

**RESPONSES OF THE SUSQUEHANNA RIVER BASIN COMMISSION TO THE
QUESTIONS FOR RFP NO. 2023-002 (REVISED 11/17/23)**

Please note that the answers to Questions 6, 19 and 21 were modified from the originally posted answers and that those revisions entirely supersede the prior response.

1. Would FieldDoc be a valid tool to estimate reductions?

No. CAST is the only acceptable estimation/verification tool.

2. Will the full amount of SRBC's funding obligation to the projects be escrowed at award? Or will MD or PA backstop SRBC's deferred funding liabilities?

First, projects will not be authorized to proceed until the full funding for the project in question has been transmitted from Maryland to the SRBC to ensure it is available for payment in accordance with the terms of the Pay-for-Success Contract.

Second, there is no backstopping by the states; the full amount for a given contract will be provided to the SRBC at the outset of the project and will be held in the SRBC's designated account for the length of the project to pay for the verified environmental outcomes under each approved Pay-for-Success Contract.

3. Is there a maximum or minimum award amounts?

There is an overall maximum to the funding provided for all projects that has been funded by the state of Maryland. There are currently no maximum and minimum constraints for award amounts to individual projects.

4. Based on the CAST submittal approach, to be clear, one application with multiple sites and BMPs can be submitted? That is how I heard it.

Yes, the submission of one application proposing multiple projects at multiple sites is allowed.

5. Do the MD sites receive 30 total points, the Deer Creek/Octoraro/Conowingo receive total of 20 points and other mapped priority receive 10 points?

These values are correct for the portion of points assigned based on location of the project. The framework for assigning total point values, including on the basis of cost, is provided in the RFP.

6. Can state or federal funds be used for implementation ?

Federal or state funds can be used in combination with CWIP funding in certain cases provided the nutrient reductions are available to credit towards Maryland's CWIP obligations. However, Maryland CWIP funding cannot be used solely to purchase nutrient reductions for projects that are completed using other state or federal funds.

7. If we have multiple sites, but want some considered in smaller bundles or independently AND others bundled would we need to submit multiple proposals or is only one proposal allowed or some other limitation?

As explained in the answer to question number four (4) above, the submission of one application proposing multiple projects is acceptable. Submitting multiple applications for separate evaluation is also permitted. It is critical to distinguish individual applications from one another in instances where multiple applications are submitted by the same entity, especially if they propose projects within close geographical proximity. The application format allows for only one cost value to be assigned to the proposed reductions for a given project, so if, for example, two project sites are projected to produce widely different values, the applicant may wish to submit separate applications.

8. Is there a secondary application timeframe for the potential \$15mil remaining?

The Commission plans a second round of applications to use the remaining funding from this program to be released in 2024.

9. Are previously constructed projects eligible?

Generally, a previously constructed project would not be eligible for funding under this RFP. However, a project that is currently in a design phase or is currently being constructed but not yet complete may be eligible provided the nutrient reductions associated with the project are available for purchase and use toward Maryland's Conowingo WIP load reduction, and are not already claimed as part of a Bay state WIP.

10. Time line for submittal is tight. Any chance to extend the deadline?

Given the requests for more time and to encourage the greatest number of high quality applications, the RFP submittal timeline is hereby extended to **4 p.m. January 22, 2024**.

11. If projects exceed CAST outcome through verification will SRBC purchase the credits?

No commitment has been made to purchase verified reductions produced above the amount proposed by a given project. However, there is no penalty for failing to produce the number of verified reductions projected, so it is advisable for applicants to propose the best possible outcome with respect to predicted reductions, within reason. If the offeror generates excess verified reductions that the Commission does not buy, the offeror is free to sell the excess pounds reduced to other entities.

12. Are BMP projects that are being done as part of a (PA) Chesapeake Bay Pollution Reduction Plan eligible for funding?

Only projects with nutrient reductions available for purchase and use toward Maryland's Conowingo WIP load reduction are eligible. If nutrient reductions are already claimed by a Bay state WIP, they are not eligible for funding.

13. If there are multiple parcels and multiple BMPs included in the application, can we request reimbursement upon completion and verification of an individual parcel/BMP or must we wait for the full scope of all the proposed projects for reimbursement?

