Virginia Tobacco Region Revitalization Commission

Tobacco Region Opportunity Fund (TROF)

POLICIES & PROCEDURES

Effective November 4, 2020
Last Revised November 4, 2020

Overview

The purpose of the TROF program is to help make localities in the Tobacco Region more attractive to potential business expansion or attraction projects. It accomplishes this goal by providing performance-based monetary grants and loans to localities for the purposes of supporting specific projects.

Projects are evaluated based on job creation, workforce participation rate, community affluence, prevailing community wage, and newly-created taxable assets.

In all circumstances, the Commission favors businesses that are in traded sectors and bring new capital into the Tobacco Region rather than contribute to the velocity of money within the Tobacco Region. In general, this precludes retail and food-service projects, as well as local provision of services and non-competitive projects.

Operational Framework

1. *Eligibility* – Unless otherwise approved by the Commission, TROF projects must meet the following minimum eligibility requirements:
    - Applicants - The Commission accepts TROF applications from localities and other local or regional political subdivisions within the Tobacco Region ("Applicants"). TROF performance agreements are three-party agreements typically among the eligible applicant, its industrial or economic development authority (IDA/EDA), the Company and the Commission.
    - Salary Threshold – Projects must provide an average weighted annual salary above the locality's prevailing average wage (not including benefits).
    - Industry Sector – Projects must be in a traded economic sector (i.e., projects bringing in outside capital and jobs).
    - Minimum Award Amount – Utilizing the project parameters, the TROF incentive estimator shall provide for an award of at least $10,000 (for a grant or a loan).

- Competitive – New projects must be competitive. Expansion projects must demonstrate verifiable competition.
- Matching funds from non-Commission sources - are committed to the project and evidence thereof is satisfactory to the Executive Director.

2. *Application Evaluation* – TROF applications are evaluated and amounts are awarded commensurate with the project's impact on the community and/or region in which the project is locating. Calculation of award amount is based on the following criteria:

    - project competiveness;
    - industry type;
    - provision of a weighted annual average salary above the locality's prevailing wage;
    - number of new or saved jobs; and
    - the amount of private taxable capital investment.

3. *Award Amounts* – The award amount varies based upon the parameters of a project and the availability of Commission funds. Staff uses a TROF incentive estimator that takes into account application variables including location, employment, wages and private taxable investment. Larger incentives are typically available for projects that will provide high numbers of jobs above the prevailing average wage with large amount of private taxable capital investment.

4. *Award Amount Authorizations* - The Commission's Incentives and Loans Committee ("the Committee") reviews all eligible submitted TROF applications regardless of award amounts. Unless the Committee has issues or concerns with an application, the following award authorizations are permitted:

    - TROF grants and loans up to the lesser of either the amount requested by the applicant or the amount calculated by the incentive estimator (or 150% of that amount if a TROF loan), can be approved by the Executive Director for awards up to $1 million.
    - The Committee must approve all TROF grant or loan awards greater than $1 million and up to $3 million.
    - The Full Commission must approve all TROF grant or loan awards over $3 million.
    - The aggregate amount of TROF grant and loan awards made during any fiscal year shall not exceed the sum of:
        i. The amount set forth in the Commission's approved budget for such fiscal year, and
        ii. refunds of prior TROF awards credited to the TROF account without prior approval of the Commission.

5. *Prospect Incentive Funds* - Some very large regionally transformative projects do not fit well within the existing TROF incentive estimator framework. The few projects with

thousands of jobs and hundreds of millions of capital investment simply command greater attention and competition among states than do smaller projects, which is why the Commission created the additional Prospect Incentive Fund (the "Fund"). The threshold to access the Fund be competitive projects that:

- Provide at least 400 full-time new jobs; ***OR***
- Provide a taxable capital investment of at least $250 million dollars.

6. *Type of Awards* - TROF awards are typically composed of a grant and a loan portion. The Commission's incentive formula provides a total possible award amount based on the project variables and half of the total award is offered as a grant and half as a zero-interest loan.

7. *Award Disbursement* – TROF grants may be paid in advance before the company has performed, or paid in arrears after the company has performed at the election of the local applicant. Because the purpose of TROF loans is to provide affordable financing to assist with initial development of the project, loans are only offered prior to performance.

   All TROF awards paid in advance require the local applicant to obtain adequate security to fully cover the amount of award funds if full or partial repayment is necessary.

8. *Performance Periods* – The typical performance period is 36-months from the award date of the project. Performance period extension may be requested prior to the end of the period. The first extension may be approved administratively and subsequent extensions require Commission approval.

9. *Expansions of Existing Facilities -* Expansions of existing facilities may not always be the most competitive projects because the facility already exists and it often makes sense to expand an existing facility than to build a new one. TROF awards shall be reserved for truly competitive projects that are seriously considering other sites outside of Virginia for an expansion.

   Therefore, for facility expansions that otherwise meet TROF parameters, the Commission directs staff to only accept TROF applications for expansion projects that demonstrate a true and verified (from the Company in writing) competition for the project.

10. *Performance Agreements Required -* Unless otherwise approved by the Commission, all TROF grant and loan awards are to be disbursed pursuant to a Performance Agreement among the Applicant, the Commission, and a private entity beneficiary, which the Executive Director is authorized to negotiate and enter into in substantially the same form as *Exhibit A1, for the Grant Agreement – Arrears, Exhibit A2, for the Grant Agreement – Advance, and Exhibit B, for the Loan Agreement*, each attached hereto, provided that such

Performance Agreements shall contain the appropriate grant/loan and performance information for the TROF Grant or Loan as provided in the Commission's incentive formula guidance. The terms of all Performance Agreements are subject to audit and verification by the Commission.

11. *Acknowledgements* -- An acknowledgement of the Commission must appear in any publication, announcement, or significant event related to any project.

12. *Minimum Project Targets –* Both TROF grant and loan awards require a minimum target be met before a company earns any of the awarded amount.

    For TROF grants, the Minimum Investment Target is what is required to be invested by the company before any of the grant is earned. The minimum investment target for TROF grants shall be:

    - $1 million for projects generating $2 million or more in private taxable capital investment, and
    - Half of the private taxable capital investment for projects generating less than $2 million in private taxable capital investment.

    TROF loans are disbursed in advance and repaid, so a slightly different minimum target is used. For TROF loans, the Minimum Project Targets are:

    - Half of the promised capital investment **AND**
    - Half of the promised jobs.

13. *Performance Evaluation* - The Commission utilizes confidential data from the Virginia Employment Commission and local Commissioners of Revenue to verify employment and capital investment. As performance-based grants and loans, the Commission monitors performance and requires repayment if performance targets are not met for projects that receive awards in advance. Projects that choose to receive funds in arrears may receive full or prorated payment at the conclusion of the performance period once the company's actual performance is determined.

14. *Repayment (i.e. "Clawbacks")* - In instances when funds are disbursed in advance and the company does not fully attain its performance obligations, the Commission expects to receive repayment of some or all of the disbursed funds. If the company does not make the Minimum Investment Target of at least $1 million (or half when capital investment is less than $2 million), it must repay the entire grant. If a project meets the minimum investment target, but does not meet its full capital investment and/or job creation targets, it must repay a prorated amount.

    For TROF loans, if the Minimum Project Targets are not met, 5% is added to the remaining loan balance due. 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 seeking 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.