



Empire State Development

Guidelines for Economic Development Programs:

Economic Development Purposes Fund

As of March 27, 2012

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I. OVERVIEW

For each of the ESD economic development assistance programs referred to in Section IX below, these guidelines provide consolidated information as well as guidance with respect to the application for program assistance and the award of program assistance for such programs.

ESD's economic development assistance generally falls into three categories: (i) operating businesses receive assistance through **Business Investment**; (ii) place-based investments receive assistance through **Infrastructure Investment**; and (iii) activities that foster economic growth through cultural activity, higher education activity, regional revolving loan and grant programs, other regional initiatives, agribusiness initiatives, marketing activities, training or education programs, or technical assistance receive assistance through **Economic Growth Investment**. ESD may choose to allocate program funds disproportionately among the three assistance categories depending on the volume and quality of funding requests for each.

Generally, program funds will be administered in two forms: **loans** and/or **grants**. From time to time, ESD may determine to provide only one form of program assistance (*i.e.*, loans or grants). ESD may also use certain program funds for direct contracts, including contracts for economic development marketing and advertising. See Section IX, below.

Terms used in these guidelines that are not otherwise defined in the text of a provision shall have the meaning for such term given in Section VIII of these guidelines.

II. ELIGIBLE APPLICANTS

A wide range of entities are eligible to apply for program 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. Applicants for Business Investment assistance generally should have an operating history of at least three (3) years.

III. FUNDING

Program funds may be used for economic development initiatives intended to create or retain jobs; prevent, reduce or eliminate unemployment and underemployment; and/or increase business activity in a community or Region.

A. Forms of Funding

As determined by ESD, assistance may be provided to eligible Applicants in the form of loans or grants.

B. Eligible Funding Uses and Expenses

Business Investment

A Business Investment initiative is one that facilitates 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 because it is by underwriting these job commitments that ESD is best able to assess the potential economic benefits of providing the assistance. Applicants for Business Investment assistance 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 Employees for the proposed project and the number of 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 the assistance.

Infrastructure Investment

An Infrastructure Investment initiative must attract new businesses and/or expand existing businesses, thereby fostering further investment, through the development or expansion of basic systems and facilities, including transportation, water and sewer, communication, energy generation and distribution, and parking facilities.

Infrastructure Investment projects that provide job commitments are viewed favorably. It is important, however, to note that (i) few infrastructure investment projects can provide job commitments and (ii) if the employer is an entity other than the Applicant, a third party guarantee of the Applicant's job commitment must be provided by the employer and both the employer and the third party guarantor must be creditworthy as determined by ESD.

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, marketing activities, training or education programs, or technical assistance that may not have direct job creation goals.

A broad range of expenses, hard costs and Soft Costs may be covered by program assistance. Expenses eligible for program assistance 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 percent (25%) of total project costs; and

- Planning and feasibility studies (if program is bond-funded, the study must be related to a capital project)
- Working capital (excluding salaries and benefits)*;
- Training; and
- Marketing and Advertising.

*Salaries and benefits may only be included for Economic Growth Investment projects.

The following types of expenses may be included in budgets for projects presented to ESD for consideration as part of an application for program assistance, but such expenses shall not be eligible for payment using program funds:

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

C. Timing of Funding/Reimbursement

Although funding is offered prior to project commencement as an inducement to undertake the project, generally, ESD disburses funds in arrears, as reimbursement for program assistance eligible expenses. Generally, grants for projects with job commitments are disbursed after project completion in three installments, as previously determined employment benchmarks and/or other project milestones are achieved. Generally, grants for projects without job commitments are disbursed in one installment upon project completion. As needed, however, ESD may allow payments to be made as reimbursement during construction or implementation of the project, as project milestones are achieved. Loan funds are disbursed in one installment, upon project completion.

Program funds may only be used for expenses incurred after an ESD Incentive Proposal (described in Section V below) has been countersigned by Applicant (expense documentation will be required). For more information, please see Section V, The Approval and Disbursement Process, of these guidelines.

D. ESD Assistance Amount and Project Budget

Aggregate ESD assistance should not exceed twenty percent (20%) of the project budget. Applications should include a comprehensive budget that specifies funding sources and uses; total source and total use amounts should be the same. 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.

E. Equity

Applicants must contribute a minimum of ten percent (10%) of the total project cost in the form of equity. Equity is defined as cash injected into the project by the Applicant or by investors that can be audited through the review of the Applicant's financial statements or accounts. In order to qualify for the required equity contribution, the contribution must occur after ESD's Incentive Proposal has been countersigned by the Applicant and must not be funded by borrowing against any item in the project budget.

