

NEBRASKA RURAL PROJECTS ACT FREQUENTLY ASKED QUESTIONS

NOTICE:

This guidance document is advisory in nature but is binding on the Department of Economic Development (“DED”) until amended. A guidance document does not include internal procedural documents that only affect the internal operations of DED and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

Q: The Nebraska Rural Projects Act (“Act”) requires a nonprofit economic development corporation (“EDC”) to develop an industrial rail access business park. What is a “business park”?

A: A business park is an integrated development featuring more than one industrial and/or commercial uses and developed to be occupied by more than one entity.

Q: When and how can an EDC that has an Agreement with the Nebraska Department of Economic Development (“DED”) sell all or any part of the Project or the land on which the Project is situated?

A: An EDC may sell all or any part of the Project authorized by the Act or the land on which such Project is situated to a person who is seeking to establish a business at the site of such Project if the sale is approved by DED. [Nebraska Revised Statute §81-12,215](#). The EDC must make the request to sell all or any part of the Project, or the land on which the Project is situated, to DED in writing and must provide all information and documentation requested by DED. DED will evaluate an EDC’s request to sell all or any part of the Project, or the land on which the Project is situated, to ensure the sale complies with the following Act criteria: (i) the proposed sale is to a person seeking to establish a business at the site of the Project, (ii) the proposed sale furthers the goals of the Project, and (iii) the proposed sale furthers the goals of the Act. [See, Nebraska Revised Statute §81-12,215](#). If approved by DED, the EDC may transact the sale at any time during the Transformational Period. An EDC will not be required to seek approval from DED for a sale following the expiration of the Transformational Period. A sale approved by DED shall not affect matching funds already disbursed to the EDC and shall not, by itself, disqualify the EDC from receiving matching funds after the sale. [See, Nebraska Revised Statute §81-12,215\(3\)](#). However, receipt of matching funds following a sale will remain tied to the amount of Investment in the Project made by the EDC. Project costs financed by the purchaser of a Project will not be counted as Investment for purposes of determining the amount of matching funds to be disbursed.

Q: Who will be considered “a person seeking to establish a business at the site of the Project.”

A: 1) A “person” means a natural person or a juridical person/legal entity, such as a corporation. 2) The “person” must be seeking to form or set up a new business at the Project location. The business does not need to be a newly formed entity, however, the business must be new to the Project location. For this purpose, business means a corporation and all its related entities.

Q: Can a for-profit entity's donations to an EDC specifically for a Project be counted as Applicant Resources?

A: No, the Act limits the sources of Applicant Resources to donations specifically for the Project from individuals, 501(c) organizations, and nongovernmental organizations; or direct or indirect funding for the Project from any federal, state, or local government excluding any matching funds received pursuant to the Act. As such, donations from for-profit entities will not be counted as Applicant Resources.

Q: Can an EDC purchase the land and develop the Project as part of a joint venture with other entities?

A: The Act does not exclude joint ventures, however, eligibility for matching funds is solely tied to the amount of Investment made by the EDC. Further, any sale of the Project, or the land on which the Project is situated, must be approved by DED, regardless of whether the Project is part of a joint venture.

Q: Can funding from a local municipality be counted as Applicant Resources if it goes directly into the Project?

A: Yes, the Act permits any direct or indirect funding for the Project from any federal, state, or local government to be counted as Applicant Resources. For the Project to receive matching funds for the contribution, the contribution and verifiable documentation must be reported to DED in the EDC's annual report.

Q: Must the EDC own the land on which the Project will be located?

A: Yes, the EDC must own the land on which the Project is located. All agreements with DED will require an EDC to secure the land purchase options necessary to carry out the Project. The EDC may be allowed to sell the Project, or the land on which the Project is situated, with DED approval.

Q: May an EDC contract the development of the Project prior to selling the Project?

A: Yes, an EDC may contract the development of the Project prior to selling it provided: (i) the EDC retains ownership of the Project, (ii) the EDC retains ownership of the land on which the Project is situated, and (iii) the EDC continues to make Investment into the Project.

Q: Can the Transformational Period be extended depending on when matching funds are appropriated or otherwise made available to the EDC?

A: All Project Investment must be made during the Transformational Period. The Transformational Period is ten years after the year in which the complete application was filed. The Act requires an agreement to have a duration of no more than ten years after the date of application, consisting of up to the ten years of the Transformational Period. Agreements shall remain effective until all matching funds allowed under the Act have been received.

Q: Is an EDC required to be registered with E-Verify at the time of application?

A: An EDC may enter "not applicable" when asked for its E-Verify number on the application. However, the Act requires an EDC to be and remain registered with E-Verify as part of an agreement with DED. Although not

required at the time of application, an E-Verify number will ultimately be required prior to executing an agreement with DED.

Q: How long will DED take to review applications and issue determination notices?

A: DED intends to issue application determinations within ninety (90) days after a complete application is filed with DED. If approved, an electronic copy of an agreement will be issued to the EDC within ninety (90) days of the notice of approval.

Q: May an EDC submit an application for more than one Project?

A: Yes, an EDC may submit an application for more than one Project. However, the EDC must submit two separate applications, one application in support of one Project and a separate application in support of a second Project. Investment, Applicant Resources, annual reports, and Matching Funds associated with one Project must be kept separate and apart from the Investment, Applicant Resources, annual reports, and Matching Funds associated with the second Project.

Q: May an EDC use Investment dollars, Applicant Resources, or Matching Funds for a receiving terminal in another state?

A: No, to qualify under the Act, the Project location must be within a Nebraska county with less than 100,000 inhabitants.

Q: May an EDC pay its nonrefundable \$1,000.00 application fee prior to the opening of the application on January 3, 2022?

A: Yes, the application fee may be submitted prior to January 3, 2022. For an EDC to complete the application process and establish the Date of Application, DED must receive both the application with requisite supporting documentation and the application fee. The application opens on January 3, 2022. If the application fee is received in advance, the Date of Application will be determined by the date and time the complete application is submitted to DED via Amplifund.

Q: Who should paper checks be made out to?

A: Paper checks should be made out to the Nebraska Department of Economic Development. On the memo line, please indicate the check is for the Nebraska Rural Projects Act/LB 40.

Q: Will electronic funds transfer be available to pay the application fee?

A: Yes, DED is working to finalize a mechanism to allow payments via electronic funds transfer. DED expects to provide an electronic payment method prior to January 3, 2022. When an electronic payment method is established, DED will send out a notification to DED's Nebraska Rural Projects Act email subscribers.

