

**VEDP Policies and Procedural Guidelines for
Virginia Investment Performance Grant Program
Approved by VEDP Board of Directors on June 7, 2018**

PURPOSE

The Virginia Economic Development Partnership (VEDP) is tasked with administering, monitoring and reviewing the status and progress of the performance requirements for the Virginia Investment Performance Grant program (VIP) in accordance with Section 2.2-5100 of the Code of Virginia of 1950, as amended (the Virginia Code).

The VIP is used to encourage existing Virginia manufacturers or research and development services to continue to invest in Virginia and to provide stable employment opportunities by adding production capacity, utilizing state-of-the-art technology, and modernizing assembly processes. This is a discretionary program in which grants are negotiated and offered to qualified applicants as an economic development incentive.

GUIDING PRINCIPLES

- General: To be eligible for a VIP grant, a minimum of \$25 million in capital investment is required by an eligible existing Virginia manufacturer or research and development service, as these terms are defined below.

Although no minimum new job creation is required for a VIP grant, the investment must not result in any net reduction in employment from the date of the completion of the capital investment through one year from the date of completion. New job creation associated with the capital investment may, however, result in an increased negotiated VIP grant benefit under this program. Even if there is no requirement to create new jobs, there may be a requirement to maintain a certain level of existing full-time jobs.

Investments resulting from ongoing VEDP projects will be eligible for consideration for a VIP grant, but only if the investments have not yet been publicly announced. Investments made with no prior VEDP involvement, and/or investments previously announced, committed or begun will not be eligible for consideration for a VIP grant.

- Competitive Projects Only: The VIP is the Governor's premier tool for encouraging an existing manufacturer or research and development company to grow in the Commonwealth, rather than another state or country. Accordingly, there must be an active and realistic competition between Virginia and another state or country for attracting the project. Grants are made with the expectation that the award of the grants will result in a favorable decision for Virginia.

- Traded Sector Projects Only: VIP grants will only be awarded for traded sector projects—i.e. projects for companies or functions that provide new or additional income into Virginia and add to the gross state product, by providing goods or services at least one-half of which will be sold outside of the Commonwealth or will be paid for with funds from outside the Commonwealth.
- Incentive Philosophy: These factors, among others, will be considered by VEDP when determining whether to recommend discretionary incentives:
 - proportion of company revenues derived from outside Virginia, including international exports (i.e., determination of traded employer)
 - employment multiplier
 - wages compared to local average wage
 - alignment with strategic sectors and state/local strategies
 - solution to a competitive need
 - establishment of a competitive advantage
 - ability to leverage other state and local resources
 - advancement of the quality of life
- Grant Amounts: In determining grant amounts, the following criteria will be considered as outlined in Section 2.2-5101 D:
 1. The number of new jobs created by the capital investment;
 2. The wages paid for the new jobs and the amount by which wages exceed the average manufacturing wage for the locality or region;
 3. The extent to which the capital investment produces (i) measurable increases in capacity, productivity, or both; (ii) measurable decreases in the production of flawed product; or (iii) measurable advances in knowledge, research, or the application of research findings for the creation of new or significantly improved products or processes that support manufacturing;
 4. The amount of the capital investment;
 5. The net present value of benefits to Virginia;
 6. The amount of other incentives offered by the Commonwealth and the locality; and
 7. The importance of the manufacturing or research and development facility to the economy of the locality or region.
- Allocations: Section 2.2-5101, A through C references that the fund is subject to the appropriation by the General Assembly of sufficient moneys to the Investment Performance Grant sub-fund, any eligible manufacturer or research and

development service that is not eligible for a major eligible employer grant under § [2.2-5102](#) shall be eligible for an investment performance grant as provided in this section. VEDP established an application process by which eligible manufacturers and research and development services may apply for a grant. An application for a VIP grant shall not be approved until VEDP has verified that the capital investment has been completed. The amount of the VIP grant that an eligible manufacturer or research and development service shall be eligible to receive shall be determined by the Secretary of Commerce & Trade, based on the recommendation of VEDP, and contingent upon approval by the Governor. The determination of the appropriate amount of a VIP grant shall be based on the application of guidelines that establish criteria for correlating the amount of a VIP grant to the relative value to the Commonwealth of the eligible investment.

