



**AGRICULTURAL CONSERVATION ASSISTANCE PROGRAM (ACAP)
STATEMENT OF POLICY
FOR THE LUZERNE CONSERVATION DISTRICT
ADOPTED BY THE LUZERNE CONSERVATION DISTRICT BOARD on May 18,2023**

PROGRAM IMPLEMENTATION POLICIES & STANDARDS

The implementation of the Agricultural Conservation Assistance Program (ACAP) will follow the policies and guidance outlined in the delegation agreement between the Commonwealth of Pennsylvania through the State Conservation Commission (Commission) and the Luzerne Conservation District (District). These policies set forth are in conjunction with or in addition to the ACAP Guidelines.

1. Criteria for Equal Access:

Program guidance, forms, updates, and deadlines will be available on the District website, www.luzernecd.org. Correspondence on program applications will be sent directly to applicants.

Applications will be available on the District website along with the application ranking schedule.

Efforts shall be made to enlist the cooperation of participants through a telephone conversation or a site visit.

Initial program announcement and deadline to apply will be made publicly via newspapers and social media.

The program is open to all agricultural operators in Luzerne County who meet the state ACAP eligibility criteria.

2. Pre-Application Site Visit:

The Conservation District will meet with potential program participants on site to discuss the potential project before an application is submitted for funding. The purpose of a pre-application meeting is to work jointly with the program participant to ensure that the application they submit is complete and meets the objectives of ACAP. The pre-application meeting allows the district to provide input on the potential project at an early stage before the program participant has invested a large amount of time and resources in developing an application. (See pre-application site visit request form.)

3. Application Process:

All applications for program funding must be received by the District on the "Agricultural Conservation Assistance Program Application" The form must be signed by the applicant(s).

Applications will be taken on an ongoing basis but will be ranked quarterly, throughout the year. The applications received will be ranked by the ACAP Local Advisory Workgroup (LAW) and presented to the Conservation District Board of Directors (Board). The District reserves the right to extend deadline dates if needed.

The District may retain unfunded ACAP applications on file for 3 years for consideration in future allocation rounds. The applicant may update or cancel the application at any time. Program participants may also choose to revise existing submitted applications open application timeframes (see schedule on the District website).

The District reserves the right to deny an application due to active compliance and/or enforcement actions, or a court order, issued by or on behalf of the district, the Commission, or cooperating agencies for violations of Act 38 of 2005, the Clean Streams Law, or state or federal environmental regulations.

District staff will review applications for administrative completeness and to ensure they comply with ACAP policies and guidance. All requested information must be provided on the grant application.

The applicant must represent and agree that he/she is the sole owner of the real property on which the project is to be performed, provide proof that any other owners are in full agreement with the application, or has secured a sufficient property interest, including any easements or rights-of-way, necessary to grant access for the completion and maintenance of the project.

District staff will work with program participants to revise the scope of their applications that are incomplete or do not meet program requirements. The District may make minor changes to the application and have the applicant show concurrence by initialing and dating the change. In cases where significant changes are needed to the application work plan, the District will work with the program applicant to create a new application that represents an acceptable project. Examples of "significant changes" may include changes in project scope, recommended design changes, considerations for engineering and permitting costs, etc.

Projects funded by ACAP funds in which the estimated cost of the total project (materials, equipment, and labor) exceeds prevailing wage limits (currently \$25,000) are subject to provisions of Pennsylvania's Prevailing Wage Act.

Applications deemed complete and potentially acceptable to the program will be forwarded to the local ACAP LAW for review and prioritization. The LAW will review and prioritize applications based on established written criteria and make funding recommendations to the District Board at a legally advertised public meeting.

All approvals for funding must be acted on by the District Board at a public meeting. Program participants will be notified in writing of funding approvals.

