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Joint Opportunity Business Partnership Fund (JOB Partnership Fund)

Program Guidelines

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Section I – General

A. Introduction

The Pennsylvania Department of Community & Economic Development (DCED), through the Joint Opportunity Business Partnership Fund (JOB Partnership Fund), shall provide loans to private equity partnerships for investment in Pennsylvania-related companies. The nature of the investments by the private equity partnerships shall be equity or convertible debt.

These guidelines outline the nature and focus of the JOB Partnership Fund, as well as the applicable process and procedures in the administration of this program. DCED reserves the right to review the guidelines and make additions, deletions or changes as it deems appropriate.

The JOB Partnership Fund is a Commonwealth of Pennsylvania initiative intended to address the financing needs of Pennsylvania businesses by providing loans to private equity partnerships, leveraged at least 9:1 with private capital to provide financing for Pennsylvania-related companies.

The JOB Partnership Fund will create flexible financing for private equity funds that will make equity investments into companies that will support Pennsylvania job growth and overall economic development and will be further leveraged at the project level by additional corporate and private investments.

B. Program Eligibility

1. Listed below are certain requirements that will apply to every private equity partnership that receives funding from this program.
 - a. The ultimate beneficiary of the financing must be a Pennsylvania -related company which is defined as an entity with existing business operations located in Pennsylvania or an entity locating significant business operations in Pennsylvania. For purposes of this program, “significant business operations” of an entity is defined as an entity which has or will have as a result of the financing a simple majority of its employees and employees of the entity’s Pennsylvania affiliates, if applicable, located in Pennsylvania. “Affiliates” are entities located within Pennsylvania that directly or indirectly control or are controlled by or are under common control with the ultimate beneficiary of the financing.
 - b. There must be a financial return mechanism to the JOB Partnership Fund. The rate of return need not be high or substantial in every financial transaction approved, but the goal of DCED is to achieve an adequate rate of return while balancing the goal of economic development within Pennsylvania.
 - c. The fund applicant must be willing to provide all pertinent information requested so that a complete due diligence review of the proposed investment in the private equity partnership can be conducted.
2. The private equity partnership has or will open an office in Pennsylvania, staffed with at least one senior level partner and will maintain such office for the duration of the loan. In approving the application, DCED shall consider whether an applicant has had an office in Pennsylvania for at least the 12 months immediately preceding the date of the applicant’s application.
3. Eighty percent (80%) of loans awarded to a private equity partnership plus 80% of the partnership’s nonpublic equity shall be invested in Pennsylvania-related companies.
4. The DCED investment should not exceed 10% of the total investment made into a private equity partnership.

C. Types of Financing Available

1. The actual method of financing to be offered by the JOB Partnership Fund is through a loan product to the general partner of a private equity partnership (fund), which is an entity whose purpose is to make investments in Pennsylvania-related companies and is formed as a limited partnership, limited liability company or comparable investment entity.

Section II – The Application Process

A. General

1. A general partner of the private equity partnership seeking to make an investment in Pennsylvania-related companies may submit an application for a loan by utilizing the DCED Single Application form.
2. Applicants ready to apply for funding must utilize the DCED Single Application for Assistance located at www.esa.dced.state.pa.us.
3. Applications may be filed at any time during the fiscal year, subject to availability of funds, in accordance with the process outlined herein and subject to DCED approval.
4. Two (2) complete printed applications, the required supplemental information and the signature page should be submitted to:

Department of Community & Economic Development
C/O Technology Investment Office, Office of Innovation & Investment
JOB Partnership Fund
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

B. Fund Investment Application

1. Applicants wishing to access the JOB Partnership Fund must submit the following supplemental information (see attached questionnaire in appendix A for additional details).
 - a. **Business Plan including:**
 - i. Applicant's Name.
 - ii. Home address of the applicant and a list of all offices of the applicant located in Pennsylvania.
 - iii. The applicant's business plan which may be a Private Placement Memorandum (PPM) pursuant to 17 CFR, SS 230 501 through 230 508 (Relating to Reg. D – Rules governing the limited offer and sale of securities without registration under the Securities Act of 1933).
 - iv. A history of the applicant's development, operations, accomplishments and historical investment returns including past performance of principals and partners.
 - v. Specific amount requested from DCED.

