

GOVERNOR’S Agriculture and Forestry Industries DEVELOPMENT FUND GUIDELINES

Purpose:

The Governor’s Agriculture and Forestry Industries Development Fund (AFID) provides either grants or loans to political subdivisions, acting independently or in conjunction with other political subdivisions, to attract new and expanding agriculture and forestry processing/value-added facilities using Virginia-grown products. The statutory provisions for AFID can be found at Sections 3.2-303 through 3.2-309 of the Code of Virginia. These guidelines shall be administered by the Office of the Secretary of Agriculture and Forestry and its agencies (the “Secretariat”) on behalf of the Governor.

Guiding Principles and Statutory Conditions:

AFID grants are made at the discretion of the Governor with the expectation that grants awarded to a political subdivision will result in a new or expanding processing/value-added facility for Virginia grown agricultural or forestal products. Grants will only be awarded for projects in which a minimum of 30% of the agricultural or forestry products to which the facility is adding value are produced within the Commonwealth of Virginia on an annual basis in normal production years. Additional consideration will be given to those projects that use a higher percentage of Virginia grown agricultural or forestry products. Applicants will be asked to provide a statement explaining how AFID funds play a critical role in the expected success of the project. This information will be used as part of the ranking criteria.

Although the AFID may be used to make loans, the preference is to use the AFID to make grants.

The maximum AFID grant allowed to any one project cannot exceed \$250,000. In assessing the amount of an AFID grant, the section entitled Determination of Grant Awards, Amount and Conditions will be used. Geographic diversity will be another determining factor in the awarding of AFID funds.

A dollar for dollar match, either in cash or in kind, from the political subdivision applying is required for every dollar of AFID funds requested.

The amount of AFID funds requested cannot exceed 25% of the project's total qualified capital investment as defined in the guidelines. In extraordinary circumstances, the Secretary of Agriculture and Forestry can set aside this requirement.

AFID grants are intended to be performance grants and are not intended to serve as front-end funding or financing for an economic development project.

Eligibility:

In order to qualify for an AFID grant, the benefiting project must:

- 1) be a facility that produces "Value-added agricultural or forestal products," meaning any agricultural or forestal product that (i) has undergone a change in physical state; (ii) was produced in a manner that enhances the value of the agricultural commodity or product; (iii) is physically segregated in a manner that results in the enhancement of the value of the agricultural or forestal product; (iv) is a source of renewable energy; or (v) is aggregated and marketed as a locally produced agricultural or forestal product.

- 2) demonstrate that a minimum of 30% of the agricultural or forestry products to which the facility is adding value will be grown or produced within the Commonwealth of Virginia on an annual basis in normal years.

While the authorizing legislation does not prohibit the same project from receiving funding from AFID while at the same time receiving support from the Governor's Opportunity Fund, preference will be given to projects that have not received such grants from the GOF.

Political subdivisions may apply for more than one AFID grant during a fiscal year.

Multiple political subdivisions may apply jointly for AFID funds for a single project. When multiple political subdivisions apply, one political subdivision must serve as the lead applicant.

Business beneficiaries of AFID grants are expected to provide to the political subdivision and the Secretariat, on an annual basis throughout the grant's performance period, data on their achievement of new jobs, capital investment, purchase of Virginia grown products targets and any other information agreed to be shared in the performance agreement. Also, as part of the Secretariat's efforts to determine the effectiveness of this economic development program, business beneficiaries will be asked to provide, on a confidential basis, the amount paid in the prior calendar year in Virginia corporate income tax.

Provisions Regarding New Jobs:

"New job" means employment of an indefinite duration, created as the direct result of the private investment, for which the firm pays the wages and standard fringe benefits for its employee, requiring a minimum of either (i) 35 hours of the employee's time a week for the entire normal year of the firm's operations, which "normal year" shall consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth to the location of the economic development project, positions with suppliers, and multiplier or spin-off jobs shall not qualify as new jobs. The term "new job" shall include positions with contractors provided that all requirements included within the definition of the term are met.

Although not considered new jobs, part-time and seasonal positions created by the project on a predictable, annual basis, will be included when evaluating the project. For the purposes of the AFID application, these positions should be converted into full-time equivalent (FTE) positions (based on one FTE = 1,680 hours per year), along with average annual wage, and listed separately alongside the "New jobs" figure.