Reimbursement will occur upon completion of the project in accordance with the terms of the Pay-for-Success Contract. Payment would occur when verified reductions are presented to the Commission on an annual basis. Verified reductions may be presented individually for multiple parcels and BMPs consistent with the terms of the Contract. Please also see previous responses to questions as to how an applicant may split up their projects given their consideration of costs, geography, or other factors.

14. Are all Conowingo WIP priority BMPs eligible for this RFP funding, specifically Soil and Water Conservation plans with their related nitrogen reductions? Can a comprehensive nutrient management plan count as a Soil and Water Conservation Plan?

Any BMPs that can be modeled using CAST are eligible for funding. The application instructions provide links to resources to determine eligible BMPs.

15. Do you have a list of 3rd parties who could complete verification? Could SRBC and/or MDE staff complete project verifications?

The SRBC staff will review the verification plan provided, but will not complete the verification for projects. Given the wide range of BMPs available to applicants for implementation, it is expected the applicant produce a verification plan that adheres to the accepted methodology the Bay states utilize for verification of BMPs for their own state WIPs. To the extent a practice does not have requirements for verification/inspections to occur by an agency or permittee (i.e. MS4), the applicant must hire a qualified consultant or non-profit organization to conduct the verification. The Commission recognizes that many questions centered on the concept of third party verification and the Commission will continue to explore if there is any further guidance that we can provide. If the Commission provides further guidance on this issue, it will do so by November 17 and will post it on the Conowingo WIP landing page on its website.

16. Are organizations that were a project partner on both CWIP Activities 1 & 3 eligible to apply for this RFP? In reading the No Conflicts language, I wanted to be sure this didn't apply to my organization - the Chesapeake Conservancy.

Yes, an organization that was a contracted project partner with EPA on the CWIP Implementation Management Team would be eligible to apply under this RFP. This is because the specific project proposed under the RFP, while it would be under the CWIP, is a distinct activity from the development and implementation of the CWIP itself. We view the one as a planning activity, while the actions funded by the RFP are for implementation. This scenario is not what is contemplated under the conflicts provision of the Pay-for-Success Contract.

17. The CAST model does not allow for the input of stream restoration Protocol 1. Can this information be included as an attachment? Please confirm if the delivery factor from CAST for the stream segment should be applied to the final nutrient reduction numbers.

Protocol 1 can be entered in CAST. For approved BMPs able to be modeled using CAST, any supplemental information needed to support the modeled reductions should be uploaded at the end of the “Project Details” section of the application where it allows for additional supporting information. For help with calculating certain stream protocols, please visit <https://cast.chesapeakebay.net/streamcalculator>. The application instructions for the CAST scenario runs specifies determining “Edge of Tide” nitrogen loads to be calculated, which incorporates the delivery factor.

18. Does SRBC provide 3rd party verification of nutrient reductions, or is it the responsibility of contract holder to use a sub consultant? Please verify to what level 3rd party must be involved (i.e., collect data, review only).

The SRBC staff will review the verification plan provided, but will not complete them in the first instance for the projects. It is the responsibility of the applicant to contract for these services and insure the proper methods are used given the BMPs implemented.

19. We have secured a National Fish and Wildlife Foundation (NFWF) Grant that was designed to support a pay for success model, which would be a great fit for this grant with SRBC. Although it is a NFWF grant the funds are coming from EPA. We were wondering if we can use this grant to implement the projects that would be included in the application for the SRBC grant?

This would depend on specific facts of the grant, its purposes and limitations. If the funding source provides relevant limitations or is being used to fund a nutrient-based water quality improvement project, then the applicant could only receive a pro-rated share of the nutrient reduction. If the other funding covers a project that is not focused on nutrient-based water quality improvements (e.g. carbon capture project) where there is a co-benefit of reduced nutrients, then those reductions may be fully available as long as those provided by the project are able to be claimed as credit as part of Maryland’s CWIP obligations. Please also refer to the response to question 6.

20. A third-party verification was noted as necessary during the preproposal meeting. Is the third party to be hired by the applicant as part of the total project costs or will verification be handled through SRBC or some other entity? If the applicant is hiring, the third-party results will go to the applicant, then to SRBC making it not really be a third party. Is this the intended outcome of the third-party verification?

See responses to #15 and #18.