4. Project Ranking:

All eligible applications will be ranked in accordance with the following criteria:

1. Project meets the goals of a WIP or the Countywide Clean Water Action Plan.
2. If applicable to the ag operation, the applicant has the required plan(s) (Conservation Plan, Ag E&S, MMP, or NMP). The development of such plans shall be included in the application if not yet.
3. The project implements BMPs included in the plan. Priority is given to BMPs that reduce or control nitrogen, phosphorus, and/or sediment.
4. Ag operations with unaddressed animal concentration areas (ACA) must include implementation of BMPs necessary to abate storm water runoff, loss of sediment, nutrients, and other pollutants from the ACA in the application.
5. Proximity to surface waters or public drinking sources.
6. The project must meet the design and construction standards established by the Commission.
7. Additional points will be given to projects that have secured funds attached to their project through other sources such as grants, federal cost share programs, etc.
8. Additional points will be given to veteran-owned operations with viable agricultural projects.
9. Additional points will be given to projects with a current, completed cost estimate and/or Inventory & Evaluation (I&E).
10. Any other criteria considered by the District as relevant to the priorities of ACAP and approved by the Commission.

(See **Appendix A** of this policy for the Scoring Sheet)

5. Contracting:

When an application has been approved by the District Board, the District will enter into a contract agreement with the successful program participant. The Contract, when signed by both parties, is a legally binding document between the program participant and the District that describes in detail the responsibilities of both parties. No funding transfers can take place with program participants, and no project work can begin, without a signed Contract. The Contract states the terms and conditions for the project. All Contracts must be made using the "Agriculture Conservation Assistance Program Grantee-District Agreement" form that has been approved by the Commission.

For any contracted work related to the approved project, the program participant will enter into an agreement with a contractor(s). All contracted work on approved projects must follow the bid/quote requirements established by the Commission and the District Board (see Appendix B). The District will assist the program participant by coordinating the bidding process. The project participant's failure to follow the bid/quote requirements may result in the District cancelling the contract agreement with the participant.

By offering the premises for implementation of this project, the program participant agrees to allow access, design preparation, and implementation of the project, subject to available funds, for the duration of construction and for the period identified in the Contract.

The program participant agrees not to destroy, alter, or modify the BMPs, except to perform needed repairs, for the period covered by the contract, nor to undertake any action on land under the participant's control which tends to defeat the purposes of the Contract.

The program participant will be in breach of the Contract if he/she does not maintain and repair the project in compliance with Operation and Maintenance Plan or willfully neglects any other terms of the Contract. The program participant shall be responsible for all normal, routine maintenance and normal, routine repair of the site and project.

Program participant agrees to refund all or part of the program funds paid to them, as determined by the District Board, if before the expiration of the term of the Contract, the program participant (a) destroys, alters, or modifies the BMPs installed; or (b) voluntarily relinquishes control or title to the land on which the BMPs have been established, and the new landowner and/or operator of the land does not agree to maintain the BMPs for the remainder of the term of the Contract. If the new landowner agrees to assume the program participant's obligations and to maintain the BMPs for the remainder of the term of the agreement, then a new Contract shall be executed by the new landowner/program participant.

The Contract shall be binding on the parties, their heirs, legal representatives, successors, and assigns.

The terms of the contract shall be for the duration of project construction and for the term of the longest lifespan of any particular BMP.

6. Project Work:

The following is a list of general pre-project work requirements:

PA One Call must be notified at appropriate stages of the project, including the design phase and prior to construction. One Call assigns a serial number to each call they receive. These serial numbers must be recorded and kept in the project file.

Many projects will require some type of environmental permit. Program participants are encouraged to work with the District to determine what environmental permits, if any, may be required. Any required permits must be obtained by the grant recipient before funding advances can be given or work can begin. Under no circumstance can any project work begin until all required permits are in hand.

Some projects may require an Erosion and Sediment Control (E&S) plan. The District will help determine if an E&S plan is necessary.

A. Pre-Project Meeting:

A pre-project meeting is required prior to the beginning of a project. This will allow the District to meet in person with the program participants and any contractors or sub-contractors to discuss each contract item or element of the approved plan to avoid any misunderstanding about how the plan is to be implemented and how payment will be made.

B. Notification of Project Work:

Program participants MUST notify the district before beginning work on a project. The District must also be notified before beginning a new phase of the project. The

District may withhold payments and cancel the Contract if a program participant fails to comply with notification requirements.