- **Multiple Grants:** An applicant may be granted more than one VIP grant at a time if the scope of each project has a different timeframe and independently meets the minimum investment and all other criteria expressed herein. An applicant that has an active VIP grant but separately meets the investment threshold and employment requirements for a new project may apply for an additional VIP grant. For an investment occurring in phases or stages, however, the Commonwealth will consider as one project a phased-in investment if: (i) the entire investment is announced at one time, (ii) the phases are clearly related to one project, and (iii) the entire investment proceeds normally to completion, without extraordinary delays. If these conditions are met, the negotiated amount will reflect the entire single investment.

If the applicant participates currently in another production grant program sponsored by the Commonwealth for a project, or another grant program under the Act, as defined below, it shall not be eligible for a VIP grant for that project.

- **First Announcement by Governor:** Grants will not be made for projects that have been publicly announced prior to the Governor's approval and public announcement of a grant award.

Upon approval of a VIP grant, neither the locality nor the company shall announce or confirm the proposed project without coordination with VEDP. The new jobs and capital investment targets in the performance agreement will be used in the press release when the public announcement is made. If the targets are not used for the public announcement of the project, or if the public announcement is made by anyone other than the Governor, the grant award is subject to being withdrawn.

POLICY REGARDING NEW JOBS

- **Definition of New Job:** VEDP uses a definition of "new job" that reads as follows (Section 2.2-5100): "New job" means employment of an indefinite duration at the

eligible facility, created as the direct result of the capital investment, for which the standard fringe benefits are provided by the firm for the employee, requiring a minimum of either (i) 35 hours of an employee's time a week for the entire normal year of the firm's operations, which "normal year" must consist of at least 48 weeks or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in this Commonwealth to the facility, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as new jobs under the Act. Net new jobs for contractors or employees of contractors who are located in the Commonwealth and provide dedicated full-time service to the Company may count as New Jobs (as determined by VEDP), even though the Company is not directly paying the wages or providing the fringe benefits, if the other conditions set forth in this paragraph have been satisfied.

- Definition of Maintain: Generally, the new jobs must be created and maintained through the performance and payment period. Accordingly, any layoffs instituted by the company through the performance and payment period will be taken into account in determining compliance with the company's new job requirement. VEDP uses a definition of "Maintain" that reads as follows:

"Maintain" means that the New Jobs will continue without interruption from the date of creation through the VIP grant payment period. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in the VIP grantee's employment levels (so long as there is active recruitment for open positions), (ii) strikes, and (iii) other temporary work stoppages.

- Existing Jobs: If there are existing jobs at the firm's facility (or at a contractor's facility, if applicable), it is expected that the performance agreement will state the number of existing jobs and will require that any new jobs be in addition to the existing jobs.
- Contractor Job Information: If the company wishes to count the new jobs created by contractors in meeting its new jobs target, as described in the last sentence of the definition of "new job," the company will be responsible for gathering and disseminating VEDP information regarding those jobs, including whether such jobs are "net new jobs" in the Commonwealth.
- Date from Which to Count New Jobs: For the expansion of an existing facility, the date from which VEDP will start counting new jobs generally will be around the announcement date. It is not expected that this date will ever be earlier than the date that the company received an incentive proposal from VEDP.

- Verification of New Jobs: VEDP will verify company reports per its verification policies and procedural guidelines.

POLICY REGARDING CAPITAL INVESTMENT

- Definition of Capital Investment: In accordance with Section 2.2-5100, B., "Capital investment" means an investment in real property, personal property, or both, at a manufacturing or basic nonmanufacturing facility within the Commonwealth that is capitalized by the company and that increases the productivity of the manufacturing facility, results in the creation, development or utilization of a more advanced technology than is in use immediately prior to such investment, or both. In order to qualify as a capital investment, an investment in technology shall result in a measurable increase in capacity or productivity, a measurable decrease in the production of flawed product, or both. Expenditures for maintenance, replacement or repair of existing machinery, tools and real property shall not constitute a capital investment; however, expenditures for the replacement of property shall not be ineligible for designation as a capital investment if such replacement results in a measurable increase in productivity."

