

PENNVEST CLEAN WATER PROCUREMENT **PROGRAM GUIDANCE**

PROGRAM DESCRIPTION, GOALS AND INTENT

The Pennsylvania General Assembly in its 1988 session passed the Pennsylvania Infrastructure Investment Authority Act (March 1, 1988, P.L. 82, No. 16), which was subsequently amended in 1992 (December 18, 1992, P.L. 1137, No. 149), 2005 (July 14, P.L. 299, No. 51) and 2013 (June 19 P.L.51, No. 16) all of which is codified at 35 P.S. Section 751.1 *et. seq.* (the “Act”). The Act, among other things, created the Pennsylvania Infrastructure Investment Authority (“PENNVEST”) and authorized PENNVEST to establish revolving funds and accounts to administer its programs.

Pursuant to the Act, PENNVEST created the Clean Water State Revolving Fund (“CWSRF”) to administer the federal program and funds received under capitalization grants authorized by Section 601 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1381 to fund wastewater projects and to fund projects that control nonpoint source pollution outlined in Section 319 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1329. Thereafter, in 1996 PENNVEST created the Drinking Water State Revolving Fund (“DWSRF”) to administer the federal program and funds received under capitalization grants pursuant to Section 1452 of the Safe Drinking Water Act Amendments of 1996 (August 6, 1996, P.L. 104-182) to fund drinking water projects through public drinking water supply systems. The Act also authorized PENNVEST to create a revolving loan program pursuant to 35 P.S. Section 751.5(c)(2) to fund water, wastewater, stormwater and nonpoint source projects using the seed money appropriated to PENNVEST for such purposes by the Commonwealth of Pennsylvania (the “Commonwealth”), investment earnings, bond proceeds and loan repayments.

On July 11, 2022, Act 54 of 2022 (July 11, 2022, P.L. 40, No. 54) (“Act 54”) was signed into law by Governor Wolf amending the Pennsylvania Fiscal Code, and providing for the implementation of the Commonwealth’s 2022-2023 budget, among other things. Under Section 1603-S of Act 54, PENNVEST was directed to establish the Clean Water Procurement Program to provide for the purchase of verified nutrient or sediment reduction through a competitive bidding process consistent with 62 Pa.C.S. Pt. I (relating to Commonwealth Procurement Code) (the “PENNVEST Clean Water Procurement Program”).

PROGRAM LONG TERM OBJECTIVES AND BENEFITS

The long term objective of the PENNVEST Clean Water Procurement Program is to improve water quality in the Commonwealth through the purchase of verified nutrient (nitrogen/phosphorus) or sediment reduction resulting from the installation of practices or combinations of practices determined to be effective and practical to manage nutrient and sediment to protect surface water and groundwater (“Best Management Practices”), as further defined under Act 54, with the goal of helping the Commonwealth to achieve the most current total maximum daily load limits for nitrogen, phosphorus and sediment as established by the United States Environmental Protection Agency (the “Chesapeake Bay TMDL”), as further defined under Act 54.

FUNDING AVAILABILITY

Funds available under the PENNVEST Clean Water Procurement Program include funds appropriated to PENNVEST for the purpose of the program, amounts made available from the Clean Streams Fund under Section 1712-A.2(c)(2), federal money appropriated to or authorized for the purposes of the program, money received from another governmental agency through an interagency agreement or memorandum of understanding, a gift or other contribution from a public or private source, or returns on money dedicated to the program, including interest on loans, investment interest or refunds. In 2022, the Commonwealth appropriated \$22,000,000 for the PENNVEST Clean Water Procurement Program.

QUALIFIED BIDDERS

Pursuant to Act 54, qualified bidders include persons, or persons or entities that facilitate or coordinate the implementation of Best Management Practices for nutrient or sediment reduction (“Aggregator”), as further defined under Act 54, provided that the person or Aggregator:

- 1) Has a written plan that details the method to be used to verify performance of the Best Management Practice for nutrient or sediment reduction (“Verification Plan”), as further defined under Act 54, which has been approved by the Pennsylvania Department of Environmental Protection (“DEP”);
- 2) Is not listed on the Debarment and Suspension List maintained by the Pennsylvania Department of General Services;
- 3) Is not in default of a loan or funding agreement administered by PENNVEST or any other Commonwealth agency; and
- 4) Does not have a history of notice of violation of the Act of June 22, 1937 (P.L. 1987, No.394), known as the Clean Streams Law or DEP regulations, including but not limited to, any unresolved violations or current Consent Order and Agreements, Administrative Orders or Field Orders.

ELIGIBLE PROJECTS

Eligible projects include Best Management Practices that can be quantified using the [Chesapeake Bay Nutrient Tracking Tool \(CBNTT\)](#) found on the [PA DEP Nutrient Trading Program](#) website unless such Best Management Practices are otherwise excluded under the Ineligible Projects Section set forth below.

INELIGIBLE PROJECTS

A verified nutrient or sediment reduction funded entirely by a local, state or federal public funding source shall not be eligible to be purchased under the PENNVEST Clean Water Procurement Program. If a percentage of a verified nutrient or sediment reduction has been funded by a local, state or federal public funding source, the remaining percentage of verified nutrient or sediment reduction is eligible to be purchased under the program.

Verified nutrient or sediment reduction resulting from annual Best Management Practices that have been implemented prior to October 1, 2023 shall not be eligible to be purchased under the PENNVEST Clean Water Procurement Program. Likewise, the export of manure to meet regulatory requirements of Act 38 of 2005 (also known as the Nutrient Management Act) for Concentrated Animal Operation (CAO) and/or National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) permitting requirements shall not be eligible to be purchased under the PENNVEST Clean Water Procurement Program.

