GOVERNOR'S AGRICULTURE AND FORESTRY INDUSTRIES DEVELOPMENT FUND (AFID) - FACILITY GRANT GUIDELINES

Purpose:

Chapter 3.1 of Title 3.2 of the Code of Virginia (Code) establishes the Governor's Agriculture and Forestry Industries Development Fund (AFID). AFID provides grants or loans to political subdivisions ("localities"), acting independently or in conjunction with other localities, to attract new and expanding agriculture and forestal processing/value-added facilities using Virginia-grown products.

The following guidelines will be administered by the Office of the Secretary of Agriculture and Forestry ("the Secretary"), through the Virginia Department of Agriculture and Consumer Services ("VDACS") (together, the "Secretariat"), on behalf of the Governor.

Guiding Principles and Statutory Conditions:

AFID Facility grants are made at the discretion of the Governor, with the expectation that grants awarded to the locality will result in a new or expanding processing/value-added facility for Virginia grown agricultural or forestal products. AFID Facility grants are intended to be performance grants and are not intended to serve as front-end funding or financing for an economic development project. AFID Facility grants are generally paid out on a performance basis.

The maximum AFID Facility grant allowed to any one project is capped at $500,000. In unique circumstances, this limit may be exceeded for projects that are determined to be of statewide or regional importance. In assessing the amount of an AFID Facility grant, the section entitled "Determination of Grant Awards, Amount and Conditions" will be used.

AFID Facility grants will only be awarded for projects in which a minimum of 30% of the agricultural or forestal 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 forestal 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. Geographic diversity will be another determining factor in the awarding of AFID funds.

A dollar-for-dollar match, in cash and/or in-kind (further defined in the Local Match section), from the locality is required for every AFID dollar requested.

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, commercially harvested wild fish, commercially harvested wild shellfish, 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:

- Number of jobs expected to be created;
- Anticipated amount of private capital investment;
- Anticipated additional state tax revenue expected to accrue to the state and localities as a result of the capital investment and jobs created;
- Anticipated amount of new Virginia-grown agricultural and forestal products used by the project;
- Projected impact on agricultural and forestal producers;
- A return-on-investment analysis;
- An analysis of the impact on competing businesses already located in the area;
- Other factors deemed appropriate by the Secretary

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 12 months prior to the application date, there will be a strong bias against approving an AFID application. The company will, however, be offered an opportunity to explain such actions and 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 makes final recommendations on eligibility, award amount, and conditions for Governor's approval.

Eligibility:

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

- 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.

- demonstrate that a minimum of 30% of the agricultural or forestal 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 Code does not prohibit a project from receiving funding from AFID while at the same time receiving support from the Commonwealth Opportunity Fund (COF), preference will be given to projects that have not received such grants from the COF.

Localities may apply for more than one AFID grant during a fiscal year. Multiple localities may jointly apply for AFID funds for a single project. When multiple localities are jointly applying, one locality must serve as the lead applicant. Multijurisdictional applications are encouraged and will be viewed favorably by the Secretariat.

<u>On an annual basis throughout the AFID Facility grant's performance period</u>, business beneficiaries are required to provide data on:

- Their achievement of new jobs;
- Capital investment;
- Purchase of Virginia grown products targets;
- 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.

<u>**Provisions Regarding New Jobs:**</u>

"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 Facility 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 not count as "new jobs" unless the Secretary agrees to this exception and provides written notice to the Chairmen of the Senate Finance and House Appropriations Committees justifying such exception.

Provisions Regarding Capital Investment:

"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 any other, and other incentives applied to the costs of capital assets. The Secretary 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 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 (i) 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, (ii) the real property would not be constructed or improved "but for" the company's interest in leasing some or all of the facility, and (iii) 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 Facility grant funds, the business beneficiary must commit to ensuring a minimum of 30% of the agricultural or forestal products to which the facility is adding value are produced within the Commonwealth of Virginia on an annual basis in normal production years. In unique circumstances, the Secretary may reduce the threshold for use of Virginia-grown products for any project that is determined to be of statewide or regional importance. 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 this decision-making process.

