



Empire State Development

Regional Economic Development Council Capital Fund Program

GUIDELINES

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I. ESD STATUTORY AUTHORITY

New York's Regional Economic Development Council Capital Fund Program ("Regional Council Capital Fund") was established in April 2011 as part of New York State's Fiscal Year 2011-2012 budget. The Regional Council Capital Fund, which is administered by Empire State Development ("ESD"), makes available capital grant funding for the State's Regional Economic Development Council Initiative, which helps drive regional and local economic development across New York State in cooperation with ten Regional Economic Development Councils ("Regional Councils").

II. PROGRAM BACKGROUND AND REGIONAL STRATEGIC PLANS

Regional Council Capital Funds shall be allocated among the ten Regions, each represented by a Regional Council, through a process that includes each Regional Council's development, adoption and implementation of a five-year strategic plan ("Strategic Plan") for its Region that sets out a comprehensive vision for economic development and specific strategies to implement that vision. The Strategic Plans do the following:

- Establish an economic vision for the region's future;
- Involve diverse stakeholders, including businesses, community groups, academia and local government;
- Generate effective, realistic strategies to capitalize on key industries and assets;
- Build a framework to continually identify, prioritize and implement catalytic projects;
- Leverage private, federal, local and nonprofit resources; and
- Connect program evaluation and monitoring to continually improve the strategies.

One of ESD's roles in the State's Regional Economic Development Council Initiative is to administer the Regional Council Capital Fund.

III. CONSOLIDATED FUNDING APPLICATION PROCESS

Eligible Applicants (described below in subsection III.A) shall submit a Consolidated Funding Application ("CFA") describing the proposed project, or, in the case of a multi-phase project, the specific phase of the project, (the "Project") for which funds are requested. Applicant CFAs will be reviewed by each of the relevant Regional Councils and by ESD. ESD will assess each CFA based upon the criteria described in Section III.D below. The ESD assessment will be part of an overall score that will also take into consideration the evaluation by the Regional Council. The Governor and ESD will announce funding results once all reviews are completed. To the extent permitted by law, all information regarding the financial condition, marketing plans, manufacturing processes, production costs, customer lists, or other trade secrets and proprietary information of a person or entity requesting assistance from ESD and which is submitted

by such person or entity to ESD in connection with an application for assistance, shall be confidential and exempt from public disclosure.

A. Eligible Applicants

A wide range of entities are eligible to apply for assistance, including but not limited to: for-profit businesses, not-for-profit corporations, business improvement districts, local development corporations, public benefit corporations (including industrial development agencies), economic development organizations, research and academic institutions, incubators, technology parks, municipalities, counties, regional planning councils, tourist attractions and community facilities.

B. Eligible Funding Uses and Expenses

Regional Council Capital Funds may be used only for capital-based economic development Projects intended to create or retain jobs; prevent, reduce or eliminate unemployment and underemployment; and/or increase business or economic activity in a community or Region.

Because awards are offered as an incentive to undertake a Project, the Project should not begin, and expenses should not be incurred, before funding awards have been announced. Expenses incurred prior to submission of a CFA should not be included in Project budgets.

ESD generally seeks to provide no more than twenty percent (20%) of the financing for any particular Project and generally requires ten percent (10%) equity in all Projects.

Expenses eligible for Funding through the Regional Council Capital Fund include:

- Acquisition or leasing of land, buildings, machinery and/or equipment;
- Acquisition of existing business and/or assets;
- Demolition and environmental remediation;
- New construction, renovation or leasehold improvements;
- Acquisition of furniture and fixtures;
- Soft costs up to twenty-five (25%) of total project costs; and
- Planning and feasibility studies related to a capital project.

The following types of expenses may be included in budgets presented to ESD for consideration as part of an application for Project funding but such expenses shall not be eligible for payment using Regional Council Capital Funds:

- Developer fees;
- Recapitalization/refinancing;
- Training; and
- Residential development, although program funds may be used for the commercial component of a mixed-use project.

Assets being acquired must be reflected in the budget at a level at or below fair market value. If an Applicant proposes acquiring an asset from an affiliate or related entity, the value of that asset must be verified independently.

C. Eligible Project Types

Funds will be awarded to proposed Projects as described in Applicants' CFAs. Projects should fit into one of the following Project Types in order to be eligible for funding.

Business Investment

Business investments are capital expenditures that facilitate an employer's ability to create new jobs in New York State or to retain jobs that are otherwise in jeopardy. Five-year job commitments will be required of all award recipients because it is by underwriting these job commitments that ESD is best able to forecast the economic benefits of providing assistance to any particular project. Applicants will therefore be required to commit to the number of jobs At Risk that will be retained by the proposed project, the number of Full-Time Employee Net New Jobs that will be created by the project, and the average salaries of each. Failure to achieve or maintain these employment commitments will subject a beneficiary to potential recapture of assistance. Job reporting is verified using the employer's NY-45 and NY-45 ATT and/or payroll reports.