21. Would SRBC be receptive to proposed alternative payment milestones?

The design of the RFP and Pay-for-Success Contract would provide annual payments being made for verified nitrogen reductions achieved during that year. Your pricing and payment schedule in the proposal **must** conform to this method.

22. Would you please clarify the payment schedule for successful stream and outfall project responses? Based on the expert panel reports for Stream and Outfall Protocols 1,2,3 and 5 the

payment schedule would be 50% of the cost paid following as-built project completion with the remaining 50% being paid following nutrient reduction verification at the Year 4 monitoring. We would like to confirm that this is the minimum payment schedule that can be assumed for this RFP.

Please refer to the answer to question 21.

23. Are Protocol 5 Outfall projects eligible as RFP responses for Pennsylvania-based sites?

Any BMPs approved by the Bay Program and able to be modeled in CAST are eligible for funding. However, applicants are responsible for determining which BMPs are appropriate to implement given the setting/location, as well as considering permitting and verification requirements.

24. Will previously constructed 404 wetland and stream mitigation projects be eligible to submit verified N reductions not previously reported for crediting as an approved response to this RFP? If approved what will be the minimum payment scheduled accepted for these submissions?

Previously constructed projects are not eligible under this RFP. See answer to question 9 for additional details.

25. Verification: the RFP states that outcomes will be, “verified using the Chesapeake Bay Program BMP verification guidance.” That Guidance appears to only require visual verification that the implemented BMP (whether a cover crop or stream channel restoration) once after the installation is complete. Will that be the standard by which proposed verification is measured against?

Section 2 c says that structural practices may only require verification once. Does that include stream and wetland restoration?

What if a BMP is required to complete longer or different verifications per other permits that must be obtained (e.g. NWP 27 for stream or wetland restoration may require multi-year monitoring and verification)?

The project must spell out the details of its verification plan in the application. This should include a description of verification that will be completed for other permits. The Commission will need an annual verification of pounds of nitrogen reduced by the project; however, this may look different for different kinds of BMPs, structural versus annual, etc. For further information on verification, see responses to #15 and #18.

26. Volume goals: Given that Maryland’s allocation for reduction is 180,000 lbs per year, will projects be evaluated on price and location only, and not by total volume of reductions generated towards the WIP goal?

The evaluation criteria are contained in the “Evaluation of Proposals” section of the of the RFP. Total volume of reductions generated toward the WIP goal is not a criterion.

27. Durability: What if any requirements are there for durability or permanence of the BMPs implemented? Will there be a minimum number of years a BMP (eg cover crops) need to remain in place?

There is no stated minimum number of years for a BMP. Cover crops may be proposed for 1 year or more. Structural BMPs should state their effective life in the application once constructed.

28. Scoring: Can you provide more clarity on how the points for location(s) affect overall scoring compared to pricing?

For example: Project A is in a cost-effective watershed in PA (10 points) and a price per pound of N of \$100. Project B is in a priority MD watershed (20pts) and has a cost per pound of N of \$110 per pound of N. Which project would be preferred?

Section B. Evaluation of Proposals includes the points that are available for each component of your proposal, and are an indication of the relative importance of each component. See the answer to question 29 for scoring of low cost.

29. Scoring: Will the “1. Lowest cost per pound of nitrogen removed and provided by an approved BAY Program BMP” scoring metric be scaled (i.e. lowest cost per pound gets full 50 points, second gets 40, etc.), or do all projects whose cost per pound “qualifies” receive the full 50 points?

The proposal with the lowest cost per pound of nitrogen will receive the maximum points (50 points). Other proposals will receive points based on how their cost per pound of nitrogen compares to the lowest cost. For example if the lowest cost per pound of nitrogen is \$50 per pound, this proposal would receive 50 points. A proposal for \$60 per pound would receive 41.67 points and a proposal for \$75 per pound would receive 33.33 points.

30. Scoring: The RRP states that a project will be rejected is the proposed nitrogen reduction credit is deemed too high. How will it be determined if a nitrogen reduction credit cost is too high – in relation to other proposals, is there a predetermined cost, other? In addition, if all proposed projects are deemed too expensive, will the SRBC reject all the proposals?

There is no predetermined cost per pound that is too high. The determination will be made by the Commission in consultation with MDE. If all proposed projects are deemed too expensive, the Commission does reserve the right to reject all proposals and reissue the request for proposals. Conversely, if all proposals are deemed to be at an acceptable cost, the Commission may award all projects subject to the limit of available total funding.