If there are existing jobs at the business beneficiary's facility (or at a contractor's facility, if applicable), it is expected that the AFID grant performance agreement will state the number of existing jobs and will

require that any new jobs reported be in addition to the existing jobs. Further, any layoffs instituted by the business beneficiary through the performance period will be taken into account in reporting new jobs.

If a business beneficiary is relocating or expanding its operations, but is simultaneously closing or substantially reducing its operations in another Virginia locality, the jobs at the new or expanding location will count as “new jobs” only if the Secretary of Agriculture and Forestry agrees to this exception to the general policy and provides written notice to the Chairmen of the Senate Finance and House Appropriations Committees justifying such exception.

Provisions Regarding Capital Investment:

“Capital investment” is used in these Guidelines to mean “private investment” under the AFID Act.

“Capital investment” means a private capital expenditure by the company in taxable real property, taxable tangible personal property, or both, at the company’s facility in the political subdivision. Capital investment does not include the amount of grant proceeds, AFID or otherwise, and other incentives applied to the costs of capital assets.

The Secretary of Agriculture and Forestry may, in his or her discretion, determine that the value of machinery and equipment leased under an operating lease will qualify as a capital investment.

The Secretary of Agriculture and Forestry may, in his or her discretion, determine that the value of the construction or improvement of real property leased under an operating lease will qualify as a capital investment, but is likely to do so only in circumstances in which (1) the operating lease is for at least the longer of five years or twice the period of time until it is estimated that the Commonwealth will “break-even” on the project, taking into account all incentives offered to the company by the Commonwealth, (2) the real property would not be constructed or improved “but for” the company’s interest in leasing some or all of the facility, and (3) if for an improvement project, the improvements will significantly increase the taxable value of the property. Only that portion of the construction or

improvement costs related to the portion of the facility to be leased to the company may qualify.

Capital investment generally will not include operating expenses, except operating leases to the limited extent noted above.

Capital investment may include the value of real or personal property leased under a capital lease.

The cost of the acquisition of land and existing buildings will not count toward the required capital investment thresholds, unless the land and existing buildings are being purchased from a governmental entity and/or are being returned to the tax rolls.

Provisions Regarding Use of Virginia Grown Agricultural and Forestal Products:

In order to receive AFID funds, the business beneficiary of AFID funds must commit to ensuring a minimum of 30% of the agricultural or forestry products to which the facility is adding value are produced within the Commonwealth of Virginia on an annual basis in normal production years.

In situations where the agricultural or forestry product(s) to be used are not immediately available when the facility begins production, the business beneficiary must receive written approval from the Secretary of Agriculture and Forestry that the beneficiary has a realistic plan to achieve this 30% requirement in a reasonable time frame.

Upon petition by the political subdivision, the Secretary may permit the use of a greater quantity of out-of-state products if supplies grown or produced in the Commonwealth are insufficient to meet the level of usage agreed upon in the performance agreement due to unforeseen circumstances, unusually severe weather or disease conditions. The period of performance for the use of Virginia grown products for the grant shall be extended in the event the Secretary permits a deviation from the Virginia grown requirement.

For the purposes of the AFID program, "Agricultural products" means crops, livestock, and livestock products, including field crops, fruits,

vegetables, horticultural specialties, cattle, sheep, hogs, goats, horses, poultry, fur-bearing animals, milk, eggs, aquaculture, and furs. "Forestal products" means saw timber, pulpwood, posts, firewood, Christmas trees, and other tree and wood products for sale or for farm use.

Determination of Grant Awards, Amount and Conditions:

In determining grant awards, the following criteria will be considered: (i) amount of jobs expected to be created, (ii) anticipated amount of private capital investment, (iii) anticipated additional state tax revenue expected to accrue to the state and affected localities as a result of the capital investment and jobs created, (iv) anticipated amount of Virginia-grown agricultural and forestal products used by the project, (v) projected impact on agricultural and forestal producers, (vi) a return on investment analysis, (vii) an analysis of the impact on competing businesses already located in the area and (viii) other factors deemed appropriate by the Secretary of Agriculture and Forestry.