Infrastructure Investment

Funds may be used to finance infrastructure investments in order to attract new businesses and expand existing businesses, thereby fostering further investment. Infrastructure investments are capital expenditures for infrastructure including transportation, water and sewer, docks and wharves, communication, and energy generation and distribution. Infrastructure also includes the construction of parking garages, and site clearance, preparation, improvements, and demolition. Infrastructure Investment may be used to finance planning or feasibility studies relating to capital expenditures.

Infrastructure investment projects that are able to provide direct job commitments will be viewed favorably. It is important, however, to note that (1) few infrastructure investment projects are anticipated to be able to provide job commitments and (2) if the employer will be an entity other than the Applicant, a third party guarantee of the Applicant's job commitment must be provided by the prospective employer and both the prospective employer and the third party guarantor must be found by ESD to be creditworthy.

Economic Growth Investment

An Economic Growth Investment initiative fosters economic growth through cultural activity, higher education activity, regional revolving loan and grant programs, other local or regional initiatives, agribusiness initiatives or other projects that may not have direct job creation goals. Economic growth investment projects that are able to provide direct job commitments will be viewed favorably.

D. Criteria For ESD Assessment of Applications

In addition to the criteria noted below, ESD shall have the discretion to consider additional factors in determining the relative merits of Projects:

Vision and Regional Economic Development Strategies

- the overall economic impact that the Project identified in the application will have on a region, including, but not limited to, the number and impact of any direct or indirect jobs that will be created
- the number of new jobs created and/or at-risk jobs that will be retained
- the amount of capital investment and the level of increased economic activity from the proposed capital investment
- the likelihood that the Project identified in the application would be located outside of NYS or would not occur in NYS but for the availability of state or local incentives
- for projects in an economic transformation area, whether the Applicant is proposing to renovate substantially and reuse a correctional or juvenile detention facility closed after April 1, 2011

Public/Stakeholders

- whether the Project has demonstrated support from local government and private sector leaders in the locality and the region where the project will be located
- whether the Project will have a significant regional impact or is likely to increase the subject community's economic and social viability and vitality
- the degree of economic distress in the area where the Applicant will locate the Project identified in its application, including downtown revitalization areas, Distressed Communities, and Brownfield Opportunity Areas.

Implementation

- the degree of Project readiness and likelihood of completion, including, where applicable for real estate development projects, if there are identified tenants for a completed project
- the degree of the Applicant's financial viability and strength of financials/operating history/ESD Credit Score

Leveraged Resources

- the amount of private financing leveraged
- the amount of public financing leveraged

Performance Measures

- the estimated return on investment that the Project identified in the application will provide to New York State
- for downtown areas, whether or not the Project concerns the preservation of the architectural character of a building or neighborhood
- whether, where applicable, there are identified tenants for a completed Project
- the degree to which the Project supports the principals of Smart Growth, energy-efficiency (including but not limited to, the reduction of greenhouse gas and emissions and the Leadership in Energy and Environmental Design [LEED] green building rating system for the project identified in its application), and sustainable development
- the degree to which the Project identified in the application supports New York State Minority and Women-Owned Business Enterprises

E. The Award Letter, Incentive Proposal, Directors' Approval and Disbursement Process

Award Letter and Incentive Proposal

Funding awards will be documented initially in an Award Letter notifying the Applicant that funding has been awarded. This will be followed by an Incentive Proposal outlining the terms of the proposed assistance, which is conditioned upon approval of the ESD Directors and compliance with applicable laws and regulations. The Incentive Proposal must be signed by the Applicant and returned to ESD accompanied by a \$250 fee.

Directors' Approval

Projects generally are presented to the ESD Directors for funding approval once all Project expenditures have been undertaken and disbursement of ESD assistance is sought¹.

All legal requirements must be met prior to the start of construction and approval by ESD Directors, including assessing the environmental impacts, if any, pursuant to the *State Environmental Quality Review Act* ("SEQRA") and consultation with the State Historic Preservation Office, if applicable.

In accordance with State law, after approval by the ESD Directors, a public hearing may be required if the project involves the acquisition, construction, reconstruction, rehabilitation, alteration or improvement of any property. ESD will schedule a public hearing in accordance with the *New York State Urban Development Corporation Act* ("UDC Act") and will take such further action as may be required by the UDC Act and other applicable law and regulations.