Capital expenditures funded with the proceeds of a VIP grant or other contributions by governmental entities shall not count toward a company's required "capital investment."

- Used Equipment Moved to Project: Generally, VEDP will not count as "capital investment" the value of used equipment transferred by the company to the project site. VEDP may, in its discretion (which it expects to exercise only in very unusual circumstances), allow such equipment to count toward qualifying investment, if it is being moved to the Commonwealth from outside of the Commonwealth, and it does not represent more than half of the qualifying capital investment. The community's assessed value of the used equipment to which the local tax rate will be applied will be considered in determining qualifying capital investment.
- Operating Leases / Expenses: VEDP may, in its discretion, determine that the value of machinery and equipment leased under an operating lease will qualify as a capital investment.

VEDP may, in its discretion, determine that the value of the construction or improvement of real property leased under an operating lease will qualify as a capital investment, but is likely to do so only in circumstances in which (1) the operating lease is for at least the longer of five years or twice the period of time until VEDP has estimated that the Commonwealth will "break-even" on the project, taking into account all incentives offered to the company by the Commonwealth, (2) the real property would not be constructed or improved "but for" the company's interest in leasing some or all of the facility, and (3) the improvements will significantly increase the taxable value of the property. Only that portion of the

construction or improvement costs related to the portion of the facility to be leased to the company may qualify.

Capital investment generally will not include operating expenses, except operating leases to the limited extent noted above.

- Capital Leases: Capital investment will include the value of the construction or improvement of real or personal property leased under a capital lease.
- Exclusion for the Cost of Land and Existing Buildings: The cost of the acquisition of land and existing buildings will not count toward the required capital investment thresholds, unless the land and existing buildings are being purchased from a governmental entity and are being returned to the tax rolls.
- Date from Which to Count Capital Investment: For an expansion of an existing facility, the date from which VEDP will start counting capital investment generally will be around the announcement date. It is not expected that this date will ever be earlier than the date that the company received an incentive proposal from VEDP.
- Verification of Capital Investment: VEDP will verify company reports per its verification policies and procedural guidelines.

APPLICATION PROCESS

Once the due diligence process is complete and a VIP grant has been pre-approved for a company, the company can submit an application to VEDP.

The applicant shall submit a detailed letter of application for a VIP grant directly to the President and Chief Executive Officer of VEDP providing the following information:

1. The amount and timing of the expected capital investment;
2. The extent to which, if applicable, the expected capital investment produces (i) measurable increases in capacity, productivity, or both, (ii) measurable decreases in the production of flawed product, or (iii) measurable advances in knowledge, research, or the application of research findings for the creation of new or significantly improved products or processes that support manufacturing;
3. The number of new jobs expected to be created and maintained because of the capital investment, if any, and a timeline for their creation;
4. (A) The average annual wages expected to be paid for the new jobs, if any, (B) whether a package of fringe benefits will be provided by the applicant to a typical employee (the statute requires standard fringe benefits), and (C) a comparison of the

expected average annual wages with the average manufacturing wage for the locality or region;

5. The amount of other incentives requested of, or offered by, the Commonwealth and the locality, including grants, tax credits or exemptions, and other cost-avoidance incentives;
6. General corporate information about the applicant, including date of establishment, tenure and nature of presence in Virginia, and amount of previous capital investment and existing employment; and
7. Other factors as may be presented and demonstrated by the applicant that might affect the calculation of the net present value of benefits to Virginia. Specifically, applicants may present marginal corporate income (or analogous) tax revenues to Virginia attributable to the investment for which the VIP grant is made. If accepted, these revenues would be included in the calculation of the net present value of benefits to Virginia.

