

870-RICR-20-00-2

## **TITLE 870 – COMMERCE CORPORATION**

### **CHAPTER 20 – LOANS AND GRANTS**

#### **SUBCHAPTER 00 – N/A**

##### **PART 2 – Rules and Regulations for the First Wave Closing Fund**

### **2.1 Purpose**

These rules and regulations (the “Rules” or “Part”) are promulgated to set forth the principles, policies and practices of the Rhode Island Commerce Corporation in implementing and administering R.I. Gen. Laws Chapter 42-64.23, the First Wave Closing Fund Act (the “Act”).

### **2.2 Authority**

These Rules are promulgated pursuant to R.I. Gen. Laws Chapter 42-64.23. These Rules have been prepared in accordance with the requirements of the Rhode Island Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

### **2.3 Scope**

These Rules shall apply to any application for an incentive under the Act. Notwithstanding anything contained in these Rules to the contrary, the Rhode Island Commerce Corporation shall have and may exercise all general powers set forth in the Act that are necessary or convenient to effect its purposes, and these Rules shall be liberally construed so as to permit the Rhode Island Commerce Corporation to effectuate the purposes of the Act, the public interest, and other applicable state laws and regulations.

### **2.4 Severability**

If any provision of these Rules, or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules shall not be affected thereby.

### **2.5 Definitions**

- A. The following words and terms, when used in these Rules, shall have the following meanings, unless the context clearly indicates otherwise.

1. "Act" means R.I. Gen. Laws Chapter 42-64.23 known as the First Wave Closing Fund Act.
2. "Applicant" means a Business applying for First Wave Financing under the Act and these Rules.
3. "Application" means the application, promulgated by the Corporation, which must be completed and submitted by an Applicant pursuant to the requirements of the Act and these Rules.
4. "Board" means the board of directors of the Corporation.
5. "Business" means a corporation as defined in R.I. Gen. Laws § 44-11-1(4), a partnership, an S corporation, a non-profit corporation, a sole proprietorship or a limited liability company.
6. "Corporation" means the Rhode Island Commerce Corporation established pursuant to R.I. Gen. Laws Chapter 42-64.
7. "Financing agreement" means an agreement between the Corporation and an Applicant for an approved Project setting forth the terms and conditions of the provision of First Wave Financing.
8. "First wave financing" means funding for a Project from the First Wave Closing Fund established pursuant to R.I. Gen. Laws § 42-64.23-4.
9. "Full-time job" means an employment position filled by a full-time employee in this State, which is a person who is employed by a Business for consideration for a minimum of at least thirty-five (35) hours per week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, or who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization for a minimum of thirty-five (35) hours per week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose wages are subject to State withholding.
10. "Project" means the transaction for which the Applicant seeks First Wave Financing.
11. "Project cost" means costs incurred in connection with the Project by the Applicant until such time as specified by the Corporation.
12. "Project financing gap" means:

- a. the part of the total Project Cost that remains to be financed after accounting for
  - (1) all other sources of capital,
  - (2) a reasonable assumption of debt on the Project, and
  - (3) any other capital source that is reasonably available given the nature of the Project; or
- b. the amount of funds that the State may invest in a Project to gain a competitive advantage over a viable comparable location in another state by means described in the Act and Rules.

13. "State" means the State of Rhode Island and Providence Plantations.

## **2.6 Funding Guidelines**

- A. The following requirements must be met for a Project to be eligible for a First Wave Financing:
  - 1. the Applicant must demonstrate need for First Wave Financing by showing that all other options for financing, within reason, have been exhausted;
  - 2. the Project must be of a critical or catalytic nature in that it either:
    - a. will result in the creation or retention of at least twenty-five (25) Full-Time Jobs;
    - b. has the potential to spur further private investment or economic activity in the community in which it is located; or
    - c. involves infrastructure or a facility that will support or enhance development in the community in which it is located, including, but not limited to, transportation, parks, greenways, performance venues, meeting facilities, or other community facilities.
- B. First Wave Financing may be used for:
  - 1. working capital, equipment, furnishings, fixtures;
  - 2. the construction or rehabilitation of a structure;
  - 3. the purchase of real property;
  - 4. as permanent financing; or

5. such other purpose as the Corporation approves.
- C. First Wave Financing is available in the form of debt financing, equity financing, or grants.
  - D. Prior to awarding any First Wave Financing under the Act, the Corporation may, in its discretion, require any Applicant to obtain a tax stabilization agreement from the municipality in which the Project is located on such terms as the Corporation deems acceptable.

