

PENNSYLVANIA FIRST

Program Guidelines | May 2018



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Section I – Statement of Purpose

The Pennsylvania First Program was established as a comprehensive funding tool to facilitate increased investment and job creation in the commonwealth and to enable the commonwealth to compete more effectively in the global economy.

Section II – Eligibility

A. Eligible Applicants

Eligible applicants for Pennsylvania First Program include:

1. **Businesses** – corporations, partnerships, sole proprietorships, limited liability companies or other for-profit entities. This term shall also include not-for-profit entities.
2. **Municipalities** – boroughs, townships, towns, cities, home rule municipalities.
3. **Municipal Authorities**
4. **Redevelopment Authorities**
5. **Industrial Development Authorities or Corporations**
6. **Local Development Districts**

B. Eligible Uses of Funds

All costs financed through the Pennsylvania First Program must be necessary for the operation of an eligible business or businesses at a project site(s) in the commonwealth. Specifically, funds may be used for:

1. Job training for direct, full-time, commonwealth resident employees of the applicant/business.
2. Acquisition of land, buildings or rights-of-way.
3. Construction or rehabilitation of buildings.
4. Construction or rehabilitation of infrastructure necessary for the operation of an eligible business or businesses at a project site not to include tap-in fees.
5. Purchase or upgrade of machinery and equipment.
6. Working capital.
7. Project site preparation, including demolition and clearance.
8. Environmental assessments.
9. Remediation of hazardous material.
10. Architectural and engineering fees not to exceed 10% of the total Pennsylvania First Program award.

C. Ineligible Uses of Funds

Activities which are not eligible for funding under the Pennsylvania First Program include, but are not limited to:

1. Fees paid to consultants, lobbyists or other parties to negotiate public financial incentives or otherwise lobby public officials.
2. Refinancing or retirement of existing debt.
3. Costs unrelated to a business's expansion or location at a project site.
4. Costs incurred prior to receiving a formal commitment for funding from the Department of Community and Economic Development (the "Department").

Section III – Program Requirements

Except for businesses receiving assistance through WEDnet / the Guaranteed Free Training (GFT) Program, all businesses benefitting from Pennsylvania First Program assistance must meet the requirements outlined in this Section:

A. Private Investment Requirement

1. Private investment means any new capital investment to be made as part of a new location or expansion project at a commonwealth site (the "project site") by a business. An investment made more than 90 days prior to approval of a Pennsylvania First Program award is not eligible to satisfy this requirement unless the investment is specifically approved by the Department. Upon approval, all private investment must occur within the time frame specified in the commitment letter executed by the applicant.
2. Funds will be awarded through the Pennsylvania First Program on a competitive basis. The higher the private investment as compared to the funding assistance requested, the more competitive the project. Each annual Pennsylvania First Program appropriation must leverage at least \$10 in private investment for every \$1 of program assistance awarded.

B. Employment Requirement

1. Businesses must achieve one of the following standards within three years of receiving Pennsylvania First Program funding: (1) create or retain a minimum of 100 full-time jobs at the project site; (2) increase their full-time employment within the commonwealth by at least 20%; (3) provide a substantial number of new, full-time employment opportunities within a high-growth industry; or (4) create or retain fewer than 100 full-time jobs at project sites that are located in counties or communities suffering from high unemployment. Businesses must also maintain the jobs retained and created for an additional two years.
2. The base pay of an employee hired or retained by the business must be at least 150% of federal minimum wage in order for the employee to be counted toward meeting the employment requirement.

C. Project Site Requirement

Businesses receiving Pennsylvania First Program assistance must commit to operating at the approved project site for a minimum period of eight (8) years.

