: _____
 - iii. Also please specify the CEQA lead agency (the agency preparing the document) and the (expected) date for adoption or certification: _____
 - iv. Please note that the Authority will need to review and consider the adopted or certified CEQA document prior to authorizing a grant.”
- Edited Section II. Grant Application – Preliminary Budget and Schedule on page 6 to remove the embedded budget, which will instead be attached to the application. The following language edits were made in this section to reflect this change:
 - i. Edited the following sentence:
 - i. “Please use the ~~embedded~~ provided budget matrix (in excel document form) to ~~provide the project’s preliminary budget and schedule information. In Outline your completed budget, and attach that excel document to this application, the budget can be sent separately in excel, or embedded below.~~
 - ii. In the budget matrix ~~below~~ attached to your application, relist the tasks identified in #7 above and for each provide: 1) Project costs per year, adding additional columns as needed, 2) the estimated cost of the task, and 3) the funding sources (applicant, Authority, and other) for the task, and for other funds, please describe below all sources of other funding and whether secured or pending. The table will automatically sum the totals for each row and column. To do this, highlight the whole table and hit F9.
 - iii. You may include a task for direct project management for no more than 15% the cost of the project. If you choose to include contingency or overhead, please include as a separate task and be advised that overhead calculations must be justifiable for an audit.
 - iv. Below, and in addition to completing the attached budget matrix, please also include a discussion of any uncertainties in this budget, and your anticipated ability to operate and maintain the project, as well as explain how you will handle any contingency costs.
 - ii. Change in the second paragraph “In the budget matrix attached to your application ~~below~~, relist the tasks identified in #7 above.”
 - iii. Change in the fifth paragraph “Below, and in addition to completing the attached budget matrix ~~the budget matrix~~, please also include a discussion of any uncertainties in the budget...”

3. Summary of Public Comments on the Grant Guidelines, RFP, and Grant Application

Comment #1:

Sarah Young, former Advisory Committee member and staff at the Santa Clara Valley Water District, submitted a general comment email on February 14, 2018, requesting that staff “add a page to the SFBRA website with resources for grantees, including: 1. Timeline of what to expect from grant application to completion, and 2. Template for board resolution for grantee agency.”

Staff let Ms. Young know that several of these already were available and another is under development. Resources for grantees are hosted on the SFBRA website (the “Grants” tab for resources related to the grant program specifically, and the “Resources” tab for additional resources). There is also a “Typical Sequence of Events for Accepting a San Francisco Bay Restoration Authority Grant” document, found on the “Grants” tab of the SFBRA website, that explains what to expect from a SFBRA grant from application to completion. The Authority is also currently developing a template board resolution for grantees.

Comment #2:

Robert E. Doyle, General Manager, East Bay Regional Park District submitted a comment letter specific to the Grant Guidelines and RFP on April 6, 2018, to express that the Park District will work collaboratively with the SFBRA to identify future projects in Contra Costa County. Mr. Doyle also noted that the Park District has found the Grant Guidelines to be challenging in finding suitable projects in urban areas. He specified that “linking every eligible project to restoration severely limits the types of projects which can be physically completed along an urban shoreline.” Mr. Doyle further commented that “many of our proposed projects along the Richmond, Oakland, and North Contra Costa County shorelines involve increasing access, cleaning up degraded areas, and stabilizing shoreline infrastructure.” Mr. Doyle outlined some thoughts on how to improve the Grant Guidelines:

1. “Support eligibility for grants for acquisition.
2. Provide flexibility in allowing public access or flood management projects that are not part of a restoration project.
3. Allow cleanup projects or repair of failing shoreline infrastructure, particularly in areas where physical and regulatory limitations would preclude any meaningful restoration.
4. Consider climate resiliency projects as a way to reduce SF Bay pollution.”

After reviewing the comment letter, staff have determined that:

- Comment #1 above is covered under the current edits to the Grant Guidelines, as outlined in this memo.
- Comments #2 and #3 above conflict with both the language in Measure AA, as well as the language in the Restoration Act, which require that both public access and flood protection projects must be tied to a restoration project.
- Comment #4 is possible under the current Grant Guidelines.

Next Steps

Staff expects to further refine these proposed amendments based on Governing Board and Advisory Committee input in June and present a proposed version for adoption at the Authority’s September meeting.

Attachments

1. Proposed Revisions to the Grant Program Guidelines (Redline Version)
2. Proposed Revisions to the Proposal Solicitation (Redline Version)
3. Proposed Revisions to the Application Form (Redline Version)