AMOUNT OF VIP GRANT AWARD

Except as provided in the next paragraph, no one VIP grant may exceed \$3,000,000. In the aggregate, no more than \$6 million in total VIP grants may be paid-out in any one year. The total aggregate amount of outstanding VIP grants approved after July 1, 2015 cannot exceed \$20 million.

Although each VIP grant generally cannot exceed \$3,000,000, a VIP grant may be for as much as \$5,000,000 for a project that meets more than one of the extraordinary characteristics set forth below:

- Desirable workforce characteristics (e.g. significant job numbers, especially high wage levels, or sophisticated skill sets)
- Strategic industry sector
- Significant impact on or transformation of the local/regional economy
- Significant R&D component, especially if in concert with Virginia's public higher educational institutions
- Considerable capital investment
- Likelihood of attracting a significant supply chain or other significant follow-on opportunities

The maximum \$5 million grant is intended to be reserved for special projects deemed meritorious of such a significant investment by the Commonwealth.

The VIP grant will be paid in five annual installments at the times described below under "Performance Agreement – VIP Grant Payout Schedule."

PERFORMANCE AGREEMENT

General Provisions: Once negotiated and agreed upon, the amount, terms and conditions of a VIP grant shall be reflected in a performance agreement expected to be executed by the applicant no later than 120 days after the public announcement of the project by the Governor.

Targets and Statutory Criteria: The performance agreement will set forth the (i) capital investment target; (ii) new jobs target; (iii) wage target; (iv) prevailing average manufacturing wage in locality; (v) expected performance date; (vi) reporting and target verification procedures; and (vii) any grant reduction circumstances.

Performance Date: The performance agreement shall contain an end-date by which the capital investment and, if applicable, new job creation, is expected to have been completed (a "Projected Completion Date"). It is VEDP's strong preference that this Projected Completion Date will be three years, but no more than five years, from the date the performance agreement is signed, but extensions will be considered on a case-by-case basis.

Any extension of the Projected Completion Date shall require the prior approval of VEDP's Project Review and Credit Committee ("PRACC") and the Board of Directors of VEDP. If the Projected Completion Date is extended, VEDP will notify the company of any such extension. Generally, the extension should be granted only in circumstances under which it is reasonable to believe that the company is likely to make significant progress toward meeting its performance targets by the extension date. In the unlikely event that a second extension request will be considered, that extension will require the approval of PRACC, the Board of Directors of VEDP and the Major Employment and Investment Project Approval Commission.

Initial Company Notification: The performance agreement will require the VIP grantee to notify VEDP in writing within 90 days of the completion of the capital investment and any new job creation or existing job maintenance, certifying the amount of capital investment and, if applicable, the number of net new jobs created and maintained at the facility, the average annual wage rates paid to such employees and a summary of the fringe benefits package offered by the VIP grantee to a typical employee (an "Initial Company Notification").

Subsequent Company Notification: One year after the completion of the capital investment and, if applicable, any new job creation, the performance agreement will require the VIP grantee to certify to VEDP whether there has been a net reduction in employment in the year since the completion of the capital investment (a "Subsequent Company Notification"). If so provided in the performance agreement, whether there has been a net reduction in employment in such year may be determined solely with respect to the employment related to the improvements made by the capital investment. If, for example, the capital investment updated a single production line, it may be possible to

look solely at that production line in determining whether there has been a reduction in employment during that one year period.

The performance agreement will likely require other notices to VEDP as may be necessary to administer the VIP grant program.

VIP Grant Payout Schedule: Beginning with the fiscal year in which the verified Initial Company Notification has been on file at VEDP for 36 months, and pursuant to the provisions of the Act, the Commonwealth plans to make five equal annual grant installment payments to the VIP grantee. In fiscally stressed localities, installment payments can begin in the fiscal year in which the verified Initial Company Notification has been on file at VEDP for 24 months.

CONDITIONS TO PAYOUTS OF VIP GRANTS; REDUCTIONS

Annual Appropriation: VIP grant installment payments are subject to annual appropriation by the Virginia General Assembly. If there are insufficient moneys in the Investment Performance Grant subfund to pay all VIP grant payments due to intended recipients, the provisions of Section 2.2-5104 of the Act shall govern the distribution of the available funds.