D. Execution of Documents Requirement

All commitment letters, contracts, requests for payment and other reports and documentation required by the Department shall be executed by two officials of the applicant, as the Department shall deem appropriate, and shall be subject to the penalties under 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Section IV – Program Specifications, Assistance Limitations, Rates, Terms and Fees

- A. The Pennsylvania First Program may provide grants, loans and loan guarantees. Determination of the type of assistance shall be at the discretion of the Department based upon the financial needs of the individual projects. Appendix IV of these program guidelines provides additional detail with regard to the possible loan guarantees available through the Pennsylvania First Program.
- B. Applicants may not receive Pennsylvania First Program assistance for more than two consecutive fiscal years for the same business expansion or location project.
- C. The project may not commence prior to the approval of Pennsylvania First Program assistance without the written consent of the Department to incur project costs. Commencement of work prior to receiving the Department's approval will result in the project becoming ineligible for funding consideration.
- D. The maximum assistance amount shall not exceed \$5,000 for each job projected to be created or retained. The Department has discretion to modify this amount for special circumstances.
- E. The interest rate for loans shall be set quarterly based on the 10-year Treasury rate. Loan terms will not exceed 15 years for real estate and infrastructure or 10 years for machinery and equipment. There is a 1% commitment fee on all approved loans.

Section V – Penalties and Security

A. Penalties

1. The Department may impose a penalty for any of the following:
 - a. Failure to create or retain the number of jobs specified in the executed commitment letter;
 - b. Failure to invest the amount of private investment specified in the executed commitment letter; or
 - c. Failure to operate at the project site for a minimum period of eight (8) years.
2. For grants, the Department may impose a penalty not to exceed the full amount of the financial assistance received for failure to achieve the job and investment requirements. The Department may impose a penalty of the full amount of the financial assistance received plus 10% of that amount for failure to achieve project site operation requirements. The penalty shall be payable in one lump sum or in installments, with or without interest, as the Department deems appropriate.
3. For loans, the Department may increase the interest rate charged on the outstanding principal amount of the loan at a rate not to exceed an additional 5% per annum for failure to achieve the job, investment or project site operation requirements.
4. A penalty may be waived by the Department, at its sole discretion, if it is determined that failure to achieve the job, investment or project site operation requirements is due to circumstances outside the control of the applicant.

B. Security

1. The Department may require a recipient of grant funds to secure a possible penalty obligation with a mortgage lien, a letter of credit, or other collateral for a period of time as determined by the Department.
2. Borrowers must demonstrate the ability to repay any loans awarded through the Pennsylvania First Program. All loans must be adequately secured by the borrower, as determined by the Department.

Section VI – Application Procedures

A. General Procedures

1. Applicants will utilize the Department’s Electronic Single Application for Assistance.
 - a. The Electronic Single Application can be accessed at www.esa.dced.state.pa.us.
 - b. Electronic Single Application questions can be directed to the Department’s Customer Service Center at 1-800-379-7448 or 717-787-3405 or e-mail at ra-dcedcs@pa.gov.
 - c. Applications may be electronically submitted by eligible applicants to the Department at any time during the fiscal year, subject to the availability of funds.
 - d. Applicants will be prompted to include information, as outlined in the appendices at the end of these guidelines, as addenda to the Electronic Single Application.
 - e. Applicants will be prompted to print and sign a required signature page as part of the Electronic Single Application. An application shall not be deemed complete until the signature page and any addenda not attached to the Electronic Single Application are received by the Department.

Section VII – Application Evaluation

- A. The Department will determine the eligibility and competitiveness for Pennsylvania First Program funding requests based on the following criteria:
 1. The number of jobs created and/or retained.
 2. The quality of the jobs created and/or retained as reflected in the average wage threshold.
 3. The level of private sector investment leveraged.
 4. The economic conditions of the region where the project is located.
 5. The impact of the project on the commonwealth’s competitiveness in the global marketplace as reflected in export expansion, investment in workforce skills and/or the potential for impact on other commonwealth businesses, such as suppliers and vendors.
 6. The strategic importance of the project to a region.
 7. The extent to which the project involves the development or application of leading technologies.
 8. The project’s incorporation of sound land use principles.
- B. The goal of the Pennsylvania First Program is to improve economic conditions throughout the commonwealth. The Department will make every effort to equitably distribute Pennsylvania First Program assistance throughout the regions of the commonwealth.

