

BUILD MISSOURI

A Program Jointly Administered By The:



PROGRAM GUIDELINES

(Rev. June 2011)

BUILD MISSOURI PROGRAM GUIDELINES

Jointly Submitted to the:

<p>MISSOURI DEPARTMENT OF ECONOMIC DEVELOPMENT</p> <p>Harry S. Truman Building 301 W. High Street, Room 770 P.O. Box 118 Jefferson City, Missouri 65102</p>	<p>MISSOURI DEVELOPMENT FINANCE BOARD</p> <p>Governor Office Building 200 Madison Street, Suite 1000 P.O. Box 567 Jefferson City, Missouri 65102</p>
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GUIDELINES

General

An Applicant submits an Application to the Missouri Department of Economic Development (the “Department”) and the Missouri Development Finance Board (the “Board”) for the purpose of requesting the issuance of bonds (“Bonds”) for the purpose of financing the Project described below (the “Project”) pursuant to the BUILD Missouri Program.

The Applicant agrees that the submission of an Application to the Department and the Board is solely for the purpose of permitting the Department and the Board to make independent determinations of whether the Applicant and the proposed Project qualify for assistance pursuant to the BUILD Act, and, assuming such qualification, the amount of assistance such Project may be eligible for, if any. The determination of eligibility is solely within the power of the Department and the Board. The Department and the Board reserve the right to request additional information in connection with the submission and consideration of an Application.

Procedure for Submission of Application

Procedure for Submission of Application. For the Department and the Board to consider the Application, it must be complete with all required attachments or supporting documentation and must be received by Department staff **15 business days prior to the first Monday of the month** in which the Applicant wishes to be considered by the Board. If the due date falls on a state or federal holiday, the application is due on the next following business day. The Applicant must submit an original and one copy of the Application to the Department. Applicants are encouraged to work with Department and Board staff prior to submitting the final Application to determine if additional information is needed. If sufficient information has not been provided, the Application will be withheld until a subsequent meeting.

Upon receipt of the original and copy of the Application, the Department shall immediately forward the copy of the Application to the Board. The Department will initially

consider the Application and forward to the Board its determination as to whether the Application is in compliance with the BUILD Act and the Rules promulgated by the Department. **The Department will submit a recommendation and an economic impact study to the Board by no later than the Tuesday that is two weeks prior to the meeting at which the Board is to consider preliminary approval of the Application.** Upon receipt of such determination, the Board will schedule the Application for consideration at its next regularly scheduled meeting.

Consideration of the Application. The Board will notify the Applicant of the time and date of the Board meeting when the Application will be presented. At such meeting the Applicant will be expected to make a complete and detailed presentation concerning the matters covered by the Application. After completion of the presentation, the Board will decide whether to preliminarily approve the Application. The Board reserves the right to postpone any action on the Application and to request additional information the Board determines is necessary to properly consider the Application.

Preliminary Approval. If the Board preliminarily approves the Application, the Board will adopt a Resolution to the effect that the Application has been preliminarily approved. The Board and Applicant will proceed to prepare the documentation on forms provided by the Board for the final approval and issuance of Bonds. Such documents will include the preparation and negotiation of a Program Agreement as required by the BUILD Act setting forth the terms and conditions of the issuance of the BUILD Tax Credits.

Preliminary resolutions of intent will expire on the date specified in the resolution, generally on December 31st of the year following the year of adoption of the resolution but may have a later expiration date depending on the scheduled completion date for the Project. If a preliminary resolution has expired and the Applicant wishes to proceed to final approval, all information in the Application must be updated and the Applicant must certify in writing that no material adverse changes have occurred in its financial condition or any other aspect of the Project since preliminary approval.

Final Approval. Prior to the issuance of the Bonds, the Board will adopt a final resolution giving final approval to the Application and authorizing the issuance of the Bonds and the execution and delivery of all documents necessary to issue and secure the Bonds and the Program Agreement. Applicants are not required to be present at the Board meeting at which final approval is given.

Requirements Relating to the Issuance of the Bonds and Tax Credits

Sale of the Bonds. Unless otherwise approved by the Board, the Applicant will be required to purchase the Bonds. All documents relating to the issuance, sale and resale of the Bonds must be acceptable to the Board.

Determination of Interest Rate on the Bonds. The interest rate on the Bonds will be 5.00% per annum, subject to adjustment by the Board as market conditions dictate.

Determination of Amortization and Maturity of the Bonds. The Board will determine the annual principal amortization schedule for the Bonds in such amounts necessary to produce an approximately level payment of principal and interest on the Bonds to the maturity date, unless otherwise determined by the Board. The final maturity date for the Bonds will not exceed 15 years from the date of issuance of the Bonds.

Penalty and Reimbursement for Failure to Meet Projections. The Board and the Department understand that certain aspects of any economic development project are subject to factors, which in many cases are beyond the control or the foreseeability of the Applicant. To protect the State and the Board's interest in the investment being made by the Board in the Project, the Program Agreement will obligate the Applicant to reimburse the Board to the extent that the anticipated economic benefits and investment (i.e., both estimated number of new jobs, estimated wages and estimated capital investment) do not occur as projected by the Applicant in the Application. The obligation to reimburse such tax credits includes those circumstances where the "new jobs" are reduced during the term of the Bonds due to layoffs or other workforce reduction. Applicants are encouraged to use conservative projections in the Application to avoid the onerous nature of these reimbursement requirements.