Conditions to Payouts: VIP grant installment payments are subject to the conditions that (i) the capital investment remains in place during the payment period, (ii) the Subsequent Company Notification has not revealed a net reduction in employment, (iii) if applicable, the new jobs have been maintained during the payment period, and (iv) the facility continues to operate throughout the payment period at substantially the same level as existed at the time of the completion of the capital investment. If the capital investment does not remain in place, if the new jobs have not been maintained, or if the facility is no longer so operated, the performance agreement will require the VIP grantee to provide immediate notice to VEDP. In the event that conditions (i), (iii) or (iv) are not met, the installment payments on the VIP grant will cease, but the VIP grantee will not be required to return any VIP grant installments previously paid.

No Payouts: If the VIP grantee does not achieve the statutory minimum capital investment requirement of \$25 million or does not maintain at least steady employment in the one-year period after the completion of the capital investment, no VIP grant payment will be made. If the VIP grantee achieves the statutory minimum capital investment and maintains steady employment, but does not achieve at least 50% of the capital investment goal and any jobs goal stated in the performance agreement, no VIP grant payment will be made.

Reduced Payouts; Allocations: If the VIP grantee achieves the statutory minimum capital investment goal and maintains steady employment and achieves between 50% and 100% of the targeted capital investment and new jobs, the total VIP grant to be paid shall be diminished proportionately.

In the event that the total VIP grant is reduced, the VIP grant will still be paid out as provided in the Act, so long as the capital investment remains in place during the payment period, the new jobs, if applicable, have been maintained during the payment period, and the facility continues to operate throughout the payment period at substantially the same level as existed at the time of the completion of the capital investment. For this purpose, in the performance agreement, it is expected that the VIP grant will be allocated between the capital investment goal and the job creation or retention goal. Generally, the VIP grant will be allocated three-quarters to the capital investment goal and one-quarter to the job creation or retention goal. For example, if the VIP grantee achieves 60% of its capital investment goal and 75% of its job retention and creation goal, the VIP grant will be diminished proportionately to 60% of that portion allocable to the capital investment and 75% of that portion allocable to jobs retained and created, to be paid out on the schedule described above. If there is no new job creation goal, the entire VIP grant may be allocated to the capital investment goal.

LOCAL MATCHES

Qualifying Local Matches: Localities are expected to provide local matches at least equal to 50% of the VIP grant. Previously invested local funds, grants of moneys from other government sources, and contributions from private interests which benefit from the project's location may not be counted as part of the local match. A local match may be funded by an in-kind contribution from the locality for the direct benefit of the grantee, such as infrastructure development, fee waivers, or free or reduced-price land or buildings.

Local Enterprise Zone incentives may be counted toward the local match where the locality makes actual expenditures after the project is announced to benefit the project.

Date by Which Local Matches Must be Provided: Local matches generally must be made by the performance date by which the company is obligated to complete its capital investment and job creation and maintenance. Generally, this period is three to five years.

MISCELLANEOUS

Assignment: A VIP grantee may not assign its rights or obligations under a performance agreement without the express written approval of VEDP. VEDP will consider an assignment of rights and obligations in the event that there is a transfer to a parent company, subsidiary or sister entity, there is no net effect on new job creation and capital investment, and the net present value of benefits to Virginia will remain substantially the same.

Change in Law: The VIP grant provisions described in these guidelines reflect the VIP grant provisions in the Virginia Code as of July 1, 2017. Changes made by the General Assembly in the applicable provisions of the Virginia Code will be read into, and will be

deemed to amend, these guidelines. As necessary, VEDP will provide the VIP grantees with written notice of any such changes.

Confidentiality: Each VIP grantee should be aware that information regarding the grantee, including its application materials and its level of achievement of its performance goals under the performance agreement, will be shared by VEDP with the Virginia Small Business Financing Authority, the Joint Legislative Audit and Review Commission, and the general public.