Section VIII – Procedures for Accessing Funds

A. For Loans

1. Upon approval of an application, a loan commitment letter will be issued to the applicant outlining the terms and conditions of the loan. The loan commitment letter must be signed and returned to the Department within 60 days of the date of the loan commitment letter or the offer may be withdrawn by the Department.
2. Following the acceptance of the loan commitment by the applicant, the borrower will be contacted by the Department's Office of Chief Counsel to coordinate any due diligence, submission of documents and the loan closing process.

B. For Grants

1. Upon approval of an application, a commitment letter, as part of a grant agreement, will be issued to the applicant notifying them of the Pennsylvania First Program commitment and the terms and conditions of that approval.
2. The applicant must sign and return both the commitment letter and the grant agreement to the Department within 60 days of the date of the commitment letter or the offer may be withdrawn by the Department. If the applicant is not a business, then both the applicant and the business associated with the project must sign the commitment letter. The grant agreement must be executed as provided on the signature page of same and as the Department shall deem appropriate, and shall be subject to the penalties under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).
3. The following is a summary of the general provisions included in the official agreement for grants and, where applicable, for loans:

- a. **Conditions of Funding Commitments** – The terms and conditions contained in the commitment letter signed by the applicant and the business are included in the grant agreement. These will include any additional conditions the applicant must meet before the disbursement of any funds.

If the applicant is a political subdivision or other entity for which open and competitive bidding procedures have been established by law, the applicant must comply with those procedures if they are applicable to the project being funded under the Pennsylvania First Program. If not required by law to seek competitive bids, the applicant must provide a narrative to the Department outlining the method it followed in selecting a vendor for purchases or a contractor for construction-related activities that are to be paid with Pennsylvania First Program assistance.

- b. **Certification of Expenses** – The applicant shall sign a payment request form certifying that the expenses were incurred and were in accordance with the scope of work approved by the Department. In lieu of a formal project audit and prior to final closeout of the grant agreement, the applicant shall be required to submit copies of all canceled checks verifying the expenditure of the Pennsylvania First Program proceeds. Bank statements may also be submitted if electronic payment of the expenditure occurred.

- c. **Nondiscrimination** – No assistance shall be awarded to an applicant under this program unless the applicant certifies that the applicant shall not discriminate against any employee or against any person seeking employment by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act, which prohibits discrimination on the basis of race, color, religious creed, ancestry, age, sex, national origin, handicap or disability, or in violation of any applicable federal laws. All contracts for work to be paid with grant funds must contain the commonwealth’s official nondiscrimination clause.
- d. **Change in Operating Status** – The applicant shall promptly notify the Department of any events or changes in circumstances that may result in the inability of the applicant to perform any or all of its obligations under the terms of the commitment letter and/or grant agreement.
- e. **Disbursement Process** – Requests for payment must be submitted to the Department on a payment request form provided by the Department and must be accompanied by invoices and/or other documentation verifying costs incurred by the applicant. Properly submitted payment request forms require at least 45 days for processing and payment issuance. All payment requests must be signed by two officials of the applicant, as the Department shall deem appropriate, and shall be subject to the penalties under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).
- f. **Project Records** – The applicant must maintain full and accurate records with respect to the project and must ensure adequate control over the records of related parties to the project. The Department requires access to such records, as well as the ability to inspect all project work, invoices, materials and other relevant records, at reasonable times and places. The grant agreement requires the applicant to furnish, upon request from the Department, all data, reports, contracts, documents and payroll records to verify jobs and other information relevant to the project. The grant agreement specifies a periodic reporting requirement for the applicant at the request of the Department. All reports must be signed by two officials of the applicant, as the Department shall deem appropriate, and shall be subject to the penalties under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).
- g. **Conflict of Interest Provision** – An officer, director, or employee of an applicant who is a party to or has a private interest in a project shall disclose the nature and extent of the interest to the governing body of the applicant, and may not vote on action of the applicant concerning the project, nor participate in the deliberations of the applicant concerning the project.
- h. **Pennsylvania Prevailing Wage Act** – The Pennsylvania Prevailing Wage Act (43 P.S. §165-1 et. seq.) may be applicable to a project funded under this program. Prevailing Wage requirements are generally applicable to grants for construction, reconstruction, demolition, alterations, repair work, renovations, build-out and installation of machinery and equipment in excess of \$25,000. If applicable, the applicant is responsible for including prevailing wage rates in all bid documents, specifications, and construction contracts pertaining to the project funded under this program. The Department of Labor and Industry (L & I) has final authority to make prevailing wage applicability determinations. Questions may be directed to (717) 787-3681.