b. Financials/Information

- i. Ownership Status, e.g., locally owned, subsidiary of a larger corporation, and the home address of the parent corporation (if applicable).
- ii. At risk position of the principals.
- iii. Remuneration, distribution and participation in the project for principals and partners.
- iv. Conflict of interest and risk factors as well as risk mitigation steps.
- v. Current and future term sheet commitments and letters of commitment from third-party investment sources.
- vi. List of investment sources approached, but not participating in this project.
- vii. An aggregate IRR on all prior investments, including both realized and unrealized returns.

c. Marketing/Opportunity

- i. General size of the present active marketing area(s).
- ii. Investing strategy and intended industry sectors including stage of investment.
- iii. Deal flow generation strategies and operations.
- iv. Deal flow screening criteria.
- v. Due diligence strategies and past experience with similar or different due diligence strategies.

d. Experience/Management

- i. Provide a list of members of the management team, board members and their qualifications.
- ii. Qualifications, network and access to advisors with industry expertise of the project management team.
- iii. Portfolio company management strategies and procedures.
- iv. A description of the level of involvement of management in the investment process and portfolio management.
- v. A description of the applicant's current and proposed relationship(s) with organizations in Pennsylvania that foster economic development.

e. Potential Impact

- i. Priority consideration will be given to finance Pennsylvania-related companies that demonstrate significant Pennsylvania job creation as well as Pennsylvania business and citizen impact. Please provide both an initial and three year estimated assessment for each of these measures, including any past relationships with organizations within Pennsylvania that have fostered economic development.

f. Any other information required by DCED.

C. Approval Process

1. Staff will review the application. Staff will work with the applicant to obtain a full understanding of the private equity partnership. Staff will review and analyze all necessary documentation to determine, among other things:
 - a. Whether the applicant has invested in Pennsylvania-related companies in the past.
 - b. Whether the applicant has demonstrated strong relationships with organizations in Pennsylvania that foster economic development.
 - c. That the applicant has demonstrated a satisfactory investment performance.
 - d. The projected economic development return to the proposed investment region or to the entire state.
 - e. The expected ability of the applicant to raise and invest in Pennsylvania-related companies at least \$9 of private capital for every \$1 of loan funds received by the applicant through this program.
 - f. That the applicant has or will open a Pennsylvania office staffed with at least one senior level partner or principal and that the applicant will maintain such office for the duration of the loan.
 - g. That the applicant complied with all other criteria established by DCED.
2. Applicants that complete a satisfactory staff review will be submitted to DCED senior level management for review and consideration. Approval of a project for financing will require the approval of DCED's Secretary.
3. Applications for financing may be rejected or deferred for any one or more of the following reasons:
 - a. The applicant fails or refuses to provide pertinent information regarding the fund which is deemed essential to adequately perform a due diligence review.
 - b. The proposed financial return is non-existent or negligible; or a return cannot be readily defined and/or calculated.
 - c. There is inadequate participation by other investors in the fund or the level of participating investment committed to the fund is insufficient to close the fund.
 - d. The anticipated economic development benefits to the region or to the state are non-existent or negligible; or the level of proposed benefits is not commensurate with the amount of DCED financing being requested.
 - e. The fund is not based in Pennsylvania or does not maintain a substantive presence within Pennsylvania.
 - f. There are insufficient funds available to DCED in the program to make an investment in the fund.
 - g. Any other criteria adopted by DCED.

D. Post Approval Process

1. Upon being satisfied that all requirements have been met, DCED may approve an application and, if approved, DCED may award a loan. DCED shall establish the term of repayment of principal and interest as well as any other return to DCED in addition to all other terms and conditions of the loan consistent with these guidelines.
2. No investment will be closed until the following have been satisfactorily resolved.
 - a. The applicant must certify that it shall not discriminate against any employee or against any applicant for employment because of race, religion, color, handicap, national origin, age or sex.
 - b. The applicant and its principals must be current in payment of all state and local taxes unless they have entered into a workout agreement satisfactory to the respective taxing authority and are in full compliance with the terms thereof.
3. Following disbursement of funds, staff will monitor the activities of the applicant to insure that the conditions of DCED's loan are being observed and met. Staff will promptly advise DCED senior management of any substantive failure in performance by the applicant and any failure or delay in making any required payment(s). DCED shall have full authority to engage in any and all activities required in order to protect and preserve its investment(s), including but not limited to appropriate legal action when required.
4. The applicant shall maintain full and accurate records with respect to the fund and the fund management, and shall ensure adequate control over the records of all related parties to the fund. Staff shall have access to such records and be able to inspect all project work and all relevant records at reasonable times and places. Upon request, the applicant must furnish all data, reports, contracts, documents and other information relevant to the project, as may be requested in the investment documents.
5. If a project is approved and it is subsequently determined that the application contained material misrepresentations, or funds were used for ineligible activities or activities not permitted under the terms of the approved financing or financing documents, the applicant will be in default and DCED will demand immediate repayment of any and all funds advanced in connection with the fund. In addition, the matter may be referred to the appropriate authorities for criminal investigation.