In the case of public or public private infrastructure 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.

F. Job Commitments

Applicants for Business Investment assistance must commit to create new jobs or retain jobs that are otherwise At Risk. Failure to achieve and maintain job commitments will subject the program assistance recipient (and, if applicable, the program assistance beneficiary) to potential recapture of program assistance. Although job creation and retention are two key indicators of economic activity, ESD recognizes that certain investments may increase productivity and revitalize communities without immediately increasing permanent employment. Therefore, job commitments are not always required for the Infrastructure Investment and Economic Growth Investment categories of program assistance.

G. Recapture

If job commitments are required in connection with a program grant, program assistance recipients or, if applicable, program assistance beneficiaries, that fall short of their job commitments are subject to annual *pro rata* recapture during the five-year period following the disbursement of the program assistance funding.

For grants that involve the purchase or improvement of real property, *pro rata* portions of the program assistance funding will be subject to recapture if such real property or improvement is sold within five years of disbursement of the program assistance funding. Generally, this will not be applied to Business Investment initiatives.

H. Financial Review and Analysis

ESD shall perform financial review and analysis of Applicants requesting assistance, including a benefit-cost analysis that estimates the return on investment that the project will provide to

New York State. Review and analysis includes proposed project information, including budget and, where applicable, job creation and/or retention targets, historical financial performance, and, in some cases, financial projections.

Privately-owned companies, IDAs, not-for-profits, and municipalities shall provide (i) an organizational chart and/or description of ownership structure, including the percentage ownership by each individual/entity and (ii) three (3) years of historical financials. If most recent financials are over one hundred eighty (180) days old, the most recent interim statements, certified as true, accurate and complete by an authorized officer, should be included.

A start-up Applicant shall provide, in addition to the above, (i) financial projections (five years), (ii) personal financial statements from a personal guarantor of the Applicant, and (iii) the resumes of the Applicant's principals. Note that applicants for Business Investment assistance generally should have an operating history of at least three (3) years.

For a public company Applicant, ESD may use information available from the company's website.

I. Guarantees

For all program assistance, guarantees are required from any individual or entity owning fifty percent (50%) or more of the Applicant (and/or beneficiary as the case may be). For Loans, in addition to guarantees required from any entity owning fifty percent (50%) or more of the borrower, personal guarantees are required from any individual owning twenty percent (20%) or more of the borrower.

In determining the required guarantors, the ownership of the corporate entity and its affiliates are merged, so that guarantees are required from all commonly controlled entities whose ownership interests aggregate to fifty percent (50%). In determining personal guarantees, the ownership of individuals and their immediate family members are merged, so that guarantees are required from all immediate family members whose ownership interests aggregate to twenty percent (20%) or fifty percent (50%), as applicable.

IV. The Application Process

A. General Information

For each proposed project, eligible Applicants shall submit either a Consolidated Funding Application ("CFA") or an ESD application form, available from the ESD Regional Office in the Applicant's area. Links to the CFA and ESD Regional Offices can be found on ESD's website www.esd.ny.gov.

Applications will be reviewed by ESD, which will conduct due diligence and project assessment to determine if a project is eligible for program assistance. ESD will assess each project based upon the criteria described below in subpart B of this Section IV.

Information submitted to ESD in connection with an application for assistance and identified by the Applicant in writing as trade secrets or other proprietary information (such as information regarding financial condition, marketing plans, manufacturing processes, production costs and customer lists) will be treated by ESD as confidential and will be exempt from public disclosure to the extent permitted by law and regulations.

Conditional awards will be documented in the form of an Incentive Proposal (described below). Please see Section V, which also describes the approval and disbursement process.

B. Criteria For ESD Assessment of Applications for Projects

In addition to the criteria noted below, ESD shall have the discretion to consider additional factors in ESD's assessment of a project:

- Number of Net New Jobs created and/or At Risk jobs retained in New York State;
- Amount of the investment to be made;
- Amount of private financing leveraged;
- Amount of public financing leveraged;
- Estimated return on investment that the project identified in the application will provide to New York State;
- Level of increased economic activity from the proposed investment;
- Whether the application is supported by multiple public and/or private entities;
- The level of local and/or regional support;
- Whether the project will have a significant regional impact or is likely to increase the subject community's economic and social viability and vitality;
- Whether the project area is located within a Brownfield Opportunity Area or a Distressed Community;
- Whether, where applicable, there are identified tenants for a completed project;
- Potential to revitalize a downtown neighborhood;
- Whether or not the project concerns the preservation of the architectural character of a building or neighborhood;
- Whether the project is consistent with sustainable development;
- Whether the Applicant will use energy-efficient measures, 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;
- Degree of economic distress in the area where the Applicant will locate the project identified in its application;
- Degree of the Applicant's financial viability, strength of financials, operating history, project cash flow, and other financial measures;