Section IX – Monitoring and Reporting

- A. At the request of the Department, applicants shall submit interim and final monitoring reports on the status of approved projects.
- B. The Department shall have the right to make project site visits, as it shall deem appropriate, during the grant or loan period or until monitoring is complete.

Section X – Program Inquiries and Supplemental Information

- A. Program inquiries, application signature pages and any necessary application supplemental information, not electronically attached to the Electronic Single Application, should be directed to:

Department of Community and Economic Development
Center for Business Financing, Grants Division
Pennsylvania First Program
4th Floor, Commonwealth Keystone Building
Harrisburg, PA 17120-0225

Telephone: (717) 787-6245

- B. These guidelines can be accessed on-line at dced.pa.gov.

Appendix I – Supplemental Information Pennsylvania First Program

In addition to the information provided by an applicant within the Electronic Single Application for Assistance, businesses must also provide the following information as required addenda:

1. The amount of Pennsylvania First Program funds that are being requested and the intended use of the funds.
2. The full legal name and address of the applicant for Pennsylvania First Program funds.
3. Complete project site(s) mailing address and the name of the county and municipality in which the project site(s) is located.
4. A description of the type of business and a brief description of what the business does and who are its primary customers.
5. A statement regarding the current employment levels at the project site(s), statewide and worldwide and the number of new, full-time jobs to be created at the project site(s). Please include the start date for job creation. Please also include any other affiliated/related business or businesses that may be retaining and/or creating the previously stated jobs.
6. A project description, an estimated total project cost and estimated commencement and completion dates for the project investment to be made at the project site(s). Please also include any other affiliated/related business or businesses that may be participating in making the total project cost investment at the project site(s).
7. The estimated starting wage level for jobs to be created and/or retained at the project site(s) and the estimated starting dollar value of the benefits associated with those jobs.
8. The Federal Employer Identification Number (FEIN) for any affiliated/related business or businesses that may be referenced in numbers 5 or 6 above.

Appendix II – Supplemental Information for Infrastructure Projects

When the request for funding through the Pennsylvania First Program is specifically for infrastructure projects, businesses, or applicants on behalf of businesses, should also include the following Exhibits in addition to the completion of the Electronic Single Application:

- Exhibit 1:** Attach copies of the signed bids/quotations, contractor estimates, sales agreements, or engineer estimates that verify project cost estimates. Bids must be current and dated.
- Exhibit 2:** Attach funding commitment letters from all other project funding sources (including equity commitments). Letters should include the applicable term, rate, and collateral conditions and must be signed and dated.
- Exhibit 3:** Include a color-coded map or plot plan detailing the location of the infrastructure and the parcel of land on which the business(es) being served is, or will be, located.
- Exhibit 4:** When the applicant for infrastructure assistance is an entity other than the business requiring the infrastructure improvements, the business must submit a letter of intent as detailed in Appendix V. The letter of intent must be on letterhead of the business and must be signed by the chief executive officer or other officer capable of making commitments for the business.
- Exhibit 5:** When the applicant for infrastructure assistance is an entity other than the business requiring the infrastructure improvements, provide a resolution, duly adopted by the applicant's governing board, formally requesting the Pennsylvania First Program assistance, designating an official to execute all documents, describing briefly the project scope, and identifying the amount of assistance being requested. (See Appendix VI for a sample resolution.)
- Exhibit 6:** Provide a letter from the local planning agency certifying that the proposed project is in compliance with the comprehensive and land use plans and zoning and subdivision codes. If the project is not in compliance, please explain the nature of the inconsistency and provide an estimated timetable for securing compliance or for securing any desired change.