The ESD Directors must reconsider the matter if any negative testimony is received at the public hearing. (Generally, this hearing occurs the month after the Directors' initial approval). Approval by the Public Authorities Control Board ("the PACB"), New York State Comptroller ("OSC") and the New York State Attorney General ("AG") may then be required. Following approval by the ESD Directors, and PACB, OSC and AG approval, if required, the documents for processing the grant award will be prepared by ESD. Notwithstanding the process outlined above, no Project shall be funded if sufficient resources are not received by ESD for such Project.

Disbursement

Although funding is offered prior to Project commencement as an inducement to undertake the project, funds generally are disbursed in arrears, as reimbursement for expenses undertaken. Assistance for projects without job commitments generally will be disbursed in one installment upon project completion. Grants for Projects with job commitments generally will be disbursed in three installments after Project completion, as predetermined employment benchmarks are achieved. As needed, however,

¹ If a grantee requires a commitment letter before project expenditures have been incurred in order to borrow against ESD's commitment, a project can be brought to the Directors for their approval so long as the other conditions above have been met.

conditional funding commitments may be arranged prior to Project commencement in order to facilitate bridge financing during the construction phase of a project. Expenditures incurred prior to the Award Letter date are not eligible for reimbursement by Regional Council Capital Funds but in rare cases may be counted toward total project costs, at ESD's discretion.

Fees

In addition to the \$250 fee due when the Incentive Proposal is signed by the Applicant, a one percent (1%) non-reimbursable commitment fee based on the grant amount awarded will be assessed to all awardees. The commitment fee will be due when the Applicant executes documents required for processing the grant. The Applicant will be obligated to pay for out-of-pocket expenses incurred by ESD in connection with the project, including, but not limited to, expenses related to attorney fees, appraisals, surveys, title insurance, credit searches, filing fees, public hearing expenses and other requirements deemed appropriate by ESD.

G. Terms and Conditions

1. *Equity Contribution* – An Applicant will be required to contribute a minimum of ten percent (10%) of the total project cost in the form of equity contributed after the Applicant's acceptance of ESD's incentive offer. Equity is defined as cash injected into the project by the Applicant or by investors, and should be auditable through the Applicant's financial statements or accounts, if so requested by ESD. Equity cannot be borrowed money secured by the assets in the project.

In the case of public or public private Infrastructure Investment projects, ESD may modify this equity requirement in order to allow for bond financing proceeds to qualify as equity. In the case of Economic Growth Investment initiatives that fund regional revolving loan or grant programs, ESD may modify the equity requirement in order to allow equity to be provided by the ultimate recipient of the regional revolving loan or grant program funds, as those awards are made, rather than the entity administering the funds.

2. *Modification of Award* – ESD reserves the right to offer Project awards to sponsors in different amounts and under different terms than requested or contained in these guidelines. ESD reserves the right to review and reconsider Project and property selections in the event of material changes in the Project plans or circumstances.
3. *Non-Discrimination Policy* – It is the policy of the State of New York, including specifically ESD, to comply with all federal, State and local laws, policies, orders, rules and regulations that prohibit the unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status.

4. *M/WBE Goals* – It also the policy of the State and ESD to take affirmative action when implementing projects to ensure Minority and Women-Owned Business Enterprises (“M/WBE”), Minority Group Members and women share in the economic opportunities generated by ESD’s participation in projects or initiatives or in the use of ESD funds. Compliance with these laws and policies shall be required.

As a result, Projects proposed in CFAs shall be reviewed by the ESD’s Office of Contractor and Supplier diversity, which shall, in consultation with the Applicant and/or proposed recipient of Regional Economic Development Capital Fund Program assistance and any other relevant interested parties, develop appropriate goals, in compliance with applicable law (including Section 2879 of the *Public Authorities Law*, Article 15-A of the *Executive Law*, and Section 6254 (11) of the *Unconsolidated Laws*) and the policy of ESD, for participation by Minority Group Members and women. Such goals shall typically be included in the Incentive Proposal and will include employment participation goals for minorities and women as well as business and participation goals for minorities and women in accordance with applicable laws and Governor Cuomo’s Executive Order No. 8, dated February 17, 2011, which speaks to the need for leadership in all State agencies to meet M/WBE goals.