Multijurisdictional applications are encouraged and will be viewed favorably by the Secretariat.

Grants may be made for more than one project for a single company, but the projects must clearly represent separate investments for separate projects.

If the company has existing operations in Virginia and has closed, downsized, consolidated, or laid off employees within the past 30 months prior to the application date, there will be a strong bias toward not approving an AFID application. The company will, however, be offered an opportunity to explain such actions and to provide assurances regarding the expected new jobs and capital investment.

Grants may only be made from current appropriations and available funds and may not be committed from anticipated future appropriations.

The Secretary of Agriculture and Forestry makes final recommendations on eligibility, award amount, and conditions for Governor's approval.

Local Matches:

Political subdivisions must at least match dollar-for-dollar the amount requested from the AFID. Previously invested local funds, grants of moneys from other government sources (except as noted below with respect to the Tobacco Region Opportunity Fund), and contributions from private interests which benefit from the project's location may not be counted as part of the local match. A local match may be funded by an in-kind contribution from the political subdivision for the direct benefit of the business beneficiary, such as infrastructure development, fee waivers, or free or reduced-price land or buildings. In very unique circumstances, the Governor may waive or reduce the requirement for a local match for projects that the Governor has determined are of statewide or regional interest. Criteria such as a project's impact on Virginia agriculture and forestry, vacancy and unemployment, or poverty rates in the immediate area of the proposed site may be considered in the decision-making process.

Local matches generally must be made within 3 years of receipt of the AFID grant proceeds and may not be spread out over more than five years.

Local Enterprise Zone incentives may be counted towards the local match where the political subdivision makes actual expenditures after the project is announced to benefit the project.

Grants to political subdivisions from the Tobacco Region Opportunity Fund may be used as up to one-half of the matching funds.

Use of AFID Proceeds:

AFID funds may be used for public and private utility extension or capacity development on and off site; public and private installation, extension, or capacity development of high-speed or broadband Internet access, whether on or off site; road, rail, or other transportation access costs beyond the funding capability of existing programs; site acquisition; grading, drainage, paving, and any other activity required to prepare a site for construction; construction or build-out of publicly or privately owned buildings; training; or grants or loans to an industrial development authority, housing and redevelopment authority, or other political subdivision for purposes directly

relating to any of the foregoing. However, in no case shall funds from AFID be used, directly or indirectly, to pay or guarantee the payment for any rental, lease, license, or other contractual right to the use of any property.

It is the policy of the Commonwealth that AFID will not be used for any economic development project in which a business relocates or expands its operations in one or more Virginia localities and simultaneously closes its operations or substantially reduces the number of its employees in another Virginia locality. The Secretary of Agriculture and Forestry will enforce this policy. Exceptions to this policy may be made, but will require that the Secretary provide written notice to the Chairmen of the Senate Finance and House Appropriations Committees, which notice will include a justification for any such exception. Further, the locality to which the business intends to relocate or expand will provide notification to the locality from which the jobs will be lost or the business will depart.

Application Process:

Applications should consist of two documents: (1) a letter sent by the chief elected or appointed official of any county, city, town or other applicable political subdivision, which in the case of a joint application from multiple political subdivisions is the lead entity, to the Secretary of Agriculture and Forestry and (2) a letter sent by the business beneficiary to Secretary of Agriculture and Forestry.

It is expected that the letter from the political subdivision will use the following format and include the following information:

- Name of political subdivision(s) applying and contact info for lead applicant
- A summary statement presenting the importance of the project to the political subdivision(s) and why support from the AFID fund is being sought;
- Amount requested and the use of the funds;

