

DEPARTMENT OF TRANSPORTATION

DIVISION OF PLANNING

Statutory Authority: 29 Delaware Code, Section 8422 (29 Del.C. §8422)

FINAL

ORDER

2312 Regulations Governing the Practice and Procedure for Administering the Transportation Infrastructure Investment Fund

Pursuant to the authority provided by 29 Del.C. §8422, the Delaware Department of Transportation (DelDOT), is promulgating regulations for the administration of the Transportation Infrastructure Investment Fund. The Transportation Infrastructure Investment Fund is established to provide economic assistance for renovation, construction, or any other type of improvements to roads and related transportation infrastructure in order to attract new businesses to this state, or expand existing businesses in this State, when such an economic development opportunity would create a significant number of direct, permanent, quality full-time jobs.

Findings of Fact and Conclusions of Law

1. The public was given notice and the opportunity to provide comments in writing concerning the proposed revisions.
2. The proposed revisions are useful and proper and the Department believes that the adoption of these regulations is appropriate.

Decision and Effective Date

Based on the provision of Delaware law and the record of this docket, I hereby adopt the Transportation Infrastructure Investment Fund regulation, as set forth in the version attached, to be effective November 11, 2019.

It is so ordered on this 3rd day of October 2019.

Jennifer Cohan, Secretary
Delaware Department of Transportation

2312 Regulations Governing the Practice and Procedure for Administering the Transportation Infrastructure Investment Fund

1.0 Authorization

This regulation is adopted pursuant to 29 Del.C. §8422(d).

2.0 Purpose

The purpose of these Regulations is to establish the practice and procedure for the administration of the Transportation Infrastructure Investment Fund (the "Fund"). The Regulations contain procedures governing the process for applying to the Council for economic assistance under the Fund, pre-closing and post-closing procedures and criteria for the approval or disapproval of an application for economic assistance under the Fund.

3.0 Definitions

The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings:

"Application" means an application made to the Council on such form or forms, together with all relevant attachments, as the Council may, in its sole discretion, require in connection with administration of the Fund.

"Applicant" means any person, including individuals, firms, partnerships, trusts, public or private corporations, or other legal entities, for which a Project is undertaken or proposed to be undertaken.

"Council" means the Transportation Infrastructure Investment Fund Council as set forth in 29 Del.C. §8422.

"DelDOT" means the Delaware Department of Transportation.

"Final Approval" means the final approval of an Application by the Secretary of the Department of Transportation and the Secretary of State.

“Grant” means a financial award in the form of funds to Applicants for the specific intended use of the proceeds from the Fund.

“Project” means economic development or redevelopment activity to attract or expand employment.

“Public Endorser” means the State of Delaware or any agency thereof, or any County, municipality, local political subdivision within the State of Delaware.

“Transportation Infrastructure” for purposes of these Regulations, shall include but not be limited to the following:

- : Any project that would construct, maintain, extend or enhance any highway, and/or road, and/or bridge.
- : Any project that would construct, maintain, extend or enhance access to any transit and/or intermodal system.
- : Any project that would construct, maintain, extend or enhance any access to commercial ports and/or airports.

4.0 Infrastructure Grants

4.1 Grant Description. Proceeds of a Grant are to be used to reimburse work performed for renovation, construction or any other type of improvements to Transportation Infrastructure.

4.2 Eligibility Standards. To be eligible for a Grant, a Project must have at least one Public Endorser and expand employment in the State. Grants would only be authorized for Transportation Infrastructure located within the public right-of-way or on public land.

4.3 Project Approval Standards

4.3.1 Findings. As a precondition to approving a Grant, the Council shall find that the Project would create a significant number of direct, permanent, quality, full-time jobs, and the associated Transportation Infrastructure improvements would benefit the public by improving infrastructure within the State. The Council shall apply the following standards, where applicable, in making such findings and determinations:

4.3.1.1 Employment Standard. The Council will review information concerning the Applicant as submitted in an Application. As a condition precedent to making a Grant, the Council shall determine that the Applicant intends to provide gainful employment within the State. The standards to be considered by the Council will include, but not be limited to, the number of permanent, quality, full-time jobs created as a result of the Project, the wage scale applicable to persons to be employed as a result of the Project, the effect of the Project on the tax base of the State and/or the county or municipality in which the Project is to be located, and the expected impact that the Project will have on the development of new or expanded economic activity within the State.

4.3.1.2 In determining whether the Project will assist in creating "direct, permanent, quality full-time jobs" in the State, the Applicant shall demonstrate to the Council that the Applicant, operator or principal user thereof has the capability to operate and maintain such Project efficiently and that the Applicant has not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application. In this regard, the Council may, in its discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, the Council, in its sole discretion, may decline to consider the Application. If requested by the Council, similar proof shall be obtained from any operator or principal user of the Project.