Verified nutrient reduction that is sold or traded as part of DEP's Nutrient Trading Program shall not be eligible to be purchased under the PENNVEST Clean Water Procurement Program. Conversely, a verified nutrient reduction that is purchased under the PENNVEST Clean Water Procurement Program shall not be eligible for DEP's Nutrient Trading Program.

SUBMITTAL PROCEDURE

Qualified Bidders must provide a detailed submittal that outlines, pursuant to the criteria set forth below, the pertinent information that will enable PENNVEST to consider the submittal without additional input regarding the proposed reduction. Submittals shall include the following:

- 1) The legal name, address and contact information, including, a telephone number and email address of the person providing the submittal;
- 2) A description of the project or practices to be used or implemented to achieve the proposed nutrient or sediment reduction, including an estimate of the amount of reduction in pounds per year for each year of the expected contract and the basis for estimates;
- 3) The location where the projects or practices will be used or implemented. This includes the physical address and latitude/longitude of the project(s) or practice(s);
- 4) The expected life of each reduction that will be achieved as a result of the proposed project(s) or practice(s);
- 5) A description of the ownership, or written agreement with the owner, of each parcel of land or facility that will be used in implementing the projects or practices;
- 6) A description of the measures to be used to quantify, by measurement or modeling, the amounts of the reduction of nutrients or sediment resulting from the proposed projects or practices, and a verification plan to verify the reduction annually in accordance with the applicable water year, as defined by DEP under Pennsylvania's BMP Verification Program;
- 7) A detailed breakdown of the cost per pound of nutrient reduction or sediment to be removed by the Best Management Practice. This cost breakdown shall demonstrate the cost per pound of nitrogen, phosphorous, and sediment, as applicable;
- 8) Detailed information regarding the extent the project impacts a locally impaired watershed (as defined under Act 54 of 2022. July 11, 2022, P.L. 40, No. 54), a Tier 1 Chesapeake Bay county, or small farms (as defined under Act 54 of 2022. July 11, 2022, P.L. 40, No. 54);
- 9) Any additional information regarding the impact of the Best Management Practice to provide additional community and environmental benefits, including, but not limited to, flood mitigation, toxic substance exposure reduction, or climate change impacts;
- 10) A suggested payment schedule;
- 11) A statement of the qualified bidder's capability, experience and resources; and
- 12) A statement of the qualified bidder's proposed surety and other financial assurances.

All submittals will be received electronically through the PENNVEST Website for the PENNVEST Clean Water Procurement Program at www.pennvest.pa.gov.

RANKING CRITERIA

PENNVEST will only consider those submittals from qualified bidders where the operational and financial capacity of the qualified bidder is deemed sufficient to ensure the timely implementation of Best Management Practices and delivery of the nutrient and sediment reduction (“Technically Qualified Submittals”).

All Technically Qualified Submittals will be reviewed in accordance with the following criteria and may be awarded ranking points up to the point totals provided based on the strength of the submission in each category:

- 1) Dollar cost per pound of nutrient or sediment removed:

Maximum Available Points – 40 points	
Lowest cost per pound of nitrogen removed by all bidders	40 points
2 nd lowest cost per pound of nitrogen removed by all bidders	35 points
3 rd lowest cost per pound of nitrogen removed by all bidders	30 points
4 th lowest cost per pound of nitrogen removed by all bidders	25 points
5 th lowest cost per pound of nitrogen removed by all bidders	20 points
6 th lowest cost per pound of nitrogen removed by all bidders	15 points
Remaining bidders	10 points

- 2) Quantity of nutrient or sediment loads reduced annually:

Maximum Available Points – 25 points	
More than 10,000 pounds of nitrogen reduced	25 points
More than 5,000 pounds of nitrogen reduced but less than 10,000	20 points
Less than 5,000 pounds of nitrogen reduced	10 points

- 3) Extent to which the project includes small farms (farms that are not a CAFO):

Maximum Available Points – 10 points	
More than 10 small farms	10 points
More than 5 small farms but less than 10 small farms	5 points
Less than 5 small farms	3 points

- 4) Verified nutrient/sediment reduction in a Tiered County:

Maximum Available Points – 10 points	
Tier 1 County	10 points
Tier 2 County	6 points
Tier 3 County	4 points
Tier 4 County	2 points

- 5) Verified nutrient/sediment reduction in a local agriculturally-impaired watershed¹ - Maximum Available Points – 10 points,
- 6) Fiscal/managerial viability of entity - Maximum Available Points - 3 points, and
- 7) Additional community/environmental benefits – Maximum Available Points – 2 points.

In order to achieve the maximum impact to the Commonwealth’s water quality and the achievement of the Commonwealth’s Chesapeake Bay TDML, available funding will be distributed first to the highest-ranked Technically Qualified Submittals which include new Best Management Practices. Any remaining funds will be distributed to the highest-ranked Technically Qualified Submittals which include existing Best Management Practices until available funds have been exhausted.

FINANCING TERMS

Any successful bidder will be required to enter into a nutrient and sediment reduction purchase agreement with PENNVEST (“Purchase Agreement”). Payment under the Purchase Agreement shall be conditioned upon the successful bidder’s compliance with the terms and conditions of the contract, including but not limited to, the successful bidder achieving all performance targets set forth in the Verification Plan and the submission of evidence of the same to PENNVEST, and compliance with all terms and conditions associated with funds appropriated to or authorized for the purposes of the program, including all reporting requirements associated therewith.

Purchase Agreements resulting from the initial appropriation of funds to the PENNVEST Clean Water Procurement Program, in the amount of \$22,000,000, shall be subject to a term not to exceed December 31, 2026. The term of Purchase Agreements associated with subsequent funding may not exceed ten (10) years.

¹ Local agriculturally-impaired watersheds are not to be larger than a watershed corresponding to a 12-digit Hydrologic Unit Code.