E. Reporting Requirements

1. Unless otherwise approved by DCED, all reporting is due within 30 days of the end of the quarter.
2. All recipients must provide quarterly reports quantifying the progress toward accomplishing approved deliverables.
3. Aggregated IRR for the reporting quarter and period to date are required.
4. Audited annual financial statements are required.
5. Following an investment by the private equity partnership into a Pennsylvania-related company, the borrower will be required to monitor and report semi-annually on a cumulative basis the following impact measures:
 - a. Citizens Impacted – An action that compels an action/effect that can be quantified and verified
 - b. Business Impacted – An action that improves or enhances the operational process of another Pennsylvania -related company in a quantified and verifiable manner, including the current employment for portfolio companies.
 - c. Jobs Created – The direct creation of new jobs in Pennsylvania for your operation. This does not include the transfer of jobs within Pennsylvania.

Appendix A – Fund Questionnaire

A. Proposed Fund

1. Briefly describe the fund that you are proposing. Include a description of the fund’s purpose, investment focus, geographic focus and any limitations that are or may be imposed on the investment process such as SBIC limitations, industry limitations, etc.
2. Describe the investment philosophy and strategy you plan to employ. Describe any experience with this investment philosophy in prior funds and/or any changes from philosophies employed in prior funds.
3. State the target size of the fund, life of the investment period of the fund and the overall expected life of the fund. Describe any similarities or differences to prior funds.
4. Describe the proposed management fee, offsets of other compensation against management fees, proposed allocation and distribution structures, co-investment opportunities, the structure and role of any Advisory Board or Valuation Committee in developing policies and addressing conflicts of interest, and any other important terms and conditions related to the fund. Specific terms should include but not be limited to proposed provisions for:
 - a. No-fault divorce
 - b. Any claw backs
 - c. Joint and several liability
 - d. Conflicts of interest
 - e. Restrictions on raising multiple funds
 - f. Key man insurance policies
5. List any special advisors, consultants, business brokers, investment bankers, etc. that you plan to use for this fund.
6. Break out intended stage of investment and industry focus by percentage for all investments and Pennsylvania investments specifically.

B. Previous/Current Funds

1. Describe any previous and current fund experience using the following format:

	Fund 1	Fund 2	Fund 3
Final Closing Date			
Total Committed Capital			
Total Invested (at cost)			
Realized Proceeds			
Cash-on-cash Multiple			
Cumulative Net IRR to LP's through the most recent quarter			
Total Number of Investments			
Average Size of Investment			
Number of Investment Professionals			
Net IRR on PA Portfolio			

2. Please provide a portfolio company detail spreadsheet for each fund including the following:
 - a. Company Name
 - b. Industry
 - c. Lead General Partner
 - d. Company Location
 - e. Investment and Return History
 - f. Initial Stage at First Investment
 - g. GP Role (Lead, Co-Lead, Follow)
 - h. Board Seat(s)
 - i. Lead Investor
 - j. Co-Investors
 - k. Deal Source
 - l. Date of Exit (if any)
 - m. Exit Method (if any)
 - n. Ticker Symbol (if public)
3. Please list all office locations, both current and planned.

C. Management

1. List personnel responsible for the private equity investment activity including the day-to-day operations of the partnership. Include backgrounds and prior expertise in private equity/alternative asset investments. Please provide a total number of current and planned employees.
2. Describe how carried interest is apportioned among the staff and others using the format provided below. List apportionment as a percentage of total carried interest.

Name of Individual	Fund 1	Fund 2	Fund 3

3. Describe any vesting schedule for staff and other party interests in the proposed fund in addition to previous funds.
4. Describe portfolio and investment involvement of your investment professionals as outlined below:

Name of Individual	Capital Managed	# of Investments	# of Board Seats

5. Describe the level of GP financial investment in the proposed fund, other current funds and past funds.
6. Describe controls that are in place to ensure that funding in portfolio companies is properly routed and effectively utilized.
7. Describe the ownership of the management company and the general partner.
8. Information Regarding Other Business Interests (this should be supplied by each principal or partner of the general partner).
 - a. Please list all business endeavors or investments in which you are actively involved, including a percentage of time dedicated to each activity.
 - b. Please list all corporate or non-profit directorships that you currently hold.