4.3.1.3 Financial Stability and Economic Sustainability. The Applicant shall demonstrate to the Council that it possesses financial stability and can also demonstrate that the Project is economically sustainable. The Applicant must meet all of the following:

4.3.1.3.1 Validly exist as a corporation, limited liability company, or other regulated entity.

4.3.1.3.2 Be in good standing under the laws of this State, duly-qualified to do business.

4.3.1.3.3 Be in good standing in each other jurisdiction in which its conduct of business requires such qualification.

4.3.1.3.4 Possess business and professional licenses required under Titles 24 and 30.

4.3.1.4 Public Purpose Standard. When applying the "public purpose standard", the Council shall take into consideration whether the Transportation Infrastructure improvements associated with the Project will enhance the infrastructure of the state, such that it would have a positive impact on Delaware's future economic health and competitiveness. Factors to be considered by the Council shall include, but not be limited to, whether the Transportation Infrastructure improvements will benefit the greater public and not just the Applicant, whether the Transportation Infrastructure improvements will help attract additional economic development to the area where the Project is

being built, whether the Transportation Infrastructure would have otherwise required the use of State funding to be completed.

4.3.2 Clawback Provision. The Council shall determine appropriate clawback provisions for each Applicant under which the Applicant may be required to repay some or all of the Grant.

4.3.3 Post-Grant Period - Annual Reporting. Unless waived or amended by the Council, the Applicant shall, for a period of five (5) years following the award of Grant, submit to the Division of Small Business, on an annual basis, financial statements in a form acceptable to the Council, a progress report on the status of the project, including, but not limited to, the number of permanent, quality, full-time jobs created or saved as a result of the Project and the wage scale applicable to such persons, any economic impact of the funding (such as sales, costs, etc.) and any other information required by the Council. Each applicant shall report to the Division of Small Business no later than June 30 of each of the years for which the report is required.

5.0 Application Procedure

5.1 Applicants may obtain Application forms through DeIDOT.

5.2 To apply for the Grant, an Applicant must submit a completed Application concerning the Project to DeIDOT. Each Application must include the written certification of at least one Public Endorser for the Project, a narrative of the Transportation Infrastructure needed to support the Project outlining both the direct need and the benefits to the general public, proof of employment standards, financial stability and economic sustainability.

5.3 Completed Applications will be reviewed by the DeIDOT and the Division of Small Business. DeIDOT and the Division of Small Business shall use its reasonable best efforts to complete its review of the Application within sixty (60) days from the Application deadline. No application will be reviewed by the Council until it is complete to the satisfaction of DeIDOT and Division of Small Business.

5.4 Applications will be accepted on a quarterly basis, unless otherwise directed by the Council.

5.5 Any business applying to the Transportation Infrastructure Investment Fund shall validly exist as a corporation, limited liability company or other regulated entity and shall be in good standing under the laws of the State of Delaware, duly qualified to do business and shall be in good standing in each other jurisdiction in which its conduct of business requires such qualification. Such applying business shall possess required business and professional licenses in accordance with Titles 24 and 30 of the Delaware Code.

6.0 Approval Process

6.1 The Council shall use its reasonable best efforts to complete its review of the Application for preliminary approval or disapproval within thirty (30) days from the date DeIDOT and Division of Small Business deems an Application is complete, provided, however, that if no meeting of quorum of Council is scheduled or held within 30 days of the Application being deemed complete, the Application will be considered at the next meeting of the Council at which quorum is present.

6.2 If a majority of the Council present determines that a Project meets the approval standards outlined above, and that the Grant award would represent a prudent use of the Fund, then the Council shall adopt a resolution recommending the issuance of the Grant to the Secretary of Transportation and the Secretary of State for consideration for Final Approval.

6.3 Final Approval will be binding however, the Secretary of Transportation and Secretary of State may withdraw Final Approval at any time prior to the disbursement of the Grant, if it determines that (1) the Applicant's circumstances have changed adversely since the date of Final Approval or since completion of the Application, if such adverse change did not come to the Council's attention prior to Final Approval or (2) the Application contained a statement that was materially false or failed to include information necessary to prevent the Application from being materially false.

6.4 The Council will establish the term of the Grant and the reimbursement schedule. The Council may make recommendation on limitations or grant extensions and may only be withdrawn as set forth in subsection 6.3.

6.5 The Applicant shall be issued a commitment letter outlining the terms and conditions of the Final Approval. The Grant is encumbered from the Fund for the Transportation Infrastructure associated with the Project upon the execution of an agreement detailing the terms and conditions of the commitment letter.