5. *Reservations of Rights Concerning Funding Commitment* – It is expected the project will proceed in the time frame set forth by the Applicant. If the implementation of a project fails to proceed as planned and is delayed for a significant period of time and there is, in the exclusive judgment of ESD, doubt as to its viability, ESD reserves the right to cancel its funding commitment to such project.
6. *Environmental Sustainability* – ESD encourages the environmentally sustainable practice of recycling construction and demolition debris rather than disposition in a landfill.
7. Applicants agree to allow the Department of Taxation and Finance to share Company tax information with Empire State Development.
8. Applicants authorize the Commissioner of Labor to disclose, to employees of both the New York State Department of Labor and Empire State Development, all records filed by the Company in making Unemployment Insurance (U.I.) reports and contributions required by State Labor and Tax Law, including, but not limited to, all information contained in or relating to the quarterly combined withholding, wage reporting and U.I. returns, the registration for U.I., the New Hire file, and all records of U.I. delinquencies. In addition, this authorization shall include all information contained in any survey reports requested by the Department of Labor on behalf of the U.S. Department of Labor, Bureau of Labor Statistics including, but not limited to, the Current Employment, Occupational Employment, multiple worksite, and annual refiling surveys. The use of

information and records released pursuant to this authorization shall be limited to government purposes concerning the company and assistance described in this incentive proposal to monitor compliance with worker protection laws and with the conditions and requirements associated with the financial assistance being requested.

H. Other ESD Funding Sources

Applicants for Regional Council Capital Fund assistance may apply for and receive funding from multiple ESD-administered and affiliated sources, even for the same project. Please see the Regional Council Resource Guide for a comprehensive list of other ESD programs, as well as programs administered by other State agencies, that may be helpful in considering other potential resources for Projects specifically and with respect to the implemental of a Region's Strategic Plan generally.

ESD generally seeks to provide no more than twenty percent (20%) of the financing for any particular project and generally requires ten percent (10%) equity in all projects. Applicants must always disclose whether they are pursuing or intend to pursue multiple ESD funding sources, including loans, grants and tax incentives.

IV. DEFINITIONS

"Applicant" shall mean a for-profit business entity, not-for-profit corporation, business improvement district, local development corporation, public benefit corporation (including an industrial development agency), economic development organization, research and academic institution, incubator, technology park, municipality, county regional planning institution, tourist attraction or community facility that submits a CFA.

"At Risk" shall mean a Full-time Permanent Employee position currently located in New York State that is found by ESD to be at risk of being lost or moved out of State based on compelling information provided by an Applicant.

"Brownfield Opportunity Area" shall mean an area that has been approved for funding under New York State's Brownfield Opportunity Area program for the purpose of establishing a community-based revitalization plan and implementation strategy to achieve Brownfield redevelopment in a proactive and systematic way. Visit the following link for a partial listing: http://nyswaterfronts.com/BOA_projects.asp.

"Distressed Communities" shall mean areas determined by ESD meeting certain criteria indicative of economic distress, including land value, employment rate, rate of employment change, private investment, economic activity, percentages and numbers of low-income persons, per capita income and per capita real property wealth, and such other indicators of distress as ESD shall determine.

“Full-Time Employee” shall mean a full-time, permanent, private sector employee on Applicant’s payroll who works at the project location for a minimum of 35 hours per week for not less than 4 consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by the Applicant to other employees of comparable rank and duties; or 2 part-time, permanent, private sector employees on Applicant’s payroll who work at the project location for a combined minimum of 35 hours per week for not less than 4 consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by Applicant to other employees of comparable rank and duties.

“Minority Group Member” shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (i) Black persons having origins in any of the Black African racial groups; (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (iii) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; and (iv) Native American or Alaskan native persons having origins in any of the original peoples of North America.

“Minority or Women-Owned Business Enterprise” shall mean an entity that has been certified by the New York State Division of Minority and Women’s Business Development as a Minority or Women-Owned Business Enterprise.

“Net New Jobs” shall mean jobs created in this state that: (1) are new to the state; (2) have not been transferred from employment with another business located in this state including from a related person in this state; (3) are either full-time wage-paying jobs or equivalent to a full-time wage-paying job requiring at least thirty-five hours per week; and (4) are filled for more than six months during the year for which credits are being granted.

“Smart Growth” shall mean the sensible, planned, efficient growth that integrates economic development and job creation with community quality-of-life by preserving and enhancing the built and natural environments. Smart Growth encourages growth in developed areas with existing infrastructure to sustain it, particularly municipal centers, downtowns, urban cores, historic districts and older first-tier suburbs.

“Region” shall mean the regions of the State established pursuant to section 230 of the Economic Development Law.

“Soft Costs” shall mean costs related to those items in a project that are necessary to prepare and complete the non-construction needs of the project. Soft Costs include such items as architecture, design, engineering, permits, inspections, consultants, environmental studies, and regulatory demands needing approval before construction begins. Soft Costs do not include construction, telecommunications, furnishings, fixed equipment, and expenditures for any other permanent components of the project.