9. Litigation Questionnaire. This questionnaire must be completed by each principal or partner of the general partner. All “Yes” answers must be explained.
 - a. Are you now or have you ever been a named defendant in any criminal proceeding or in any civil action involving a claim of greater than \$250,000?
 - b. Has any organization of which you have been a member of senior management, or in which you have had a meaningful ownership interest (greater than 5%), ever been a named defendant in any criminal proceeding or civil legal action involving a claim of greater than \$250,000?
 - c. Have you or any organization in which you have had a meaningful ownership interest (greater than 5%), or of which you are, or were, a member of senior management, ever filed voluntarily, or had filed against you involuntarily, a bankruptcy petition?
 - d. Has any licensor, franchisor, or master distributor ever initiated proceedings to terminate a business relationship with you or any organization of which you have ever been a member of senior management?
 - e. Has any business partner, joint venture, or subcontractor ever sought injunctive relief or arbitration or otherwise commenced legal proceedings to terminate any business or contractual relationship?
 - f. Have you or any organization in which you have had a meaningful ownership interest (greater than 5%), or of which you are, or were, a member of senior management, (i) been the subject of any federal, state, or other regulatory investigation or disciplinary hearing or proceeding, (ii) agreed to any consent order or decree in connection with any alleged violation of federal or state laws or regulations, or (iii) pleaded nolo contendere in any legal or administrative proceeding?
10. Performance
 - a. Describe any performance metrics you would use to evaluate your prior fund(s) performance and the most current quarter’s performance according to those metrics.
 - b. Provide a list of investments which have been liquidated to date, the nature of the exit strategies you have employed and an analysis of whether those exit strategies are still valid.
 - c. Indicate whether any of your prior fund’s partnership interests have traded as a secondary interest.
 - d. Describe the valuation methodology that your fund will use to value portfolio investments and whether this is different from prior funds.
 - e. Describe important lessons learned from prior fund experience (both good and bad).
11. Decision Process
 - a. Describe your proposed investment decision making process for portfolio investments.
 - b. Explain your investment criteria.
 - c. Describe your portfolio composition strategy and portfolio management procedures including how investments can be terminated, how failed investments are dealt with, how and when portfolio companies are shut down.
 - d. Describe controls that are used to ensure that all investment decisions are consistent with firm/fund guidelines.
 - e. Describe your policies and procedures for determining and dealing with conflicts of interest of fund management and within portfolio companies.

12. Deal Flow

- a. Describe your current and planned deal flow sources. Specifically identify economic development entities, universities and other private equity firms as well as a description of your relationship with them.
- b. Provide an analysis of your firm's number of deals reviewed versus investments in the prior year. Specifically break out Pennsylvania deals.
- c. Provide the number of Pennsylvania-related companies or projects in your current pipeline.
- d. Describe any partnership agreements with other private equity funds or corporations.
- e. Please provide a copy of your most recent deal log as of the most recent quarter.

13. Reporting

- a. Describe the type of reports you prepare for your limited partners.
- b. List your auditors and your legal counsel. Describe how these service providers are selected and how often you have or are likely to change them.
- c. Describe any changes your auditors have requested to portfolio company valuations.

14. Limited Partner Relationships

- a. Provide a list of current limited partners in your current or past funds and the nature of those limited partners (public, private, individual, etc).
- b. List past limited partners who are re-investing or participating in the proposed fund.

15. Provide a description of any litigation pending against any general partner, any current or past funds, or the proposed fund.

16. List whether or not you are registered with the SEC.

17. References (please provide contact information for references including telephone numbers and email addresses)

- a. Provide a reference listing of CEOs of all portfolio investments in your prior funds.
- b. Provide a reference listing of all mezzanine/subordinated debt lenders who have provided capital in your previous fund investments.
- c. Provide a reference listing of senior debt lenders who have provided capital in your previous fund investments.
- d. Provide a reference listing of all private equity investors who have provided capital in your previous fund investments.
- e. Provide a reference listing of individuals who have an understanding of your firm's investment expertise.
- f. Provide a reference listing of one CEO who was turned down for financing, one CEO who has left a portfolio investment and one CEO that you recruited to a portfolio investment.
- g. Please list any partners or principals that have left the firm within the last five years, citing reasons for their departure and their contact information.