C. Performing Project Work:

Program participants must follow the bidding procedures for contractors and materials as outlined in **Appendix B** of this policy.

Work must be performed in accordance with the accepted application, work plan and/or design unless both parties agree to project changes in writing. The District is responsible for construction oversight of any contractors or subcontractors working on the project. Work must be performed within the Contracted scope, budget, and timeframe.

If an increase in costs or extension of time is required, the District must be contacted as soon as possible. At the District's discretion, based on existing policies and funding availability, Contracts may be amended for cost overruns up to 20% (twenty percent) of the original Contract amount or to extend the timeframe for completion. When cost over-runs exceed 20% (twenty percent) of the original Contracted amount, an additional or new Contract will be required. [Note: if a Contract is between \$20,800 and \$25,000 (barely under the prevailing wage threshold for Contracted work), an amendment may increase the total value of the project so that prevailing wage would apply.]

If applicable, Contractors or subcontractors may be asked to sign a statement certifying that the installed components meet or exceed the Natural Resource Conservation Service (NRCS) standards and specifications. All Contractors or subcontractors are responsible to protect work from environmental conditions such as temperature extremes, weather events, wind, surface water, and ground water.

7. Certification and Final Payment:

Payment shall be made upon satisfactory completion of project for actual services performed consistent with the project application and the work plan, to satisfaction of the District.

If a project's BMP(s) require review and certification by a registered professional engineer under the applicable laws or regulations of this Commonwealth, the BMP shall be certified by a registered professional engineer.

Those BMPs required to meet the Natural Resource Conservation Service (NRCS) standards and specifications shall be certified by a technical service provider, staff from the District or USDA-NRCS having the appropriate job approval authority, or any other qualified person who has appropriate training and expertise and Commission requirements.

Payment may be withheld for defective work not remedied, liens filed, or damages by the Contractor(s) to others related to the project.

All claims submitted by the program participant pursuant to this agreement shall be submitted to the District in accordance with the Schedule of Payments and the terms and conditions contained in the approved project agreement. The claims shall be itemized and

show that the utilization of funds is in accordance with the approved project application and work plan. Claims shall include receipts, and/or other appropriate supporting information to document actual expenditures on the project. Payments will be made to the program participant.

PROCEDURES FOR ACAP LOCAL ADVISORY WORKGROUP (LAW) FORMATION & CONDUCT

1. ACAP LAW Formation:

A committee will be appointed by the District Board to advise on the program and identify local priorities. The Luzerne County ACAP LAW will be comprised of a chairman and at least three voting members knowledgeable of agricultural operations and conservation, as appointed by the Board. The chairman will only vote in instances where there is a tie.

2. Meeting Schedule and Procedures:

All LAW meetings will be advertised and open to the general public in accordance with the Sunshine Law (Act 84 of 1986 and any amendments thereafter). The LAW will meet on an as-needed basis. Specific dates and time will be determined by the chairman. All formal recommendations of the LAW will be presented to the District Board for final approval.

3. Conflict of Interest:

If an ACAP project application involves an applicant who is a District Board member, a LAW member, or a District staff member or an immediate family member or a business with which he/she is associated, that individual may not participate in the evaluation, ranking, or any deliberation for approval or disapproval of the application or approval of a reimbursement payment of program funds. This individual will abstain from any such involvement or voting pertaining to that application.