31. Payments: Can a proposer request full payment after verification or one year of operation even if it is a multiyear project?

No. A multi-year project may not receive full payment after verification of one year of operation. Please see the answer to question 21.

32. Credits: Can an applicant propose, for credit, for a practice that has already been implemented, but for which no agency is currently claiming “credit” (e.g. TMDL/nutrient, mitigation, CRP, etc.). Provided they can verify that the practice is no being “claimed”.

No, not for a practice that has been fully implemented. Please refer to the answers to questions 9 and 24.

33. Project Description: Demonstration of sufficient access for the project property will be required of any successful offeror. What form (e.g. executed lease or easement) will be required at the time of proposal submission?

At the time of proposal submission, if there is no easement, lease, or license agreement, a commitment letter from the landowner would be sufficient. Generally, an enforceable form of legal access would have to be provided by the time of contract execution. The Commission recognizes that there may be some proposals that bundle different locations for annual practices and that certain locations may drop out or new locations for a BMP practice are added. The Commission would look to be flexible for when proof of legal access can be provided in such an instance.

34. Other Funds: Does the statement under Project Description (e) require a funding match or is it informational?

This statement is seeking information regarding other funds, if applicable. There is no outside funding or match requirement provided by this statement.

35. Section B, Evaluation of Proposals, Introductory Paragraph: Is there any further definition around the phrase "project viability" that could be provided?

This phrase refers to the Commission’s evaluation of whether the proposed project based on a nitrogen reduction at a cost (per pound or total) deemed too high, where the verification of the reduction or nature of the project would be too uncertain, or there is a lack of available funding for the total project cost.

36. Please confirm the definition of “project lifecycle”. For this RFP, does project lifecycle mean the BMP lifecycle (for example a stream BMP is 20 years)? What definitive guidance or metrics define BMP lifecycle for this solicitation?

Credit durations, or the BMP lifecycle, can be found in the Quick Reference Guide for Best Management Practices (BMPs) (<https://www.chesapeakebay.net/what/publications/quick-reference-guide-for-best-management-practices-bmps>).

37. It seems that practices with the longest BMP life would be in SRBC’s best interest to satisfy the Conowingo WIP. The RFP suggests practices with lifecycles of up to 20 years will be considered. Why aren’t permanent practices considered under this RFP?

The Commission chose 20 years as a reasonable timeframe for it to administer contracts under this RFP. The Commission believe 20 years is a reasonable amount of time to allow for structural BMPs to be proposed under this RFP given the range of BMP lifespans. If a BMP

effective life is longer than 20 year, the project is free to sell verified reductions produced in year 21 and beyond to any willing buyer. It is possible that the Commission may decide to purchase reductions past year 20, but that decision would not be made by the time of contract execution.

38. Is it the intent of the commission to make equal annual payments commencing after verification over the entire life of the BMP? In the example of stream restoration, assuming a 20-year BMP life (urban stream) is it the Commissions intent to make 20 equal payments? Or would a weighted and/or shorter payment milestone schedule be acceptable?

Please see the answer to question 21.

39. The RFP suggests that practices must be monitored and maintained over the life of the specific practice selected as designated in the CAST model. For example, would this mean that maintenance and monitoring would need to take place over 20 years for an urban stream practice and 30 years for a wetland practice? Please confirm.

Each BMP may have different requirements for maintenance and monitoring, including other applicable permit requirements, to remain effective and to produce verified nutrient reductions. The Commission will only cover the first 20 years of any BMP with a life that extends past 20 years. See the answer to question 37 for further details. Each year the contractor will have to certify to the Commission the amount of verified nutrient reductions achieved during that year. This certification shall state the amount of the verified nutrient reduction achieved and supported by the appropriate third-party verification, reports or other evidence satisfactory to the Commission. The Commission expects this supporting documentation can vary depending on the type and nature of the BMP and there is flexibility in what the offeror can propose in their verification plan, especially for structural practices.

40. Is stream restoration considered as a valid method of TN reduction in the Conowingo Watershed Implementation Plan (CWIP)? And is it also considered a valid method to TN reduction under this RFP?

