

# Tobacco Region Incentive for Agribusiness Development (TRIAD) Grant Program Guidelines

## **Purpose:**

The purpose of the Tobacco Region Incentive for Agribusiness Development (TRIAD) is to provide the cities and counties of the Tobacco Region, and the political subdivisions that support them, an economic development incentive for attracting new or expanding agriculture- and forestry-based businesses that add value to products grown in the Tobacco Region. The program's goal is to bring beneficial economic activity along with new jobs and investments to the Tobacco Region, while also creating new market opportunities for farmers and forestland owners operating there.

## **Guiding Principles:**

- TRIAD awards are made at the discretion of the Tobacco Commission, with the expectation that each awarded grant will result in a new or expanding processing or value-added facility for agricultural or forestry products that are produced in the Tobacco Region.
- TRIAD awards are made to political subdivisions of the Commonwealth to be awarded to, or spent to the direct benefit of, a private business that is committing to achieve certain targets for jobs, investment, and the purchase of products grown in the Tobacco Region (the Business Beneficiary). Additional targets or conditions may be added to the grant terms on a case-by-case basis.
- TRIAD grants are intended to be performance grants that incentivize actions. They are not intended to serve as front-end funding or financing for an economic development project and shall not consider investments made prior to an award decision.
- TRIAD grants are generally paid out on a performance basis.
- A dollar-for-dollar match, in cash and/or in-kind (further defined in the Matching Funds section) is required for every TRIAD dollar requested.
- Leveraging additional state and Federal grant awards for the business beneficiary is an important goal of the TRIAD program, and reasonable flexibility in the program's administration will be allowed in order to accommodate the needs of these other programs.
- In assessing the amount of a TRIAD grant, the section entitled "Determination of Grant Awards, Amount and Conditions" will be used.
- TRIAD Facility grants will only be awarded for projects that demonstrate a substantial benefit to farmers and forestland owners within the Tobacco Region.
- Businesses benefiting from TRIAD funds must provide a statement explaining how TRIAD support will play a critical role in the expected success of the project.
- All decisions and interpretations of these guidelines are made by the Commission, or its designee, based on the application materials provided and the recommendation of staff.
- Companies relocating from one Virginia locality to another within the Tobacco Region will generally not be eligible for support through the TRIAD program

## **Determination of Grant Awards, Amount and Conditions:**

In determining the amount of a grant and the conditions under which it will be awarded, three areas of impact will be taken into consideration:

- Projected impact on the region's farmers and forestland owners, which includes:
  - The project's commitment on the volume and value of new Tobacco Region-grown agricultural and forestry products used by the project
  - Anticipated number of farmers and forestland owners that may benefit
  - The degree to which the project improves the access of the region's producers to lucrative new and expanded markets
  
- A return-on-investment analysis to the Commonwealth, which takes into consideration the project's commitments relating to:
  - Number of New Jobs to be created
  - Average annual pay for these New Jobs
  - Commitment of new private capital investment
  
- Other factors that raise the quality and impact of the project:
  - Importance of project to the applicant, including the amount and source of local matching funds
  - How well the project presents a clear market opportunity, builds on the region's inherent assets, and leverages existing business strengths
  - Amount of additional funding that the award leverages from the public, non-profit, and private sectors
  - How the project helps achieve other community and economic development goals of the community or region
  - How critical the grant award is to the success of the project

Commission staff make final recommendations on eligibility, award amount, and conditions for approval by the Commission.

## **Eligibility:**

TRIAD Grants are made only to the Cities, Counties, and Towns located in the Tobacco Region, or to a political subdivision of the Commonwealth that supports one or more of those entities, such as an Industrial Development Authority or an Economic Development Authority.

TRIAD awards are to be used only as an economic development incentive in cases where the benefiting business is:

- A privately owned, tax-paying enterprise that is or will be physically located in the Tobacco Region
- Adding value to agricultural or forestry products that are or will be produced within the Tobacco Region

- Bringing significantly greater economic benefit to the region's agricultural and forestry economy than the company is receiving in TRIAD funding
- Committing to: 1) make significant new taxable private investment; and/or 2) create new jobs and FTEs; and 3) use a specific amount of Tobacco Region-grown products
- Committing to achieve the above commitments within a specified Performance Period, which is typically 36 months

### **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 per 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. The following shall not qualify as new jobs: 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.

Additionally, positions that do not meet the definition above, but instead are new, part-time, or seasonal positions created by the project on a predictable, annual basis, may be, for the purposes of this program, converted into Full-Time Equivalent positions (FTEs). An FTE shall be calculated as: One FTE equals 2,000 paid hours per year. When projects are being evaluated for funding, FTEs may be considered as New Jobs in the project's ROI analysis.

The term "New Job" shall include positions with contractors provided that all requirements included within the definition of the term are met.