- Description of the project, including:
 - Business beneficiary name and information (website, ownership, location of headquarters, other Virginia operations, etc.)
 - Project location (county, city or town – physical address)
 - Type of operation (i.e. brief description of the nature of the business: its products, markets, this facility's relationship to other parts of the business, etc.)
 - How does this project add value to Virginia grown agricultural or forestal products
- Details on the project's expected impact of Virginia agriculture and forestry producers
- Amount of private capital investment (as defined in these guidelines);
- Number of new jobs created (as defined in these guidelines) and their average annual salary.
- Regular, annual creation of part-time and seasonal jobs (converted into FTEs) and their average annual salary.
- Timetable for this project's capital investments, job creation and purchase of Virginia grown agricultural and forestal products
- List each Commonwealth of Virginia funding source individually.
- List local match for project (as defined in these guidelines) and describe how cash funds will be used.
- Analysis of the impact on competing businesses already located in the area;
- Where applicable, a statement indicating that written notification, as required under these guidelines, has been given to the locality that is either losing jobs or having a business relocate away from it as a result of this application; and

- Any other current or background information pertinent to the project that might assist the Governor in making an informed decision based on complete knowledge. Political subdivisions are obliged to disclose any information that could reflect negatively on the project.

It is expected that the letter from the business beneficiary will use the following format and include the following information:

- An explanation from the business beneficiary as to why the AFID funds are critical to the success of the project.
- An indication of the total amount of agricultural or forestry products the business beneficiary plans to utilize, where these agricultural or forestry products will likely be sourced over the course of the performance period, and how the business beneficiary plans to track and report those products being sourced from Virginia as part of meeting their performance agreement with the political subdivision.
- An affirmation that they have reviewed the political subdivision's AFID application and concur with the jobs, investment and other information it includes.
- An affirmation that the proposed project will not result in a closing, loss of jobs, consolidation, or change to any existing operations in Virginia for the next 12 months.
- An affirmation that the business beneficiary has not closed, downsized, consolidated, or laid off employees at existing operations in Virginia within the past 12 months prior to the application date, or, if it has, additional assurances regarding the stability of the new jobs and capital investment.

Together with the letter from the business beneficiary described above, the business beneficiary may be asked to provide three years of historical financial statements, covering the three years prior to the application, and three years of pro forma financial statements, covering the three years following the application. If the business beneficiary has been in business less than three years, it may be asked to provide the historical financial statements that may be available. The Secretariat may request additional

financial information from the company, including financial information and satisfactory evidence of a company's financial stability. It is likely that such information will be requested and reviewed prior to a decision on whether to recommend an AFID grant for a start-up business beneficiary or for a new division or operation for an existing business beneficiary.

Contractual Arrangements

Since an AFID grant or loan is awarded to a political subdivision, the political subdivision is required to enter into a performance agreement with the business beneficiary before it may receive AFID funds. This agreement ensures that the business beneficiary will meet the purchase commitment of Virginia grown agricultural and forestry products, job creation and capital investment levels as stated in the application. The Commonwealth will not be a party to the performance agreement. The Commonwealth, however, will require that the performance agreement contain language agreed to by the Secretary of Agriculture and Forestry that provides for approval and enforcement provisions.

The performance agreement will likely contain a date by which the political subdivision must request the AFID check. The performance agreement will likely provide that the performance agreement will be terminated if the check is not requested by that date. The political subdivision and the business beneficiary would be welcome to reapply for another AFID grant, using any new criteria in place at that time and subject to the availability of funds at that time. The form to be used by the political subdivision for requesting the check will be made available by the Secretariat.

The performance agreement must include a statement that the business beneficiary will achieve and maintain through a "performance date" the specified purchase of Virginia grown agricultural and forestal products, new job creation and capital investment targets. Generally, the performance date will be the date 36 months after the date by which the political subdivision needs to request the AFID check. Further, if the date by which the Commonwealth is expected to reach its "break-even point" as determined by a return-on-investment analysis prepared by the Secretariat, is later than the performance date, there will be another obligation of the business beneficiary to maintain its new jobs through the break-even date. The political subdivision will be held responsible for requesting any

repayments as calculated by the Secretariat, and for returning the AFID grant moneys repaid by the business beneficiary to the Commonwealth if the performance agreement criteria are not met.

Generally, AFID grants are broken into 33% for purchase of Virginia grown products, 33% for new jobs and 33% for capital investment. If the business beneficiary fails to meet its performance agreement targets in any of these categories, the political subdivision must clawback a proportionate amount of the AFID grant from the beneficiary.