Any BMPs that are approved by the Chesapeake Bay Program and included in the CAST model are eligible as a method of nitrogen reduction if implemented in a manner consistent with Bay Program methods. Please see the Chesapeake Bay Program Quick Reference Guide for Best Management Practices and any supporting expert panel documentation.

41. Stream restoration is included in the Chesapeake Bay Program (CBP) Quick Reference Guide for Best Management Practices (BMPs). Part A-9 of the CBP Quick Reference Guide for BMPs, Stream Restoration (Ag), only lists Protocols 1-3 . Is Protocol 5 credit acceptable under this RFP regardless of the categorization of the stream as urban or non-urban? If so, is credit duration 10 years? It is understood that Pennsylvania does not recognize Protocol 5 credit, but Maryland does.

Please see the Chesapeake Bay Program Quick Reference Guide for Best Management Practices, specifically the sections that address urban stream restoration, as well as supporting expert panel documentation.

42. CBP defines “urban” in relation to stream restoration projects as being in a subwatershed with >5% impervious cover. Please define “subwatershed”.

Absent more context to the question, this RFP relies on existing Chesapeake Bay Program standards/protocols, and it does not redefine how a jurisdiction defines or determines the appropriate sector for an implemented practice.

43. Can the successful bidder self-certify the credit verification? If not who would represent a qualified “third party” verifier?

See responses to #15 and #18.

44. Without black and white verification and project acceptance criteria the successful offeror could expend the full project budget implementing practices and generating credits without a definitive means of recovering costs. In Maryland TMDL and MS4 credits are self-certified by the MS4 permit holder. In Pennsylvania the State plays a more prominent role in credit verification. Will the state where the project takes place be responsible for verifying and accepting credits or will SRBC be the sole verifying agency? What criteria will SRBC use to verify project credits and accept projects?

See responses to #15 and #18.

45. SRBC can default on the contract if they determine that verification of credit is false, misleading, or defective. By what criteria and whose determination will the contract be deemed to be in default?

To clarify, the Commission will not default on this contract. The Pay-for-Success Contract outlines the circumstances where the project may commit an event of default. The criteria for events of default are provided for in Section 4.01 of the Contract and will be determined under the standards set forth in Pennsylvania law. The Commission will determine when and if an event of default has been triggered by the actions or inactions of the contractor. The Commission cannot provide legal advice and if proposers have legal questions regarding default, they should consult with a licensed attorney.

46. Is any type of performance or payment bond required?

No performance or payment bond is required. If the project is not constructed then no verified nitrogen reductions will be produced and no payment can be made under this contract.

47. Is a perpetual easement required or will a temporary easement equal to the life of the selected and implemented practices suffice?

The Commission will only require legal access that covers the effective life of the BMP subject to this contract (maximum of 20 years). See also the answer to question 33.

48. Is any Long-Term Management required?

It is possible long-term management will be required for the BMP to remain effective depending on the BMP chosen and the method of its construction and operation. Please see the answer to question 39 for more details.

49. If the project generates more credits than what SRBC is willing to buy, does the successful offeror own those credits and can the offeror sell excess credits generated from the project to entities other than SRBC?

The Commission generally refers to the answer to question 11.

50. Will there be an opportunity for a successful offeror to engage with the Commission to reach contract terms that are more narrowly-tailored to the specific project?

The Commission has provided the Pay-for-Success Contract as a part of this solicitation. While certain elements of the contract will be derived from the information in the application, the Commission does not envision any significant contract negotiations. The Commission may entertain suggestions for contract changes that are narrowly-tailored to unique aspects of a specific project, but there is no guarantee that the Commission will make any specific changes.

51. Can funds from the solicitation be used to help farms become compliant with existing nutrient management plans if they are not currently meeting baseline? If so, will there be any adjustments in the pounds of nitrogen generated by the project that can be sold to the SRBC?

Verified reductions are only eligible from reductions achieved above baseline compliance with existing requirements, including nutrient management plans. Funds cannot be used for farms to meet baseline nutrient management requirements.

52. CAST model has been identified as the main tool to model the reductions for this SRBC grant. However, there is another tool that has integrated the CAST model and can estimate the reductions with the same accuracy as CAST. This tool is FieldDoc. The advantage of FieldDoc is that it can aggregate projects and is very user friendly. Would you consider FieldDoc as an optional tool to calculate estimated reductions for this application?

No. Please refer to the answer to question 1.