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

Local Match:

Localities must at least match dollar-for-dollar the amount requested from 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 that 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 locality for the direct benefit of the business beneficiary, such as infrastructure development, fee waivers, or free or reduced-price land or buildings. In unique circumstances, the Governor may waive or reduce the requirement for a local match for any project that the Governor has determined is of statewide or regional importance. 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 this decision-making process.

Grants to localities from the Tobacco Region Opportunity Fund may be used as up to one-half of the matching funds. Local Enterprise Zone incentives may be counted towards the local match where the locality makes actual expenditures after the project is announced to benefit the project. Local matches generally must be made within three years of the AFID Facility grant award and may not be spread out over more than five years.

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 to an industrial development authority, housing and redevelopment authority, or other political subdivision for purposes directly relating to any of the foregoing.

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 will enforce this policy. Exceptions to this policy may be made but require that the Secretary provide written notice to the Chairmen of the Senate Finance and Appropriations and House Appropriations Committees, which 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: (i) 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 and (ii) a letter sent by the business beneficiary to the Secretary.

It is expected that the letter from the locality(ies) will use the following format and include the following information:

- Name of locality(ies) applying and contact info for lead applicant (if applicable);

- A summary statement presenting the importance of the project to the locality(ies) 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 this project adds value to Virginia grown agricultural or forestal products

- Details on the project's expected impact of Virginia agriculture and forestal producers;

- Amount of 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 AFID funds are critical to the success of the project;

- An indication of the total amount of agricultural or forestal products the business beneficiary plans to utilize, where these agricultural or forestal 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 locality;

- An affirmation that they have reviewed the locality's AFID application and concur with the jobs, investment, and other information it includes;

- 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;

- 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

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 Facility grant is awarded to a locality, the locality 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 forestal 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 that provides for approval and enforcement provisions.

The performance agreement will contain a date by which the locality must request the AFID check and provide that the performance agreement will be terminated if the check is not requested by that date. The form to be used by the locality for requesting the check will be made available by VDACS.

The performance agreement must include a statement that the business beneficiary will achieve and maintain the specified purchase of Virginia grown agricultural and forestal products, new job creation and capital investment targets through a “performance date”. Generally, the performance date will be the date 36 months after the date of award. 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.

AFID Facility 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 locality must clawback a proportionate amount of the AFID Facility grant from the beneficiary.

The performance agreement will contain a provision that will require a 100% clawback of all AFID Facility grant funds if at any time the locality or the Secretary conclude that the business beneficiary will be unable to meet at least half (50%) 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 locality. The locality will be held responsible for requesting any clawback 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.

If the business beneficiary has not achieved at least 90% of its Virginia grown purchases, jobs, and capital investment targets by <u>no less than 60 calendar days</u> before the performance date set forth in the performance agreement, the locality, in consultation with the Secretary, may grant the business beneficiary a one-time extension of up to 15 months. The locality will notify the Secretary, in writing, of any such extension.

The business beneficiary may not assign its rights or obligations under an AFID performance agreement without the express written approval from the Secretary and the locality. The Secretary 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, or capital investment, and the benefits accruing to the locality and the Commonwealth will remain substantially the same.

Once the Secretary, the locality, 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 (7) days to provide written comments regarding the performance agreement.

Upon approval of an AFID Facility grant, neither the locality nor the business beneficiary shall announce or confirm the proposed project without coordination with the Secretary. The Virginia-grown 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 award is subject to being reduced or withdrawn.

For the Secretary to demonstrate the value of the AFID program and other economic development incentives, it would be helpful for the business beneficiary to share 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. Each performance agreement will contain a provision that substantially reads as follows:

> With each annual 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.

A sample performance agreement is available on request.