The performance agreement will likely contain a provision that will require a 100% clawback of all AFID grant funds if at any time the political subdivision or the Secretary of Agriculture and Forestry conclude that the business beneficiary will be unable to meet at least half of any one of the following targets: its purchase of Virginia grown products requirements, new jobs or capital investment by the performance date. Such a conclusion may be based on factors such as the bankruptcy of the business beneficiary, the sale or liquidation of the business beneficiary, or the cessation or substantial reduction of operations by the business beneficiary in the political subdivision.

The business beneficiary may not assign its rights or obligations under an AFID performance agreement without the express written approval from the Secretary of Agriculture and Forestry and the political subdivision. The Secretary of Agriculture and Forestry will consider a reassignment of rights and obligations in the event that there is a transfer to a parent company, subsidiary or sister entity, so long as there is no net effect on the purchase of Virginia grown products, jobs and capital investment, and the benefits accruing to the political subdivision and the Commonwealth will remain substantially the same.

Once the Secretary of Agriculture and Forestry, the political subdivision and the business beneficiary are comfortable with the language of the performance agreement, the performance agreement must be presented to the Office of the Attorney General (OAG) for review as to proper legal form. The OAG will have up to seven days to provide written comments regarding the performance agreement.

If the business beneficiary has not achieved at least 90% of its Virginia grown purchases, jobs and capital investment targets by the performance

date set forth in the performance agreement, the political subdivision, in consultation with the Secretary of Agriculture and Forestry, may grant the business beneficiary an extension of up to 15 months, or more in extraordinary circumstances. The political subdivision will notify the Secretary of Agriculture and Forestry of any such extension.

Upon approval of an AFID grant, neither the political subdivision nor the business beneficiary shall announce or confirm the proposed project without coordination with the Secretary of Agriculture and Forestry. The purchase, jobs and capital investment targets in the performance agreement will be used in the press release when the public announcement is made. If the targets are not used for the public announcement of the project, or if the public announcement is made by anyone other than the Governor, the grant or loan award is subject to being reduced or withdrawn.

For the Secretary of Agriculture and Forestry to demonstrate the value of the AFID program and other economic development incentives, it would be helpful for the business beneficiary to share with the Secretariat the Virginia corporate income taxes paid by the business beneficiary. The Secretariat has no access to this information, unless the business beneficiary volunteers to provide it. It is expected that each performance agreement will contain a provision that substantially reads as follows:

With each _____ progress report, the business beneficiary shall report to the Secretariat the amount paid by the business beneficiary in the prior calendar year in Virginia corporate income tax. The Secretariat has represented to the business beneficiary that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by the Secretariat solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

For the Secretariat to track the use of Virginia grown products, it would be helpful for the business beneficiary to share with the Secretariat its purchases of Virginia grown products. The Secretariat has no access to this information, unless the business beneficiary volunteers to provide it. It

is expected that each performance agreement will contain a provision that substantially reads as follows:

With each _____ progress report, the business beneficiary shall report to the Secretariat the amount purchased and the purchase price paid by the business beneficiary, or the fair market value of the products utilized, in the prior calendar year for Virginia grown products. The Secretariat has represented to the business beneficiary that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by the Secretariat solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives

A basic form of a performance agreement will be attached to these Guidelines once it is completed.

MISCELLANEOUS

If legislation from the Virginia General Assembly provides that moneys from the AFID must be or may be directed to other uses, the Secretary of Agriculture and Forestry may cause the withdrawal of such moneys from the AFID fund for those uses, regardless of whether such those uses may conflict with these Guidelines.

If the Virginia General Assembly deposits federal funds into the AFID fund, and if the expenditure of those federal funds would require compliance by the political subdivision and/or the business beneficiary with various federal legal requirements, those federal legal requirements will be deemed to be read into the performance agreement.

Questions regarding the Governor's Agriculture and Forestry Industries Development Fund and these Guidelines should be directed to Virginia Department of Agriculture and Consumer Services' Office of Agriculture and Forest Development Services.

Stephen Versen – AFID Program Contact
Virginia Department of Agriculture and Consumer Services
102 Governor St.
Richmond, VA 23219
Ph: (804) 786-6911
Stephen.Versen@vdacs.virginia.gov
www.vdacs.virginia.gov/AFID