Certain Legal Risks. The use of tax credits by the Department and the Board has been an important economic development tool for many years. However, state law imposes a number of limitations upon the funding of private projects with public funds. The use of tax credits has been held to constitute a use of public funds. Projects which serve primarily a public purpose involve the reimbursement of infrastructure costs typically provided by a public entity, or the primary purpose of which is the elimination of blight, have been found by courts to comply with these limitations. Because each Project will be different in purpose and function, neither the Department nor the Board can guarantee that a court reviewing any particular use of the tax credits would uphold the Board's use of the tax credits. Each Applicant will therefore be required to assume the risk that a court might invalidate the use of tax credits for the Applicant's Project.

Reporting Requirements. In order to monitor compliance with investment and job creation requirements contained in a Program Agreement and to calculate earned tax credits, businesses will be required to file semiannual reports during the first three years following issuance of the Bonds and annual reports thereafter. These reports require reporting of all new jobs created (and existing jobs retained, if applicable), and applicable wages for such jobs. In order for the Board to verify the number of new jobs created as mandated by the BUILD Act, each business will be required to submit an Employee Status Report to the Board utilizing a secure password-protected website. The Employee Status Report will permit verification of data submitted by the business to the Board with reports filed by the business with the Missouri Department of Labor and Industrial Relations or other state agencies. Such job information will remain strictly confidential with access being limited solely to specific Board personnel, except as otherwise required by law.

In each Status Report, the business will be required to certify that it does not knowingly employ an unauthorized alien. In addition, each business must enroll and participate in a federal work authorization program ("E-Verify Program") to verify the employment eligibility of every

employee whose employment commenced after the employer enrolled in the program. The E-Verify Program, conducted jointly by the Department of Homeland Security (DHS) and the Social Security Administration (SSA), is designed to provide employment status information to determine the eligibility of applicants for employment. E-Verify requires that participating commercial employers use the automated Verification Information System (VIS) to check the SSA and the DHS databases to verify the employment authorization of ALL newly hired employees.

**Tax Credit Accountability Act of 2004 as Amended by House Bill 191
(Section 135.805 RSMo)**

Included with each Annual Report, beginning with the first one due at least one year after issuance of any tax credits, is an Annual Compliance Report required to be filed by tax credit recipients as required by the Tax Credit Accountability Act of 2004. A recipient of a BUILD credit shall annually, for a period of three years following issuance of tax credits, provide to the Board information confirming the category of business by size, the address of the business headquarters and all offices located in the state, the number of employees at the time of the annual update, an updated estimate of the number of employees projected to increase as a result of the completion of the project, and the estimated or actual project cost.

In addition, for a period of three years following the issuance of tax credits, companies shall provide annually to the Board the actual number of jobs created as a result of the tax credits, at the location on the last day of the annual reporting period, separated by part-time permanent and full-time permanent for each month of the preceding twelve-month period.

In the event the tax credit recipient fails to file the Annual Compliance Report or if a court determines there was fraud in the application process, the tax credit recipient will be subject to penalties.

If the Annual Compliance Report is six months past due, the Board shall notify the Department of Revenue that the taxpayer is subject to penalties because of failure to report. Such penalties include the following:

- Failure to report for six (6) months but less than one year shall equal a penalty of two percent (2%) of the value of the tax credits issued for each month of the delinquency.
 - EXAMPLE: Recipient receives \$10,000 in tax credits. Annual report is due June 30, 2009; however, the recipient does not submit the report until March 30, 2010. The recipient is nine (9) months delinquent and the penalty would equal 2% multiplied by \$10,000 for nine (9) months or \$1,800.
- Failure to report for more than one (1) year shall equal a penalty of ten percent (10%) of the value of the credits issued for each month of the delinquency, not to exceed one hundred percent (100%) of the tax credit value.

- **EXAMPLE:** Recipient receives \$10,000 in tax credits. Annual report is due June 30, 2009; however, the recipient does not submit the report until March 30, 2011. The recipient is twenty-one (21) months delinquent and the penalty would equal 10% multiplied by \$10,000 for twenty-one (21) months or \$21,000; however, the statute limits the penalty to the amount of the tax credits, therefore, the penalty would be \$10,000.

The taxpayer shall be liable for any penalties as of December 31 of any tax year and the liability shall be due as of the filing date of the taxpayer's next income tax return. If the taxpayer is not required to file an income tax return, the taxpayer's liability for penalties shall be due as of April 15th of each year.

The Director of the Department of Revenue shall offset any tax credits claimed on a filed tax return against any outstanding penalty before applying such credits to the tax year against which they were originally claimed. Any nonpayment of liability for penalties shall be subject to the same provisions of law as a liability for unpaid income taxes, including but not limited to, interest and penalty provisions. Penalties shall remain the obligation of the person or entity obligated to complete the annual report without regard to any transfer of the credits.

Processing of Tax Credits. Prior to the Board's authorization of a tax credit, the Board will contact the Department of Revenue (and Department of Insurance, if required by statute) and verify that the taxpayer does not owe any delinquent income, sales, use taxes, or insurance taxes, or interest or penalties on such taxes. If a delinquency exists, the amount of tax credits issued will be reduced by the amount of the delinquency. After satisfying all delinquencies, the remaining credits will be issued.

Closed Records. The Board and Department are authorized to close records or documents that "relate to financial investments in a business, or sales projections or other business plan information which may endanger the competitiveness of a business" if requested by the Applicant or as otherwise allowed by law.