- Degree of project readiness, and the likelihood of completion of the project identified in the application;
- Degree to which the project identified in the application supports New York State’s minority-owned and women-owned business enterprises;
- Degree to which the project identified in the application supports the principles of Smart Growth;
- Overall economic impact that the project identified in the application will have on a Region, including, but not limited to, the impact of any direct or indirect jobs that will be created;
- Degree to which other state or local incentive programs are available to the Applicant;
- Likelihood that the project identified in the application would be located outside of New York State or would not occur but for the availability of State or local incentives; and/or
- Degree to which the project is consistent with the Region’s Strategic Plan as developed by the Regional Council.

V. The Approval and Disbursement Process

Awards will be documented in the form of an Incentive Proposal outlining the terms of the proposed assistance, which is contingent 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.

Generally, projects are presented to the ESD Directors after all project expenditures have been undertaken and the disbursement of ESD assistance is sought¹.

For capital projects, 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. Generally, hearings are held the month after Directors’ approval.

The ESD Directors must reconsider the matter if any negative testimony is received at the public hearing. Approval by the Public Authorities Control Board (“the PACB”), New York State

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 provided the other conditions above have been met.

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 funding the award will be prepared by ESD. Notwithstanding the process outlined above, no project shall be funded if ESD does not receive sufficient funding resources for such project.

A one percent (1%) non-reimbursable commitment fee based on the amount of program assistance awarded will be assessed to all awardees. The commitment fee will be due when the Applicant executes documents required for processing the program assistance. In addition, 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.

In the case of Infrastructure Investment projects or Economic Growth Investment projects consisting of regional revolving loan and grant programs, the commitment fee may be waived, at ESD’s discretion.

VI. General Terms and Conditions

1. *Modification of Award* – ESD reserves the right to offer program assistance under terms different from those requested or those contained in these guidelines. ESD reserves the right to review and reconsider program assistance offers and terms in the event of material changes in project scope, timing, or circumstances.
2. *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.
3. *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, applications for projects shall be reviewed by the Affirmative Action Unit of ESD, which shall, in consultation with the Applicant and/or proposed recipient of 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 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.

4. *Reservations of Rights Concerning Funding Commitment* – It is expected the project will proceed in the time frame set forth by the Applicant in its application. If the implementation of a project fails to proceed as so indicated or is delayed for a significant period of time or ESD determines that there is doubt as to the viability of the project or the Applicant or the economic benefit of the project, ESD reserves the right to cancel its commitment to such project of program assistance.
5. *Environmental Sustainability* – ESD encourages the environmentally sustainable practice of recycling construction and demolition debris rather than disposition in a landfill.

VII. Other ESD Funding Sources

Applicants for program assistance may apply for and receive assistance from multiple ESD-administered and affiliated sources, even for the same project. 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 (see Section III, subpart E above). Applicants must always disclose whether they are pursuing or intend to pursue multiple ESD funding sources, including loans, grants, and tax incentives.

VIII. 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, and community facility.

“At Risk” shall mean a permanent Full-time 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 as 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 thirty-five (35) hours per week for not less than four (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 two (2) part-time, permanent, private sector employees on Applicant’s payroll who work at the project location for a combined minimum of thirty-five (35) hours per week for not less than four (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: (i) are new to the state; (ii) have not been transferred from employment with another business located in this state including from a related person in this state; (iii) are either full-time wage-paying jobs or equivalent to a full-time wage-paying job requiring at least thirty-five (35) hours per week; and (iv) are filled for more than six (6) 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.

IX. FUNDING PROGRAMS

Economic Development Purposes Fund

New York's Economic Development Purposes Fund ("EDPF") was established in April 2011 as part of New York State's Fiscal Year 2011-2012 budget. The EDPF makes available a two-year appropriation of \$62.36 million of grant and loan funding over a two-year period, which will help drive economic development across New York State. EDPF funding may be awarded to Eligible Applicants in accordance with these Guidelines through loans and/or grants, and may be used by the ESD for direct contracts, including contracts for economic development marketing or advertising.