APPENDIX A: ACAP Scoring Sheet

ACAP Scoring Sheet

Scoring Date:	Technician:
Applicant Name:	Application Score: 170

Does this project meet the goals of the County WIP or County Action Plan?		/30
Yes	FALSE	0
No	FALSE	0
 If applicable, which of the following plans does this operation have?		/20
Conservation Plan	FALSE	0
Agricultural Erosion and Sediment Control Plan	FALSE	0
Manure Management Plan	FALSE	0
Nutrient Management Plan	FALSE	0
None	FALSE	0
N/A	FALSE	0
 Does the application contain BMP's associated with one of the above checked plans and reduce N,P or sediment?		/25
Yes, the BMP's is associated with a plan checked above	FALSE	0
No, the BMP's are not associated with a plan checked above	FALSE	0
BMP's listed reduce N, P or sediment	FALSE	0
BMP's do not reduce N, P or sediment	FALSE	0
 Do the ACA's on this operation have BMPs implemented or will be implemented that abate storm water runoff, loss of sediment, nutrients and other pollutants?		/15
Yes (15 pts)	FALSE	0
No (0 pts)	TRUE	0
N/A	FALSE	0
 Proximity to surface waters, public drinking water sources, Karst geology with underground drainage or sinkholes		/5
Within 100 feet (5 pts)	FALSE	0
Within 200 feet (4 pts)	FALSE	0
Within 300 feet (3 pts)	FALSE	0
Within 400 feet (2 pts)	FALSE	0
Within 500 feet (1 point)	FALSE	0
 Does the applicant indicate that the BMPs will be installed to design and construction standards approved by the commission		/5
Yes	FALSE	0
No	FALSE	0

ACAP Total:

Local Total:

Scoring Total:

0
0
0

Comments:

ACAP Scoring Sheet (Local Questions)

Scoring Date:	Technician:
Applicant Name:	Local Score: 70

Is the project located in High Priority Watersheds? /25

- Yes (25 pts) 0
- No (0 pts) 0

What Local Priority Best Management Practices will be installed for this project? (check up to 3, 5 points each) /15

- Water control practices, diversions, waterways, gutters, UGO 0
- Rotational Grazing System 0
- Stream buffers(grass/forest) 0
- Adequate Manure Storage 0
- Stream Crossing/Streambank Fencing 0
- Barnyard Runoff Control 0
- ACA/loafing lot management 0

Does the project have additional funds/match funds from other sources committed to it (i.e other grants, EQIP) /10

- Yes (10 pts) 0
- No (0 pts) 0

Do the operation seem to have good management? /5

- Yes (5 pts) 0
- No (0 pts) 0

Is the owner/operator a United States veteran or have prior military service? /5

- Yes (5 pts) 0
- No (0 pts) 0

Is the farm owner/operator a new and beginning farmer? /5

- Yes (5 pts) 0
- No (0 pts) 0

Does the operation have a current cost estimate/I&E? /5

- Yes (5 pts) 0
- No (0 pts) 0

Scoring Total:

Comments:

APPENDIX B: BIDDING PROCEDURES

ACAP is currently funded with federal American Rescue Plan Act of 2012 (ARPA) funds. Federal ARPA funds require bidding procedures. Below are the approved bidding requirements as approved by the Department of General Services waiver process.

Procurement Method	Expense Amount	Requirements
Micro-purchase (No quotes required)	Less than \$10,000	<ul style="list-style-type: none"> • Consider price to be reasonable • Distribute equitably among suppliers to the extent practical
Small Purchase Procedures (Relatively simple and informal)	\$10,000 - \$249,999	<ul style="list-style-type: none"> • obtain/document price or rate quotations from a reasonable number of qualified sources • written or documented quotes required to be kept in the contract file
Sealed Bids	\$250,000 or more	<ul style="list-style-type: none"> • Bids must be publicly advertised using standard bidding requirements • Bid must allow for a minimum of 15 days for response time • Bids must be solicited from an adequate number of qualified sources • Sealed bids must be opened publicly • Contract award must be made to the lowest responsible bidder • Contract must be for a firm, fixed price

EXAMPLE BIDDING PROCEDURES

- Micro-purchase – Projects less than \$10,000, districts must consider price to be reasonable and distribute equitably among suppliers to the extent practical.
- Small Purchase - Projects between \$10,000-\$249,000 shall obtain at least three written quotes and kept on record.
- Sealed Bids - Projects with an estimated expenditure of \$250,000 or more shall be competitively bid and publicized.

