



Georgia Department of Community Affairs

Life Sciences Facilities Fund

Regulations

THE GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS

CHAPTER 110-25-1 THE LIFE SCIENCES FACILITIES FUND LOAN PROGRAM DESCRIPTION

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110-25-1-.01 Scope of Rule

This regulation governs the operation of the Life Sciences Facilities Fund (“Facilities Fund”) as established by the Georgia Legislature and signed by the Governor in the S.F.Y. 2005 Amended General Appropriations Act, the Governor’s Budget Document for S.F.Y. 2005, and 2005 Ga. Laws Act #395 (HB 84). The Board of the Georgia Department of Community Affairs (“the Department”) through its resolution adopted on August 3, 2005, approved the adoption of regulations which will guide the Facilities Fund’s operation.

Authority O.C.G.A. § 50-8-1 et seq.

110-25-1-.02 Definitions

(1) The definitions for purposes of this regulation are identical in all respects to the terms defined in O.C.G.A. Sections 50-8-2 and 50-26-4, as well as the following:

(2) **Life-science company.** Life-sciences companies use biological processes to solve problems and make useful products for the improvement of health care (human and animal), food and agriculture, aquaculture, forestry, industrial production (such as chemicals, textiles, plastics, pulp and paper), energy production, environmental management (such as remediation and natural resource recovery) and national defense. Also included are companies that make the tools (from synthetic DNA and protein products to computer hardware and software) that support life-sciences industry research and development and the materials and systems for manufacture of life-sciences products.

Companies should be creating commercially promising technologies and higher quality jobs.

110-25-1-.03 Purpose

The purpose of the Life Sciences Facilities Fund (the “Facilities Fund”) is to serve as an incentive program to provide low-cost loan assistance for the purchase of fixed assets to eligible applicants that are being considered as a relocation or expansion site for a life-science company targeted by Georgia. The Facilities Fund is intended to be used as an incentive when needed to retain or recruit life-science companies in and to Georgia, or to fill a financing gap that is unmet by the private sector (including angel investors, venture capital, traditional commercial financing, developer financing, etc.) and when the health, welfare and economic security of the citizens of the state are promoted through the recruitment, development and retention of life-sciences companies that are creating higher quality jobs, making private investment in Georgia and creating marketable products.

Authority O.C.G.A. § 50-8-3(b)

110-25-1-.04 Eligible Applicants

Eligible applicants and recipients of funds awarded under this program shall include, but not be limited to, general-purpose local governments (municipalities and counties), and component units of local governments and/or local government authorities and joint or multi-county development authorities. All local government units that are party to an application must be in compliance, where applicable, with the requirements regarding comprehensive planning (O.C.G.A. §§ 50-8-1 *et seq.*), report of local government finances (O.C.G.A. § 36-81-8 (b)), local service delivery strategies (O.C.G.A. § 36-70-1 *et seq.*), government management indicators survey (O.C.G.A. § 36-81-8 (h)), report of registered authority finances (O.C.G.A. § 36-81-8), and local government authorities registration (O.C.G.A. § 36-80-8 *et seq.*).

110-25-1-.05 Fund Availability

- (1) Funds appropriated or otherwise made available to the Department will be made available to eligible applicants for projects when a life-sciences company cannot locate or expand without special financial assistance.
- (2) In addition to funds appropriated by the Legislature, additional funds may come from program income such as principal and interest on the LSFF loans or REBA loans that were designated for use by life-science companies. Program income may be used for future LSFF loans or to cover the Department's costs in managing the Facilities Fund.
- (3) Loans will be closed in either DCA's name or by the Georgia Housing and Finance Authority (or a subsidiary corporation thereof). Loans may be made to a development authority which will in turn loan the funds to the sub-recipient business, or loans may be made directly to the sub-recipient business.
- (4) Loans are not limited in amount, although generally the loan amount will not be more than 25% of the fixed-asset needs of the company's Georgia location. A recommended loan amount should be included in a letter of support from a state agency or organization whose statutory powers and duties include community and economic development or the enhancement of Georgia's technology sectors. (See section 110-25-1.08(3) below.) Final approval of loan amounts is at the discretion of the Department.
- (5) The criteria in these rules are designed to assist the Department in making its decision and only constitute minimum standards. Additional factors may be considered depending on the nature of particular projects and their relative merit compared to competing proposals, and depending on the availability of funding at the time of application.
- (6) The Department will establish and announce funding availability. Applications will be accepted throughout the fiscal year and will be reviewed based upon the criteria in Rules 110-25-1-.08 and .09.
- (7) Eligible applicants must apply for assistance under this program in a format and manner described by the Department. Application manuals and guidelines may be obtained from the Department or its website:

Georgia Department of Community Affairs

Life-Sciences Facilities Fund
60 Executive Park South, NE
Atlanta, Georgia 30329
(404) 679-4940

www.dca.state.ga.us

Authority O.C.G.A. §§ 50-8-3(b)(7), 50-8-8, 50-26-4, 50-26-5, 50-26-8(9), (18) and (37), 50-26-18.

110-25-1-.06 Eligible Activities

- (1) Loan funds may be used only for privately owned or publicly owned/privately leased fixed assets (i.e. land, buildings, leasehold improvements or machinery and equipment). Transactions may require the participation of a local-government development authority as a conduit for the loan funds.

Authority O.C.G.A. §§ 50-8-8, 50-26-5(i), 50-26-8(a)(9), 50-26-18.

110-25-1-.07 Loan Terms

- (1) Terms for the Loans, including interest rate, amortization, loan fees, collateral and other consideration, will be determined during the underwriting process based upon the nature of the assets financed, the needs of the sub-recipient business and the risk associated with the project. In general, funds will either be loaned directly to the subrecipient business or transferred to recipient local governments or authorities with conditions that determine the terms and covenants required in the loan to the sub-recipient business, including eligible uses, collateral requirements, and private-investment and job-creation commitments.
- (2) Generally, loans will be secured, at a minimum, by the assets to be financed, (e.g., via a UCC security interest, a leasehold deed to secure debt) and with other security (e.g. corporate guarantees) on an as-needed basis. The interest rates on the loans will generally be below market-rate financing as an incentive to move the project forward and to improve the company's cash flow; interest payments may be deferred until the end of the loan term.
- (3) If funds are passed through a local government authority, then that entity shall reimburse the total amount of the loan funds to the Department; provided, however, that the reimbursement obligation shall generally be limited to payments made by the Company under the loan. Reimbursement by the recipient shall be made in periodic payments in amounts equivalent to payments made by the Company under the loan, less any fees that might be agreed upon in writing between the recipient and the Department.
- (4) All loan repayments, including interest, fees and principal repayments, shall be recaptured by DCA in the LSFF program fund to be reloaned to future eligible borrowers and to cover administrative costs of the program.
- (5) Generally, the terms of the loan shall contain at least one "triggering event" that will require the acceleration of the term of the loan. For example, a loan with a term of ten years may be accelerated to a three-year term in the event that the sub-recipient Company is acquired, has an initial public offering, or receives regulatory approval from a governing agency (e.g., the FDA or USDA).
- (6) In most cases, loans will contain terms requiring immediate and full repayment of the Loan balance if the company moves its operations out of Georgia, closes the LSFF-funded facility, is sold or liquidated. The Department also reserves the right to establish criteria for the recapture of loan funds upon transfer of project assets to an entity other than the sub-recipient business or upon any event that violates state law, the public purpose of the loan program, any of the loan conditions, or any intergovernmental contract provision. All recaptured funds must be returned to the Department unless otherwise specified by the Department.

Authority O.C.G.A. §§ 50-8-8, 50-26-5(i), 50-26-8(a)(9), 50-26-18.

110-25-1-.08 Threshold Requirements (Application must meet all threshold requirements in order to be considered):

- (1) The application is from an eligible applicant;
- (2) The proposed sub-recipient business is a life-sciences company;

- (3) A letter of support and recommendation has been issued by a state agency or organization whose statutory or organizational powers and duties include community and economic development or the enhancement of Georgia's technology sectors, stating that the proposed project needs the Loan Fund's loan assistance and will (if funded) develop, promote, and/or retain trade, commerce, industry and employment opportunities within the state's strategic industries and promote the general welfare of the state;
- (4) The proposed use of funds is for eligible activities and will be carried out in a manner consistent with the state constitution, state law and in accordance with the applicant's and sub-recipient's enabling legislation and authority or corporate charter; and,
- (5) The proposed activities are consistent with local and regional plans developed under the provisions of the Georgia Planning Act and the Service Delivery Strategies developed in accordance with O.C.G.A. 36-70-1 *et seq.*

Authority O.C.G.A. § 50-8-8.