Appendix III – Supplemental Information for Loans

- Exhibit 1:** Businesses must attach their financial statements and those of the parent company and any other proposed guarantors, if any, for the last three years of operation. Financial statements should include balance sheets, income statements, cash flow statements, and notes to financials. New businesses must provide three years of projected financial statements.
- Exhibit 2:** Collateral for the Pennsylvania First Program loan must be identified. If the proposed collateral is real estate, provide two complete, as-is appraisals or one appraisal prepared by either a Member, American Institute of Real Estate Appraisers (MAI) or a PA State Certified Appraiser. The appraisals must be no more than six months old. If a personal guarantee is being required as security, attach personal financial statements for the proposed guarantor and their spouse. The personal financial statements should not be more than six months old and must be signed.
- Exhibit 3:** If the project is the development of real estate on speculation, provide a projected cash flow analysis which includes all expenses and revenues covering the period of time for project commencement through lease –up/build-out and/or sale of the property, or full repayment of the loan, whichever occurs later.

Appendix IV – Supplemental Information for Loan Guarantees

Should a competitive economic development project have a need for the guarantee of a loan through a third-party lending institution, the Department may consider a loan guarantee under the Pennsylvania First Program. The third-party lending institution may apply for a loan guarantee on behalf of a borrower/business for the asset financing needs of the borrower/business willing to commit to all other Pennsylvania First Program requirements. The guarantee may in no case be used to support working capital lines of credit or the refinancing of existing debt. Utilization of Pennsylvania First Program loan guarantees is limited to projects in which the commonwealth or any authority of the commonwealth is not providing matching financing to the loan the Department is being asked to guarantee.

Please contact the Department for further information regarding the availability of loan guarantees through the Pennsylvania First Program.

Appendix V – Letter of Intent for Infrastructure Projects

When the applicant for infrastructure assistance is an entity other than the business requiring the infrastructure improvements, the business must submit a letter of intent as detailed below. This letter of intent must be on the letterhead of the business and signed by the chief executive officer or other officer capable of making commitments for the business and must include:

1. Amount of funds requested.
2. A statement regarding the number of full-time jobs to be created and/or retained at the project site (as referenced in Section III.B. of these Program Guidelines) and the start date for job creation.
3. Type of business (what the business does) and current employment levels at the project site and statewide.
4. The estimated starting wage level for new jobs to be created at the project site and the estimated starting dollar value of the benefits associated with those jobs.
5. A project description, an estimated total project cost and estimated commencement and completion dates for the project investment to be made at the project site.
6. The date occupancy is to commence at the project site.
7. A statement of willingness to comply with nondiscrimination and equal employment opportunity requirements.

Appendix VI – Authorized Officials Resolution for Infrastructure Projects

Be it RESOLVED, that the _____ (name of applicant) of _____ (name of county), PA, hereby requests a Pennsylvania First Program grant/loan of \$_____ at a _____% rate and _____ year term from the Department of Community and Economic Development of the Commonwealth of Pennsylvania to be used for _____.

Be it FURTHER RESOLVED, that the _____ (name of applicant) does hereby designate _____ (name and title) and _____ (name and title) as the officials to execute all documents and agreements between the _____ (name of applicant) and the Pennsylvania Department of Community and Economic Development to facilitate and assist in obtaining the requested grant/loan.

I, _____, duly qualified Secretary of the _____ (name of applicant) of _____ (name of county), PA, hereby certify that the foregoing is a true and correct copy of a Resolution duly adopted by a majority vote of the _____ (governing body) at a regular meeting held _____ (date), and said Resolution has been recorded in the minutes of the _____ (name of applicant) and remains in effect as of this date.

IN WITNESS THEREOF, I affix my hand and attach the seal of the _____ (name of applicant), this ____ day of _____, 20__.

(Name of Applicant)

(County)

(Secretary)

(SEAL)