

SELECTION OF CLEAN WATER SERVICE PROVIDERS FOR VERMONT WATERSHED BASINS, PER ACT 76 OF 2019

Release Date: December 23, 2019

Comments Due: January 17, 2020

Contact for Comments: Chris Rottler, ANR, Department of Environmental Conservation,
Watershed Investment Division, (802) 461-6051, chris.rottler@vermont.gov

Request for Comment

The State of Vermont, Agency of Natural Resources, Department of Environmental Conservation seeks comments on the draft Request for Proposal, for the Selection of Clean Water Service Providers for Vermont Watershed Basins, Per Act 76 of 2019, attached hereto. Written comments may be submitted by email or US Mail to Chris Rottler, at chris.rottler@vermont.gov, or at the following address: Department of Environmental Conservation, 1 National Life Drive, Davis 3, Montpelier, Vermont 05620, Attn: Chris Rottler. Electronic submissions can be sent in the following formats: HTML, Word, RTF, or PDF. Please cite "CWSP Draft RFP Comments" in all correspondence. Relevant comments received by the deadline will be considered and may be made public. Comments will not be redacted, so comments should not include information that they do not wish to be posted publicly (e.g. personal or confidential information). Comments that contain profanity, vulgarity, threats or other inappropriate language or content will not be considered. Comments to this notice must be received by 4:00PM Eastern Standard Time on January 17, 2019.

SELECTION OF CLEAN WATER SERVICE PROVIDERS FOR VERMONT WATERSHED BASINS, PER ACT 76 OF 2019

Release Date: January xx, 2020

Proposals Due: April xx, 2020

Contact for Proposals: Chris Rottler, ANR, Department of Environmental Conservation,
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THE STATE WILL MAKE NO ATTEMPT TO CONTACT VENDORS WITH UPDATED INFORMATION. IT IS THE RESPONSIBILITY OF EACH VENDOR TO PERIODICALLY CHECK <http://www.vermontbidsystem.com> FOR ANY AND ALL NOTIFICATIONS, RELEASES AND AMENDMENTS ASSOCIATED WITH THE RFP.

Introduction and Purpose

The Clean Water Service Delivery Act of 2019 (Act 76) establishes a water quality project delivery framework to support Vermont's clean water goals. Act 76 establishes new regional organizations called Clean Water Service Providers (CWSPs). With policy and priority setting from their related Basin Water Quality Councils (BWQCs), CWSPs will administer formula-based State grants for the purpose of identifying, constructing, and maintaining non-regulatory water quality projects necessary to achieve the Lake Champlain and Lake Memphremagog phosphorus TMDLs and other pollutant reduction targets both inside and beyond these specific basins. Formula grants received by CWSPs will be based on a standard allocation reflecting targets for non-regulatory phosphorus and other pollutant reductions to be established by the State of Vermont for all basins. Operations and Maintenance funds will also be provided to CWSPs as a formula grant, based on projects implemented.

Pursuant to Act 76, the State will in 2023 publish a schedule of additional impaired waters for which non-regulatory pollution reduction targets shall be established in other basins. CWSPs will also be eligible to receive formula grants for work in their assigned basin once these targets are established, and the Clean Water Board recommends funding allocations. CWSPs may receive formula grants or other competitive funding for clean water implementation work, which may address phosphorus or other pollutants. CWSPs, where active, will also serve to coordinate statutory partner engagement and BWQC engagement in the tactical basin planning process, with support from the State's basin planning staff.

Act 76 does not prescribe the type of host organization that may serve as CWSPs, nor all their capabilities. Considering that significant State resources from the Clean Water Fund will be directed to CWSPs in a formulaic manner, the State is establishing base-level capabilities that will be examined by this RFP in order to direct the

selection of CWSPs. These criteria were developed by considering existing requirements for State granting and contracting pursuant to the Vermont Agency of Administration's policies. The criteria were further informed by a detailed examination of the process by which the Vermont Agency of Human Services appoints "Designated Agencies" whom serve to implement public health services in a decentralized manner, similar to the intent of Act 76. Lastly, these criteria were developed in consultation with an advisory stakeholder group, and finally, the RFP was subjected to public comment pursuant to Act 150 of 2016.