### **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 TRIAD grant proceeds nor any incentives applied to the costs of capital assets. The Executive Director 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 Executive Director 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 Tobacco Region-Grown Agricultural and Forestry Products:**

A distinguishing feature of the TRIAD program is its focus on bringing substantial benefits to the farmers and forestland owners of the Tobacco Region, primarily through the creation of new market opportunities. This goal of the program will typically be translated into a specific commitment from the business beneficiary to purchase a certain amount of agriculture and forestry products that are grown or produced in the Tobacco Region.

Projects committing to source at least 20% of the agricultural or forestry products to which the facility is adding value, on a volume or value basis, from the Tobacco Region will be considered eligible. Vertically integrated companies growing their facility's feedstock in the Tobacco Region are eligible for TRIAD support. If the company cannot commit to sourcing 20% from the Tobacco Region, it may still be recommended for an award, but it must explain in its application how the project will bring substantial benefit to the farmers and forestland owners of the Tobacco Region. In general, the benefit to the region's producers must far outweigh the value of assistance the company will receive through TRIAD.

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 present a realistic plan to achieve either a minimum of 20% Tobacco Region sourcing or a significant positive impact to the region's producers in a reasonable time frame.

Upon petition by the locality, the Executive Director may permit the use of a greater quantity of out-of-region products if supplies grown or produced in the Tobacco Region 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 Tobacco Region-grown products for the grant shall be extended in the event the Executive Director permits a deviation from the Tobacco Region-grown requirement.

### **Matching Funds:**

All TRIAD awards require dollar-for-dollar matching funds from public or non-profit sources.

At least 10% of the matching funds must come from the applicant locality or its political subdivision, such as an Economic or Industrial Development Authority. This local match may be funded by a direct cash award or in-kind contribution from the locality for the direct benefit of the business beneficiary; such in-kind contributions may be in the form of infrastructure development, fee

waivers, or free or reduced-price land or buildings. Local Enterprise Zone incentives may be counted towards the local match where the locality makes actual expenditures or forgoes revenue normally owed to it to benefit the project after the project is announced. Local matches generally must be made within three years of the TRIAD award and may not be spread over more than five years.

If matching funds provided by the applicant locality do not meet the required one-for-one match, the remaining matching funds may come from other public or non-profit sources. Public funds, such as those coming from other political subdivisions of the Commonwealth, other state organizations, or Federal economic development programs, may be considered eligible match, provided they are being awarded to the same project being incentivized through the TRIAD award. In-kind contributions from these entities, as long as they are being awarded for the direct benefit of the business beneficiary, may also be counted as local match. Lastly, contributions to the project from non-profit sources may in certain circumstances be allowed as part of the matching funds. All decisions on the eligibility of matching funds are made at the discretion of the Executive Director.

In unique circumstances, the Commission may waive or reduce the public/non-profit match requirement for projects that are considered to be especially impactful to the agriculture and forestry community.

Unless otherwise stated in these guidelines, matching funds must comply with Section IX Matching Fund of the Commission's Funding Policies for Grant Awards.

#### **Use of TRIAD Proceeds:**

Generally, TRIAD funds shall be used to make permanent improvements to a site or building in the locality that receives the award. Acceptable uses of TRIAD funds include 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 TRIAD 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.

TRIAD funds may 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 Executive Director will enforce this policy. Exceptions to this policy may be made but require that the Executive Director provide written notice to the Commission, 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.

Unless otherwise stated in these guidelines, the use of TRIAD funds must comply with Section IV General Non-Eligible Uses of Funds of the Commission's Funding Policies for Grant Awards.

### **Application Process:**

Applications may only be submitted by a political subdivision of the Commonwealth. Interested applicants must first contact Commission staff to introduce the project, discuss whether or not it is a fit for the program, and describe the source of the applicant's required matching funds. If Commission staff believe the project is eligible, a project metric spreadsheet detailing the company's planned commitments on New Jobs, Capital Investment, and Purchases of Tobacco Region-grown products will be requested from the business beneficiary.

The business beneficiary may be asked to provide historical financial statements covering the three years prior to the application, along with pro forma financial statements covering the three years following the application. If the business beneficiary has been in business for fewer than three years, it may be asked to provide the historical financial statements that are available. The Executive Director may request additional financial information from the company, including financial information and satisfactory evidence of a company's financial stability.

