

**Vermont Department of Environmental Conservation  
Agency of Natural Resources  
Responsiveness Summary to Stakeholder Comments Regarding:**

**Clean Water Service Provider selection RFP**

As part of the Department of Environmental Conservation's (Department, or DEC) activities to implement the Clean Water Service Delivery Act of 2019 (Act 76), a draft Request for Proposals aimed at soliciting proposals for Clean Water Service Providers (CWSPs) was publicly noticed as a Request for Comment. The comment period ran from January 3 to January 24, 2020. The Department received written comment from nine organizations, all of which are posted to the DEC's Act 76 webpage, here: <https://dec.vermont.gov/water-investment/statuses-rules-policies/act-76>.

This Responsiveness Summary addresses comments made by the Act 76 Advisory Group members and other stakeholders during the Act 76 Clean Water Service Provider RFP public comment period. Some of those comments addressed common themes and issues and are summarized below, which include the following points:

1. Comment: Consider reframing the RFP for only the Lake Champlain and Lake Memphremagog basins at this time.  
Response: The Department has elected to issue the RFP only for these basins at this time.

2. Comment: Expand available time to respond. 90 to 120 days has been proposed by certain commenters in lieu of 60 days.  
Response: The Department has elected to extend the initial envisioned timeframe to approximately 90 days. DEC is concerned that allowing 120 days would compromise our ability to meet statutory deadlines for rulemaking. Furthermore, pressures imposed upon non-Champlain/Memphremagog stakeholders are alleviated in light of the reduction in geographic scope.

3. Comment: Revise the RFP to eliminate any inference that CWSPs would be more competitive than other organizations for non-formula grants.  
Response: This has been addressed in the draft RFP.

4. Comment: Clarify roles and responsibilities of CWSP vs BWQC.  
Response: the RFP has been further clarified in this regard. In each instance, the Department has relied on our interpretation of statutory language or used the statutory language verbatim. A comprehensive Q+A indicating DEC's interpretation of roles and responsibilities for CWSPs and BWQCs is at the Act 76 webpage. Further clarification around roles and responsibilities will be developed in the guidance materials.

5. Comment: Clarification is needed regarding term(s) of service. Multiple commenters expressed concern with the long-term assignment of CWSPs without a periodic review

and solicitation of new prospective organizations. Related comments address the Department's role in ensuring satisfactory annual and full-term progress.

Response: The Department modified this section of the RFP language to provide more clarity on statutory requirements for determination of adequate progress and outcomes should progress be less than satisfactory.

6. Comment: Include a request for a statement of qualification relative to *each* basin a CWSP is considering servicing.

Response: This has been done in the RFP, but also note the item below pertaining to interim assignments.

7. Comment: Certain example organizations identified in the draft RFP as non-statutory partners are in fact statutory partners.

Response: Duly noted. The RFP has been modified.

8. Comment: Provide more clarity on usage and eligibility of the 15% administrative costs, including alignment with current Ecosystem Restoration Program eligibilities.

Response: Additional clarity has been provided.

9. Comment: The RFP still needs some sort of statement regarding liability and related issues, e.g. "While the ANR Secretary will not assess legal or financial penalties on CWSPs that fail to meet target pollutant reductions, the Secretary may establish new requirements, benchmarks, conditions, or contract penalty provisions on the CWSP to provide for ongoing accountability."

Response: As newly introduced into the RFP, Act 76 §924(f) addresses the liability of CWSPs with respect to making adequate progress towards targets.

#### Questions posed by commenters that raise issues, concerns, or policy topics beyond the draft RFP:

1. Comment: Have the RFP recognize that applicants for CWSP appointment do so voluntarily and that if an applicant is selected, they may not agree to that commitment until they have seen the final Rules and Guidance.

Response: Duly noted. The Department notes that the statement in the Funding and Method of Payment section on page 4 specifically outlines the sequence of RFP outcome, assignment by rule, then availability of funding. No entity will be assigned in the rule against their will.

2. Comment: The procurement section is written to mirror the SFA – Standard Grant Agreement incorporated as part of the RFP, that procurement will follow the awardee's procurement policy. This may result in different procurement policies being followed in each basin. Is there an intent to provide statewide standards or guidelines for awardees?