The outcome of this RFP will be the selection of entities that will serve as a CWSP for one or more planning basins in the State of Vermont (see Appendix 1 for a map and list of the 15 basins). Once selected by this RFP, CWSPs will be proposed for assignment in a new chapter of the Vermont Environmental Protection Rules, required to be promulgated by Nov. 1, 2020 under Vermont's Administrative Procedures Act. Applicants may propose to serve as a CWSP for a single planning basin, or a set of planning basins. Entities that are selected and assigned as a CWSP may, upon mutual agreement of the CWSP and State, serve as a CWSP on an interim basis in any other basin should a vacancy emerge. CWSPs shall be required to support distinct BWQCs for each basin they propose to service.

More information about Act 76, planning basins, non-regulatory projects, CWSPs and BWQCs, may be found here: <https://dec.vermont.gov/water-investment/statutes-rules-policies/act-76>

Scope of Work

DEC seeks proposals for the following:

The successful applicants will administer formula grant funded programs under 10 VSA §925, the operation and maintenance funding under 10 VSA §1389(e), and other applicable funding within Act 76 in one or more watershed basins. In collaboration with BWQCs and with technical and financial support from the State, successful applicants will have responsibility for project identification, prioritization, development/design, construction, verification, inspection, and operation and maintenance to be administered in accordance with statute, DEC rules, guidance, and grant documents. Basin specific pollution reduction values and allowable project costs to determine formula grant amounts will be developed by November, 2021 for Lake Champlain, by November, 2022 for Lake Memphremagog, and November, 2023 for all other previously listed impaired waters.

Applicants interested in serving as a Clean Water Service Provider shall submit a proposal that addresses their plan for/commitment to the following:

1) Responsibilities of a Provider: Adherence to Applicable Law, Rulemaking and Guidance

Per Act 76 of 2019, the State of Vermont's Department of Environmental Conservation shall adopt rules and develop guidance, instructing and informing clean water service providers of their responsibilities and requirements. Act 76 states that, in collaboration with the BWQC and with technical and financial support of the State, CWSPs shall be required to identify, prioritize, develop, construct, verify, inspect, operate, and maintain clean water projects in accordance with the requirements of the subchapter.

The forthcoming rules and guidance will address all areas covered by Act 76, including CWSP governance principles (such as site control, dispute resolution, procurement, payment, fiscal management, audits,

compliance with Vermont’s Open Meetings laws, non-discrimination, and decertification, among other topics), the process for project selection, project life for maintenance and operation purposes, and other requirements to implement the goals of pollution reduction through non-regulatory projects. Selected entities that agree to be CWSPs will need to comply with the final rules and guidance, as a condition of relevant grants issued under Act 76. The expected timeframe for adoption of rules is November 1, 2020.

2) Program Delivery

Applicants shall describe their plan/vision for how they will implement the requirements and responsibilities of being a CWSP in the basin or basins for which they are applying. While most of these concepts will be addressed by the rule and guidance that is issued by the State, at a minimum, the plan should address non-regulatory project identification, prioritization, selection, maintenance, reporting, and governance, including staffing, project tracking, subgrantee selection and payment. While many of these efforts will be done in cooperation with the BWQC and with technical and financial assistance from the State, applicants should focus on demonstrating knowledge of key concepts, a vision for implementation, and presenting a feasible plan that is efficient and effective. Program delivery might include sub-granting or sub-contracting CWSP work to eligible entities.

3) Basin Water Quality Councils

Act 76 says that a CWSP designated under the Act shall establish a BWQC for each basin in which a CWSP operates. Successful applicants will be expected to develop their BWQC in accordance applicable statute, rules and guidance. BWQC should have sufficient technical ability and diversity to provide this service as required by law.

A CWSP applicant is encouraged to conduct outreach to potential BWQC members and may apply as a full entity. By statute, a BWQC includes a minimum of two persons representing of the natural resource conservation districts in that basin; two persons representing regional planning commissions in that basin; two persons representing local watershed organizations; one representative for an applicable statewide land conservation organization; and two persons representing municipalities from that basin.

4) Payment

Program delivery costs including those costs incurred by subcontractors and subgrantees cannot collectively exceed 15% of the formula grant, per 10 VSA §925. It is expected, but not certain, that there will be a ‘start-up’ grant for assigned CWSPs under this RFP. It is unclear at this time whether start-up funds would also be available to new CWSPs selected in the future. Payment for project implementation for phosphorus reduction projects will follow a formula, based on the number of pounds of phosphorus the project is designed to capture. Payment for operations and maintenance will follow a separate schedule that will be established in the forthcoming rule/guidance.