Once the applicant, business beneficiary, and Commission staff are comfortable with the commitments presented in this document, the locality will be invited to submit an application using the Commission's SmartSimple grants management system. The following information will be requested:

- Name of locality applying and contact information
- A summary statement presenting the importance of the project to the locality and the reason for seeking support from the TRIAD fund
- Amount requested and the use of the funds
- Business beneficiary name and information (website, ownership, location of headquarters, other Virginia operations, etc.)
- Description of the project, including:
  - Project location (county, city, or town; physical address)
  - Type of operation (i.e., brief description of the nature of the business, including its products, markets, this facility's relationship to other parts of the business, etc.)
  - How this project adds value to Tobacco Region-grown agricultural or forestry products
  - Details on the project's expected impact of the Tobacco Region's agriculture and forestry producers
- Final project metric spreadsheet, which includes:
  - Amount of capital investment (as defined in these guidelines)
  - Number of New Jobs created (as defined in these guidelines)
  - Average annual wage of the New Jobs created
  - Timetable for the project's capital investments, job creation, and purchase of Tobacco Region-grown agricultural and forestry products
- List each Commonwealth of Virginia funding source individually

- List local match for the project (as defined in these guidelines) and describe how the cash funds will be used
- Any other current or background information pertinent to the project that might assist the Executive Director in making an informed decision based on complete knowledge; political subdivisions are obliged to disclose any information that may reflect negatively on the project.
- An explanation as to why TRIAD 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 the products that are being sourced from the Tobacco Region as part of meeting their performance agreement with the locality
- 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

#### **Commission Review:**

Upon receipt of an eligible and complete application, staff provides the Incentives and Loans Committee with a copy of the application, along with a summary of the project and staff's recommendation. Staff provides the Committee a minimum of three business days to review and comment on the application. If no comments or concerns are received and there are no unresolved issues or questions, staff will route the application to the Executive Director for approval. If Committee members have unresolvable questions or other concerns, staff will hold action on the application until the Committee is able to meet, discuss, and vote on the application. In instances in which the award amount is under \$1 million, the Executive Director may approve the award on behalf of the Commission. In instances in which the award amount in total is over \$1 million and under \$3 million, the Committee has final approval authority. For all award amounts over \$3 million, the Full Commission must approve any award.

#### **Contractual Arrangements:**

Because a TRIAD 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 TRIAD funds. This agreement ensures that the business beneficiary will meet the purchase commitment of Tobacco Region-grown agricultural and forestry products, job creation, and capital investment levels as stated in the application.

The performance agreement must include a statement that the business beneficiary will achieve and maintain the specified purchase of Tobacco Region-grown agricultural and forestry 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.

TRIAD Facility grants are broken out into 33% for purchase of Tobacco Region-grown products, 33% for new jobs, and 33% for capital investment. If the business beneficiary fails to meet at least 90% of its performance agreement targets in any of these categories, the locality must claw back a proportionate amount of the TRIAD Facility grant from the beneficiary.

If the business beneficiary has not achieved at least 90% of its Tobacco Region-grown purchases, jobs, and capital investment targets by the performance date set forth in the performance agreement, the locality may seek approval from Commission staff to grant the business beneficiary a one-time administrative extension of up to one year. Additional extensions of the Performance Period beyond the one-year administrative extension may only be granted by the Commission.

The performance agreement will contain a provision that will permit a 100% clawback of all TRIAD Facility grant funds if at any time the locality or the Executive Director conclude that the business beneficiary will be unable to meet at least half (50%) of any one of the following targets: its purchase of Tobacco Region-grown products, 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 Executive Director and for returning the TRIAD grant monies repaid by the business beneficiary to the Commonwealth if the performance agreement criteria are not met.

If the company refuses or is unable to repay, then the local applicant is obligated to make the Commission whole. It is routine to negotiate repayment agreements with localities to avoid negative budget impacts, particularly with smaller or less-affluent localities.

In repayment situations, the Executive Director is authorized to negotiate and enter into repayment agreements with entities that seek to make such repayments in installments over a mutually agreed-upon period.

The following remedies shall be employed, as deemed appropriate by the Executive Director, for all grants or loans under which contractual obligations are owed to the Commission and have not been fulfilled within 60 days after delivery of a written demand notice to all parties to the Performance Agreement and its control affiliates:

- Freeze all disbursements to the grantee and its control affiliates
- Decline to accept any application for new grants from the grantee or its control affiliates
- Enter the name of the grantee and its control affiliates into the State debt set-off system
- Refer the file to counsel for appropriate steps up to and including collection proceedings

Because of this requirement to repay, it is strongly recommended that the locality receive and pay out the TRIAD award in arrears.

The business beneficiary may not assign its rights or obligations under a TRIAD performance agreement without the express written approval from the Executive Director and the locality. The Executive Director 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 significant negative impact on achievement of the targets in the Performance Agreement, and the benefits accruing to the locality and the Tobacco Commission will remain substantially the same.

Once the Executive Director, 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 a TRIAD Facility grant, neither the locality nor the business beneficiary shall announce or confirm the proposed project without coordination with the Executive Director.

The Tobacco Region-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 or the Commission, the grant award is subject to being reduced or withdrawn.