110-25-1-.09 Review of Applications

- (1) All applications that meet the Threshold Requirements outlined in Section 110-25-1-.08 will be reviewed to determine the merit of the applications and the proposed use of funds. Applicants and potential borrowers should follow the detailed guidelines set forth in the application package, paying special attention to the requirements for supporting documentation and the narrative description. Applications will be rated according to a point system with the maximum number of points available to an application being set at 500. In order to be funded, an application must receive a minimum score of 300 points. For all applications, the rating criteria may award up to 100 bonus points for projects that meet the bonus criteria outlined in Section 110-25-1-.09(5). Applications will be reviewed based upon enhancement of economic development opportunities and the project's contribution to the development of the State's life-sciences industry, including job creation, private investment and the creation of marketable products. The rating criteria are outlined below.

(2) Project Feasibility (160 Points Maximum)

Applications will be awarded "feasibility" points according to the following scale: poor: 0.0 points; below average: 40.0 points; average: 80.0 points; good: 120.0 points; excellent: 160 points. In order to determine where on the feasibility scale a project ranks the following criteria, at a minimum, will be analyzed:

- A) The proposed project and activities are clearly described and documented, and the responsibilities for carrying out each activity are clearly ascribed to a participating entity and each entity has firmly committed in writing to carry out its part. Project narrative (or some other document such as a business plan to be included with the application) should describe:
 - i) the company's background, history and mission, including how long the principals have been involved, how the work has been funded thus far, and what has been accomplished in the last twelve months;
 - ii) qualifications of key management and scientific personnel;
 - iii) the need or problem that the company's product addresses and the current state of available options to meet that need or problem (i.e., the market for the company's product including competition);
 - iv) the company's proposed technology or product;
 - v) the competitive advantage of the company's technology or product;
 - vi) the technical, scientific and commercial milestones for the company, at least through commercialization of a product;
 - vii) the status of the company's intellectual property and whether the company has an established intellectual-property policy;

- viii) any regulatory approvals that the company must obtain; and
- ix) the proposed costs for the project and the status of all funding sources.

- B) Underwriting analysis has determined that:
- i) the company's capitalization plan is sound and access to capital to sustain operations appears to be available;
 - ii) the near-term commercialization potential is good and reasonably estimated;
 - iii) the company's performance and standing is secure in the following areas: capital management, debt capacity, management character/experience, economic and market conditions;
 - iv) the company's proposed development or business plan uses reasonable assumptions;
 - v) the company's development team (principals, officers, production and scientific leaders, developers, contractors, etc.) is committed and has a successful record in the proposed or a similar industry;
 - vi) for real-estate projects, does the proposed development team have a successful record of accomplishment? The team may include the following: developer, contractor, architect, leasing agent, property manager, syndicator, construction manager, interim and permanent lenders;
 - vii) the proposed business plan, marketing strategy and proforma are realistic; and
 - viii) the company will be able to repay the loan.
- C) When requested by the Department or the Georgia Department of Economic Development, Scientific vetting, as supported by a report from the Board of Regents, the Georgia Research Alliance or a similarly capable entity, has determined that:
- i) the company has a sound scientific and technical base;
 - ii) the company's product or service can reasonably be expected to develop a competitive position in the marketplace;
 - iii) the company's regulatory strategy is sound;
 - iv) the intellectual property of the company is strong;
 - v) the company has a reasonable timeline for research and development, raising capital, applicable regulatory approvals, commercialization of products, etc.;
 - vi) the company has plans for manufacturing and marketing its product, whether in-house or with a partner; and
 - vii) the company has a reasonable likelihood of obtaining regulatory approval (e.g., FDA, USDA) of its products (as applicable).
- D) Project costs are verified through original source documents, architectural and engineering reports, or certified appraisals.
- E) Project readiness concerns are addressed (as applicable):
- i) engineering/architectural/environmental reports are complete;
 - ii) infrastructure/utility access issues;
 - iii) specific job and investment commitments have been made;
 - iv) commitments to fund operations/maintenance, etc.;
 - v) other public and private sector investors are committed and ready to invest;
 - vi) all needed real property is acquired or under option;
 - vii) environmental, regulatory and liability concerns addressed (phase 1, government permits, etc.);
 - viii) administrative capacity is adequate.
- F) Applicant certifies that project complies (or will comply) with all applicable federal, state, and local law and regulations.