See Deliverables Table in **Deadlines and Content of Proposals** section for all deliverables that must be included in the proposal.

Funding and Method of Payment

No funding is to be directly available under this RFP. However, entities identified and assigned by rule as a CWSP will have access to funding from the Clean Water Fund to initiate operations and work with the Agency in the development of relevant aspects Act 76. Funding availability is of course subject to recommendations from the Clean Water Board and Governor, as appropriated by the General Assembly.

Project Timeline

CWSPs service will be governed by the forthcoming CWSP rulemaking and guidance document. The ongoing service of a CWSP will be subject to periodic reviews, to be established in the forthcoming rulemaking. Consistent with the Agency of Human Services Designated Agency model, it is anticipated that CWSPs selected under this RFP may be eligible to serve until such time as they elect to stop serving, or circumstances require selection of a different CWSP. Specific deliverable deadlines and payments will be established by rule and guidance and incorporated into grants to be issued to CWSPs.

Procurement

Awardees will be expected to maintain written procedures for procurement transactions. Any equipment, supplies, and/or services procured outside of an awardee's organization will need to be obtained per the awardee's procurement or purchasing policy.

Deadlines and Content of Proposals

Questions: All questions are required to be submitted electronically via email to Chris Rottler at chris.rottler@vermont.gov by **March xx, 2020 at 12:00 pm (noon) EDT** using the subject line "CWSP RFP Questions."

Submittal: All proposals must be submitted electronically via email to Chris Rottler by **April xx, 2020, at 4:00 pm EDST** using the subject line "CWSP RFP Proposal."

Bid opening: Proposals are anticipated to be opened **April xx, at 9:00 am EDST**.

Notification: Proposal preliminarily accepted by the State are anticipated to be notified no later than **April or May xx, 2020**.

All proposals must include the following information:

- a) Proposals must clearly address each of the selection criteria identified in this RFP below.
- b) Proposals must identify the basin or basins for which the applicant is seeking to serve as a CWSP.
- c) A detailed scope of work, no more than 10 pages in length, describing how the deliverables will be met.

The plan shall include at a minimum:

A proposal for how the entity will implement the items listed in the Scope of Work section, above, including how the applicant will identify, prioritize, develop, construct, verify, inspect, operate, and maintain clean water projects

A description of support systems – IT/project tracking, and a statement committing to use DEC-developed IT solutions for reporting

A description of current and proposed staffing and partnerships for CWSP work/projects

A description of current, or proposed operating policies, including internal controls, personnel, procurement, accounts payable, accounts receivable, fixed assets,

reconciliation, governing board oversight (for corporate/corporate non-profit entities), records, and payroll.

Identify existing or planned staffing, experience with facilitation, consensus building, water quality projects, project management.

- d) Information showing that the applicant is solvent, liquid, and not overly leveraged, including financial statements for the last three years of operations (audited, if available).
- e) Letters of reference/support from at least three entities eligible to serve as a member of the basin's BWQC. Letters from a diversity of entities are encouraged. References/letters from other entities, such as from municipalities, or important water quality organizations not named in Act 76 as statutory parties to the BWQC may also be submitted.
- f) A statement identifying individuals who were involved in the preparation of the proposal as well as a single point of contact.
- g) A detailed description of the organization's experience with grant management and project staff qualifications and experience. This can include resumes, reports, and descriptions of expertise.
- h) A detailed description of the organization's experience with project management and project staff qualifications and experience. This can include resumes, reports, and descriptions of expertise.
- i) A detailed description of the organization's experience with water quality projects, including non-regulatory project implementation.
- j) A certificate of insurance, indicating that the entity or entities have met the insurance requirements listed in Attachment C. Professional liability insurance may be required for CWSPs or their subcontractors/subgrantees; proof of professional liability coverage is not required at this time.
- k) A completed Certification of Good Standing (Appendix 2, see attached).
- l) A completed Risk Assessment Questionnaire (Appendix 3, see attached).