## **2.7 Request for Authorization**

- A. No Application for First Wave Financing can be filed without written authorization from the Corporation.
- B. The Corporation may authorize an Application for First Wave Financing:
  1. to an Applicant who has applied for an economic incentive under another program administered by the Corporation; or
  2. after review and approval of a Request for Authorization, in the form published by the Corporation, received from the Applicant demonstrating that the Applicant's Project meets the criteria set forth in § 2.6 of these Rules.
- C. The Corporation may from time to time set deadlines for Requests for Authorization. Such deadlines will be published on the Corporation's web site.

## **2.8 Application**

- A. Each Application made by an Applicant shall include the following information in a format prescribed by the Corporation (unless inapplicable):
  1. the name, address and principal contact for the Applicant;
  2. state and federal tax identification numbers;
  3. the location of the Project;
  4. a detailed description of the Project;
  5. a demonstration that the Project satisfies at least one of the purposes set forth in § 2.6(A)(2) of this Part;
  6. a detailed description of the Project's financing, including sources and uses of funds;

7. a statement of need demonstrating why First Wave Financing in the amount sought is necessary to bring the Project to fruition in the State;
8. the amount of First Wave Financing requested, and the form (debt, equity, grant) in which the First Wave Financing is sought;
9. a schedule for the disbursement of the First Wave Financing;
10. a description of the proposed use of the First Wave Financing;
11. a list of all federal, state, and local incentives, grants, tax credits or other aid (including a tax stabilization agreement) that will or may be received or requested for the Project, and the status of the application for each;
12. an explanation of the major risks, business drivers, and financial opportunity associated with the Project;
13. a list and status of all required federal, state and/or municipal approvals and/or permits required for the Project; and
14. such other information as the Corporation deems appropriate or necessary.

## **2.9 Fees**

- A. An Applicant shall be charged a one-time, non-refundable application fee by the Corporation and may be charged fees for ongoing administration in relation to the Project if approved by the Board. The Corporation shall annually publish a fee schedule on its website commencing on or before December 31, 2015.
- B. An Applicant may be required to pay to the Corporation the full amount of direct fees and costs paid to third-parties by the Corporation in relation to the consideration and/or approval of the Applicant's Project.

## **2.10 Review Process**

- A. Each Application shall be reviewed to confirm compliance with the Act and these Rules, and the Corporation may reject any incomplete or deficient Application.
- B. The Corporation may require the submission of additional information in connection with any Application or the revision of an Application, and may permit the resubmission of an Application rejected as being incomplete or deficient.
- C. After submission of a complete Application and review by the Corporation in accordance with the requirements of the Act and these Rules, the Corporation

will determine whether to recommend to the Board that it approve a First Wave Financing for the Project. In developing a recommendation, the Corporation may take into account, in consideration with other factors deemed relevant by the Corporation:

1. economic impact of the Project, including costs and benefits to the State, including the impact on private investment, employment, and state and local revenues, and overall societal impact on the State;
  2. the amount of the Project Financing Gap;
  3. strategic importance of the Project to the State, region, or locality, including whether the Project furthers State or municipal planning and development objectives, or both and the Project's relationship to other Projects awarded to be awarded incentives under these Rules and the Act;
  4. quality and number of jobs produced;
  5. quality of industry and Project;
  6. any competitive offers regarding the Project from another state or country; and
  7. whether there exists an opportunity for the State or the Corporation to recoup or receive a return on all or portion of the First Wave Financing to be provided to the Applicant by virtue of a receipt of an equity stake or other interest in or return from the Project.
- D. The Corporation aims to award First Wave Financing to multiple Projects in a given fiscal year. In determining whether to approve an award or awards of First Wave Financing in a given fiscal year, the Corporation shall consider:
1. the number and strength of Applications received;
  2. the level of appropriations;
  3. the amounts of First Wave Financing sought; and
  4. such other factors it deems relevant.
- E. If the Corporation determines that it will not recommend a complete Application to the Board for approval of an incentive, it shall notify the Applicant in writing of such decision.

## **2.11 Discretion and Judicial Review**

- A. The Corporation shall not have any obligation to make any award or grant any benefits under the Act or these Rules.
- B. A review of an Application shall not constitute a “contested case” under the Administrative Procedures Act, R.I. Gen. Laws § 42-35-9, and no opportunity to object to an Application shall be afforded, nor shall judicial review be available from a decision rendered by the Corporation or the Board in connection with any Application.

## **2.12 Board Approval**

- A. Prior to Board consideration of any Project, a subcommittee of the Board shall convene to consider the Project, and no Project shall be submitted to the full Board for consideration unless and until such subcommittee has reviewed the Project.
- B. In approving First Wave Financing for an Applicant, the Board may set terms and conditions on the receipt of First Wave Financing as it deems appropriate, including but not limited to approving First Wave Financing in an amount lesser than the sought in the Application.

## **2.13 Financing Agreement**

- A. Upon approval of First Wave Financing for an Applicant by the Board, the Corporation and the Applicant will enter into a Financing Agreement prior to the issuance of any First Wave Financing to the Applicant.
- B. In order to safeguard the expenditure of public funds and ensure that the disbursement of funds further the objectives of the Act, the Financing Agreement shall include, among others, the following terms:
  - 1. the maximum amount of First Wave Financing awarded;
  - 2. the timing of the disbursement of the First Wave Financing;
  - 3. a provision delineating the permissible uses of the First Wave Financing provided;
  - 4. reasonable evidence that the Applicant is in good standing with the Division of Taxation at the time of execution of the Financing Agreement, meaning that the:

- a. the Applicant is current on all outstanding filings and declared tax liabilities subject to audit;
  - b. the Applicant and the Division of Taxation have a workout payment agreement or other settlement with respect to any known delinquent tax liability and the Applicant is current on that workout payment agreement or settlement; or
  - c. the Applicant has timely commenced or is engaged in an administrative or judicial proceeding concerning a tax liability the status of which would otherwise preclude the issuance of a letter of good standing from the Division of Taxation;
5. events of default and remedies including events, if any, that would trigger forfeiture, revocation and/or repayment of the First Wave Financing provided;
6. indemnification, insurance and other customary protective requirements;
7. reporting requirements including, but not limited to, any requirements under the Act;
8. the imposition of such restrictions or covenants upon the Project as may be necessary, in the Corporation's sole determination, to ensure continued compliance with the Act, the Rules, and any terms and conditions on the provision of First Wave Financing that the Corporation deems appropriate;
9. at the Corporation's discretion, a provision requiring the Applicant to pay the Corporation's reasonable attorneys' fees incurred in connection with the negotiation, execution and enforcement of the Financing Agreement; and
10. any other provisions the Corporation deems appropriate.

## **2.14 Administration and Examination of Records**

The Corporation may examine any books, papers, records or memoranda bearing upon the approval of any financing awarded under the Act, and may require the attendance of any person executing any application, report or other statement, or the attendance of any other person, and may examine such person under oath respecting any matter which the Corporation deems pertinent or material in determining eligibility for financing sought under the Act.



## **2.15 Inspection Rights**

The Corporation shall have the right to make an inspection and to enter upon any property that is the subject of a Request for Financing during the application process or term of any Financing Agreement to verify compliance with the Act, these Rules and such other conditions imposed in the Financing Agreement.

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