1. **Definitions:**

The following words and terms, when used in this document, have the following meanings, unless the context clearly indicates otherwise:

- a. *Lowest Bidder/Quote* – A bidder/quote who, in a competitive bidding/quoting situation, submits a bid/quote which, as finally determined by the District, is the best bid/quote available in terms of price, product, and/or service quality, adherence to specification, timeliness of delivery, serviceability and maintenance, and other factors that the District may establish.

- b. *Responsible Bidder/Quote* – A bidder/quote is considered responsible either through previous experience in business dealings with the District or through an investigation of the credit, reliability, and performance of the bidder/quote.
- c. *Responsive Bidder/Quote* – A bidder/quote who correctly and fully responds to the bidding/quoting requirements.

2. Invitation to Bid

When it is determined that a project is to be solicited through competitive bidding, an invitation to bid shall be publicly advertised. Quote invitations will be emailed to a list of interested contactors. The invitation shall include:

- a. A basic description of the work.
- b. The quantity of work.
- c. The method by which specifications and bid/quote documents may be obtained.
- d. The date, time, and place of the bid/quote opening.
- e. Any other specific requirements.

3. Publication requirements for Sealed Bids

The District shall publish the invitation to bid in a local newspaper at least 10 days prior to the scheduled bid opening. Copies of the bid/quote package will be posted on the District's website.

4. Bid Procedure

All bids shall be firmly sealed in an envelope and labeled so as to indicate the specific project for which the bid is submitted and the scheduled date and time of the opening. Bids will only be accepted by mail, delivery service, or in-person. Bids will be opened at the appointed time by District staff. All bid openings will be open to the public. Any bids received after the opening has commenced shall be returned to the contractor unopened. Upon completion of the bid opening, the Executive Director/ACAP coordinator, project designer (if applicable), and the program participant will analyze the bid for conformance with the specifications and recommend to the District Board the lowest responsible and responsive bid.

5. Quote Procedure

Quotes for projects not requiring the Sealed Bid Process will be accepted by mail, fax, email, or in-person. The Executive Director/ACAP coordinator, project designer (if applicable), and landowner will analyze the quote for conformance with the specifications and recommend to the District Board the lowest responsible and responsive quote. A list of all quotes received will be provided to the District Board.

6. Bid/Quote award

The District Board shall review the recommendation of the Executive Director/ACAP coordinator, project designer (if applicable), and landowner and will make a formal recommendation to the program participant to enter into a Contract with the lowest responsible and responsive bid/quote. All such actions shall be made in a public meeting by an affirmative vote of the majority of the District Board. The District Board shall at all times reserve the right to reject any and all bids/quotes received. If the program participant does not choose the lowest responsible and responsive bidder, the District Board may cancel the contract with the project participant.

7. Bonds:

Sealed bids submitted under the above guidelines shall be accompanied by a bid bond in an amount equal to 10% of the Contract price, guaranteeing the contractor's ability to perform the work outlined in the bid package. A performance bond in an amount equal to 100% of the contract price, guaranteeing the work to be completed in accordance with the contract will be required upon execution of the contract.

8. Certificates of Insurance:

The contractor whose bid/quote is accepted shall provide proof of adequate Workman's Compensation Insurance for all employees employed on the project, including those of and subcontractor(s).

The successful bidder shall also provide proof of Public Liability and Property Damage Insurance as shall protect the owner, the Contractor, and any subcontractor(s) performing work covered by the Contract from claims for damages for personal injuries, including wrongful death, as well as claims for property damages which may arise from operations under the Contract, whether such operation be by himself or by any subcontractor or anyone directly or indirectly employed by either of them and name the project participant and the Luzerne Conservation District as an additionally insured party. Coverage limits shall be a minimum of \$1,000,000.

The form of the insurance and the surety thereon shall be satisfactory to the project participant and the District. The amount of the insurance shall not be less than that specified in the Contract documents.

A copy of the Certificate of Insurance shall be furnished to the District by the Contractor.

9. Change orders:

Change orders: Requests for a change order of the project shall be done in writing and approved by the project participant and the District before the change is undertaken. The project participant and the District may alter, add, or subtract portions of the work without invalidating the original contract as long as the contract sum is adjusted in accordance with the provisions of the contract.