Selection Criteria

Proposals will be reviewed and evaluated by three or more DEC staff members. Applications will be reviewed on a basin by basin basis; applicants will only be evaluated against other applicants for the same basin. Selection will be based on the following criteria:

- **35 points – Operations Plan/Vision**
 - Scope of work, per the requirements in this RFP
 - Support systems – IT/project tracking
 - Identify existing operating policies or plan for developing same
 - Identify existing or planned staffing, including their experience with meeting facilitation, consensus building, water quality projects, and project management, as appropriate.
- **15 points -- Experience in/Plan for Grant Management**
 - Procurement, contracting and disbursement/management of subgrants or subcontracts
 - Management of received grants and contracts, and experience with implementation as well as financial performance reporting
- **15 points – Experience in/Plan for Project Management**
 - Facilitating and organizing meetings
 - Strong financial management experience
 - Project accounting and reporting
- **15 points – Technical Capacity**

- Ability to ensure quality control over projects or subcontract/subgrant to do same
- Ability to ensure development, implementation, operation and maintenance of water quality projects or subcontract/subaward to do same.

- **20 points – Letters of Reference/Support, including from potential BWQC members**

Should there be a need in any given basin, a CWSP from a different basin will be eligible to implement projects in that other basin, as determined by the State. Factors that the State will consider in selecting the backup CWSP include geographic location, fiscal condition of the CWSP, familiarity of the CWSP with the other basin, past service of the CWSP in their own basin, and capacity.

Applicants may be asked to interview with the selection team as a part of the selection process. If this occurs, questions will be provided ahead of time. The decision to interview applicants will be made on a basin by basin basis.

Eligibility

Successful applicants shall at a minimum, demonstrate that they are solvent, sufficiently liquid, and not overly leveraged. Applicants shall provide applicable financial statements, including a: Profit/Loss Sheet, Balance Sheet, and a Form 990. Audited financial statements are preferred, if available.

A current Vermont state employee responding to this RFP as a sole proprietor or owner of other form of business must obtain a waiver from the Vermont Department of Human Resources prior to entering into contract with the State.

Reservation of State’s Rights

The State reserves the right:

- to accept or reject any and all bids, in whole or in part, with or without cause in the best interest of the State;
- waive technicalities in submissions; (A technicality is a minor deviation from the requirements of an RFP that does not impact the substantive terms of the bid/RFP and can be considered without a material impact on the RFP process, etc.). If uncertain of whether a condition qualifies as a technicality, consult with the OPC or AGO for clarification. For example, a late bid is NOT considered a technicality;
- to make purchases outside of the awarded contracts where it is deemed in the best interest of the State; and
- to obtain clarification or additional information.

Insurance

Respondents to this RFP should be aware that they will need to agree to the State of Vermont Customary Contract Provisions (Attachment C) in order to execute an agreement for this project.

Special care should be paid to Workers’ Compensation coverage for out-of-state Vendors. Vermont statute requires insurance carriers be specifically licensed to write Workers’ Compensation coverage in Vermont. Out-of-state Vendors may have Workers’ Compensation coverage valid in their home state, but their carrier may not be licensed to cover workers’ compensation for work actually performed by their employees in Vermont.

Confidentiality

After conclusion of the contracting process, Proposals are a matter of public record. If an application includes material considered by the applicant to be proprietary and confidential under 1 V.S.A., Chapter 5, the application shall clearly designate the material as such and explain why such material should be considered confidential. The Vendor must identify each page or section of the Proposal that it believes is proprietary and confidential with sufficient grounds to justify each exemption from release, including the prospective harm to the competitive position of the applicant if the identified material were to be released.

Under no circumstances shall the entire Proposal be designated as proprietary or confidential. If the Vendor marks portions of the Proposal confidential, the Vendor shall provide a redacted version of the Proposal for release to the public. Notwithstanding the above, the Secretary has an independent obligation under Vermont law to determine whether any proposal material is subject to public inspection and copying upon request, which may include material that has otherwise been designated as proprietary and confidential by the Vendor. The Vendor's designation of material as proprietary and confidential, and submission of a redacted Proposal, are provided to the Secretary for informational purposes in the event the Agency receives a public records request and will not result in withholding of materials by the Secretary unless expressly supported by Vermont law.

Attachments

- SFA – Standard Grant Agreement (template)
- Attachment C – Standard State Provisions for Contracts and Grants, Revised December 15, 2017
- Appendix 1 – Map of Vermont Watershed Planning Basins
- Appendix 2 - Act 154 Good Standing Certification
- Appendix 3 – Risk Assessment Questionnaire

Appendix 1 Vermont Watershed Planning Basins