(3) **Program Strategy** (120 Points Maximum)

Applications will be awarded “Strategy” points according to the following scale: poor: 0.0 points; below average: 30 points; average: 60 points; good: 90 points; excellent: 120 points. In order to determine where on the strategy scale a project ranks the following criteria, at a minimum, will be analyzed:

- A) The proposed project will result in the enhancement of Georgia’s life-sciences industry and the State’s innovation economy;
- B) The proposed project will benefit from and/or enhance the state’s research institutions;
- C) The proposed project is likely to lead to indirect local, regional or statewide impact by: i) attracting related development/investment; ii) supporting/enhancing local or regional development strategies and priorities; and iii) fostering partnerships between the private sub-recipient and Georgia’s research universities, state colleges, or other Georgia businesses;
- D) Financial and programmatic alternatives have been considered for the proposed project and eliminated;
- E) The project represents an innovative approach to the development and retention of employment opportunities in Georgia’s life-sciences industry;
- F) The project has local support as evidenced by resolutions from the local government (City or County) and the local development authority that will be the conduit for the loan funds, if applicable.

(4) **Project Impact** (120 Points Maximum)

Applications will be awarded “Impact” points according to the following scale: poor: 0.0 points; below average: 30.0 points; average: 60.0 points; good: 90 points; excellent: 120 points. In order to determine where on the impact scale a project ranks the following criteria, at a minimum, will be analyzed:

- A) The number and quality of jobs to be created or retained including workforce enhancement through higher-than-average wages, job training, skill upgrades, education, etc.;
- B) The amount of DCA and other state assistance per job created or retained;
- C) Amount of private leverage represents at least a 3-to-1 match of the Facilities Fund loan amount (any investments made in the company more than six months prior to submission of the Facilities Fund application, or issuance of pre-agreement cost approval, may not be counted toward the 3-to-1 match requirement);
- D) The amount of public leverage;
- E) New/retained taxes;
- F) Improved regional or state competitiveness;
- G) Potential secondary benefits; and
- H) The diversification of local, regional or state economies through support of the life-sciences industry.

(5) **Bonus Points** (100 Points Maximum) Applications may be awarded bonus points based upon a project’s demonstration of exceptional benefits or partnerships such as:

- a) Significant job-creation committed;
- b) An active partnership with a State research institution or success in a Georgia incubator;
- c) Serious potential for significant future investment in Georgia such as the location of a future manufacturing facility; and

- d) Significant and quantifiable regional cooperation or impact as evidenced by multi-jurisdictional cooperation through project ownership or a revenue- and cost-sharing agreement or other intergovernmental agreement that evidences significant cooperation between two or more counties.

(6) **Proprietary information:**

Georgia Law requires that “All public records of an agency as defined in subsection (a) of this Code section, except those which by order of a court of this state or by law are prohibited or specifically exempted from being open to inspection by the general public, shall be open for a personal inspection by any citizen of this state at a reasonable time and place; and those in charge of such records shall not refuse this privilege to any citizen” (O.C.G.A. § 50-18-70(b)). This means that past and current records on Facilities Fund projects and applications are required to be open for public inspection.

However, certain proprietary information which is required to be included in an application and must be supplied by a business or developer in order to receive funds and which by law are prohibited or specifically exempted from being open to inspection by the general public (for example, information that constitutes a “trade secret” (O.C.G.A. § 10-1-740 et seq.; 16-8-13(a)(4)) is exempt from disclosure under O.C.G.A. section 50-18-70. Any information an applicant or sub-recipient business believes is exempt from disclosure must be clearly identified as such.