Response: As part of the developing guidance, DEC is considering developing best practices for procurement. The SFA – Standard Grant Agreement is attached to the RFP as a matter of custom, to provide general notice for what is contained in this template. The actual formula grant document may differ from the one attached to the RFP.

3. Comment: Given that CWSPs are responsible for construction, verification, inspection and operation and maintenance for these projects, CCRPC recommends that the RFP (or future DEC rules or guidance) make clear that a CWSP shall have the ability to obtain certifications of completion or maintenance from appropriate designated third parties, such as a professional engineer, as needed.

Response: Duly noted. This is a very good topic for inclusion into the guidance to CWSPs.

4. Comment: Concern was articulated by certain commenters that 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, owing to that CWSPs lack of basin specific knowledge.

Response: Beyond the response to item 6, above, the Department does not view this as a major concern since by definition, it is the BWQC that is to bring the strongest local knowledge, and holds the authority to exercise decision-making over projects and priority impairments in accordance with the tactical basin plan.

5. Comment: Can you provide more details on payments for projects? Will advances on approved formula grants be provided? Can you provide more details on payments for operations and maintenance? Will advances be provided towards the planned grants?

Response: The Department will be considering these topics as part of the development of the guidance along with the Act 76 Advisory Committee.

6. Comment: One of the biggest challenges for potential CWSPs is whether or not the 15% cap for these costs will cover the incurred expenses. For larger grants, 15% of the implementation cost is adequate but for smaller projects costing under \$20,000, this can be a challenge given required processes to be followed, oversight responsibilities, record keeping, etc. Will DEC allow program delivery funds to be pooled? Or can a base amount of say, \$1,000 be provided for projects under \$20,000 and then a 15% cap added on top of that?

Response: With respect to administrative costs, the present allowable uses are listed in the Clean Water Initiative Program granting policy. The Department does not intend to provide a “premium” for small projects. Similar to a consulting model, it is anticipated the implementor, whether the CWSP or another organization, will develop loaded rates for the delivery of a project that reflect the full cost of an hour of staff time (e.g., wages, benefits, overhead) in executing projects and that reasonable staff costs will be part of the overall project budget. This is an active topic of discussion among the Act 76 advisory group, and is addressed in the aforementioned “Q+A.”

7. Comment: The RFP should clearly state that all project funding decisions will go through the BWQC. If a CWSP is interested in developing and implementing projects, these CWSP-sponsored projects must go through the same review process as projects from other implementing entities. This clarification is consistent with the Act 76 BWQC language (...) and will ensure that all projects have the same level of review and screening. This clarification is critical for good governance and oversight and will help create a level playing field for all project implementers.

Response: The Department agrees that decision-making regarding funding of formula-grant supported projects implemented by the CWSP is subject to BWQC approval. Beyond this distinction, the Department considers this statement to be overly broad and three examples are provided. First, project-specific funding decisions may be made by implementors tasked to execute a project, and these decisions should not necessarily be made subject to BWQC approval. Also, independent competitive funding obtained by the CWSPs for independent water quality purposes by their host organization would not be on the table for BWQC approval. Lastly, good governance would suggest that the BWQC be made aware of independent funding applications filed by any BWQC member for water quality projects in their basin.

8. Comment: Provide clarity in the RFP on the manner in which funds will be provided for O+M.

Response: This will be part and parcel of the ultimate formula funding agreement provided to the CWSP.

9. Comment: Consider providing for advance payments for high-cost projects.

Response: This will be part and parcel of the ultimate formula funding agreement provided to the CWSP. The Department is open to developing approaches for forward funding to ensure that CWSPs are sufficiently resourced to oversee development of projects of any reasonable size.

10. Comment: Include in the RFP an indication of the rulemaking timeline.

Response: The timeline is posted in the Act 76 resources webpage which is pointed to in the RFP introduction.

11. Comment: With respect to scoring criteria, all RFP sections should carry equal weight in the review process. As currently written, a successful operations plan carries more weight than the two sections on experience combined. Weighing all sections equally will allow for more creative plans, while also valuing technical and program experience described in applications.

Response: The Department has considered this proposal and is electing to retain the scoring algorithm as is. The operations plan and vision are vitally important, and yet only accounts 35% of the total points.