- (7) The criteria in this rule (110-25-1) are designed to assist the Department in making a decision and only constitute minimum standards. Additional factors may be considered depending on the nature of particular projects and their relative merit compared to competing proposals and depending on the availability of funding at the time of application. Furthermore, in its review of applications, the Department may, at its discretion, consult with other individuals or agencies, such as the Georgia Department of Economic Development, the Georgia Research Alliance or the Board of Regents and related institutions, as appropriate for receiving advice. The decisions made by the Department shall be final and conclusive.

Authority O.C.G.A. §§ 50-8-8, 50-18-70 to 77.

110-25-1-10 Awarding of Funds

- (1) Once selected for funding, awarded funds will be made available by the Department through an award contract incorporating by reference the approved final application and adding general conditions plus special conditions as necessary. Such special conditions shall include the terms and conditions of the loan to the sub-recipient business.
- (2) Because of the limited amount of funds available, the Department may also award an amount less than the amount requested in the application. Applicants will have thirty (30) days from the date of award to accept any special conditions and/or the reduced award amount. If the applicant fails to accept the special conditions or lower award amount within the required period, the Department may unilaterally withdraw the award.
- (3) The Department will prepare loan documents in consultation with the recipient’s and company’s attorneys.
- (4) As part of the award conditions, the recipient must provide progress reports on the impact and performance of the project as required by the Department.

Authority O.C.G.A. § 50-8-8.

110-25-1-.11 Statement of Conditions

In addition to the certifications made on the face of the award statement, the recipient of funds must further certify that:

- (1) No applicable state laws, rules, regulations or applicable local ordinances shall be violated in carrying out this project and expending the Department's Life Sciences Facilities Fund monies.
- (2) Recipient's internally adopted procurement procedures meet applicable state requirements and will be adhered to and documentation shall be maintained to document such adherence.
- (3) Recipient's accounting records shall be maintained in a manner consistent with generally accepted government accounting standards and the Uniform Chart of Accounts established by the Department of Community Affairs (O.C.G.A. § 36-81-3).
- (4) If the Recipient is a development authority, then the project financed in part by Loan Fund monies shall only be leased or sold or administered as provided by O.C.G.A. § 36-62-7, local constitutional amendment, local law passed by the legislature, or other general enabling legislation, as applicable.
- (5) Upon request of the Department, the Recipient shall submit copies of annual financial audits that cover all or part of the award period to the agency. These annual financial audits must be conducted in accordance with government auditing standards established by the comptroller general of the United States.
- (6) No real or apparent conflict of interest shall be engaged in by any person or party (or any person or party with whom they have family or business ties) who is involved in any aspect of the Facilities Fund project. In general, no person who is an elected or appointed official, employee, agent, consultant, officer or any person serving in a similar capacity with any participating public agency that exercises or has exercised any functions or responsibilities with respect to any Facilities Fund activities can benefit from a Facilities Fund project. Those persons who are in a position to participate in a decision-making process or gain inside information regarding Facilities Fund proposed or related activities, who may obtain a personal, financial interest, or benefit from the project, or have any interest in any contract, subcontract or agreement with respect to any Facilities Fund project are also prohibited from benefiting from the project. The prohibitions against benefiting from a Facilities Fund project would apply to the covered individuals or those with whom they have family or business ties, for one year following their tenure in the covered position.

Exceptions -Upon written request, the agent may grant an exception to the provisions of the above paragraph, on a case-by-case basis, before funds are expended. Exceptions can only be granted when the agent determines that the exception will serve to further the purposes of the Facilities Fund Program. To seek an exception, a written request for an exception must be submitted by the applicant to the agent which:

- 1) Fully discloses the conflict or potential conflict of interest, prior to the applicant undertaking any action which results or may result in a conflict of interest, real or apparent; and
- 2) Describes how the conflict of interest was publicly disclosed; and
- 3) Includes a written opinion of the applicant's attorney that the interest for which the exception is sought would not violate state or local law.

Should any statutory conflict-of-interest provision apply (e.g., O.C.G.A. § 36-62-5(e)), then evidence must be provided that the appropriate steps were followed to disclose and remedy the conflict of interest.