

**NEBRASKA**



# **NEBRASKA RURAL PROJECTS ACT GUIDELINES**

**State of Nebraska  
Department of Economic Development**

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## 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.

### **OVERVIEW & CONTACT INFORMATION**

#### **Ben Goins**

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402-471-0822  
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*The Nebraska Rural Projects Act is codified in Neb. Rev. Stat. [§§ 81-12,195](#) to [81-12,218](#).*

#### **Application Portal and Management System**

To administer the Nebraska Rural Projects Act, DED uses a grants management system (“GMS”), AmpliFund. GMS User Guides, with instructions for accessing and using the system, along with other resources, are available on [DED’s website](#) and on DED’s AmpliFund resource page, [AmpliFund – Nebraska Department of Economic Development](#).

# CHAPTER 1: INTRODUCTION TO THE NEBRASKA RURAL PROJECTS ACT

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## 1.1 PURPOSE & GENERAL INFORMATION

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Matching funds under the Nebraska Rural Projects Act (“Act”) are made available through the Nebraska Rural Projects Fund. Matching funds are intended to stimulate the economy of rural Nebraska by incentivizing the development of new industrial rail access business parks in counties with less than one hundred thousand inhabitants.

The application window opens January 3, 2022 and closes on June 30, 2023. Applications will be considered in the order in which completed applications are filed. DED shall have the sole discretion in evaluating applications and their compliance with the Act’s requirements. The application and guidelines can be found at the Nebraska Rural Projects Act [webpage](#).

## 1.2 NEBRASKA RURAL PROJECTS ACT

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### A. Terms & Definitions

- **Applicant:** A nonprofit economic development corporation that is tax-exempt under section 501(c) of the Internal Revenue Code and is registered with the Nebraska Secretary of State.
- **Applicant Resources:** Dollars donated to Applicant specifically for the Project by any individual, 501(c) tax exempt organization, nongovernmental organization, and direct or indirect funding for the Project from any federal, state, or local government.
- **Date of Application:** The date that a completed application is filed with DED.
- **Initial Tenant:** The first new tenant at a new industrial rail business park, excluding any entity which had a commercial tenancy agreement in place at the business park prior to the Applicant’s Date of Application.
- **Investment:** The amount of money paid by the Applicant on the Project, including Applicant Resources. Matching funds received pursuant to the Act are not included when calculating the amount of Investment.
- **Project:** Development of a new industrial rail access business park at one qualified location.
- **Project Schedule:** A timetable which organizes and sequences tasks, Investment, and due dates to ensure the Project is undertaken and timely completed.
- **Qualified Location:** A location within a Nebraska county that has a population of less than one hundred thousand inhabitants.
- **Related Entity:** Any entity which is a subsidiary or affiliated entity of the Applicant or which has, as one of its purposes for existence, the financial support of the Applicant.
- **Transformational Period:** Ten years after the year in which the complete application was filed.
- **Year:** State of Nebraska fiscal year.

### B. Eligible Applicant

To apply, an Applicant must be a nonprofit economic development corporation. The Applicant must be registered as such with the Nebraska Secretary of State and must be recognized as a 501(c) entity by the Internal Revenue Service.

**C. Eligible Project**

To be eligible for matching funds, the Project must: (i) develop a new industrial rail access business park and (ii) be located in a Nebraska county with less than one hundred thousand (100,000) inhabitants.

To be regarded as developing a new industrial rail access business park, the Project must undertake at least one of the following objectives: (i) add rail access to an existing business park, (ii) add a new business park to a currently served rail site, or (iii) create a new business park and create new rail access to serve the new business park.

**D. Eligible Investment**

Investment eligible for matching funds consist of those expenditures incurred for the development of a new industrial rail access business park. Eligible Investment includes expenditures on:

- Site acquisition,
- Site preparation,
- Utility extensions,
- Rail spur construction, and
- Assistance to an Initial Tenant engaged in manufacturing, processing, distribution, or transloading operations.

**E. Ineligible Investment**

The following expenditures or activities will not constitute Investment that is eligible for matching funds:

- Private donor commitments in existence before the Date of Application,
- Renegotiation of any private donor commitments in existence before the Date of Application, except to the extent of additional donation commitments,
- Purchase of any property which was previously owned and placed in service by the Applicant or a related entity,
- Any agreement in existence on the Date of Application,
- Renegotiation of any agreement in existence on the Date of Application which does not materially change any of the material terms of the agreement,
- Purchase of property from a Related Entity; unless the Related Entity would have been considered to have made Investment on the purchase of the property if the Related Entity was considered the Applicant.

**F. Matching Funds**

Subject to adequate appropriation of funds, an Applicant may be eligible for two dollars of matching funds for every dollar of Investment in the Project up to the first \$2,500,000.00 of Investment. Five dollars of matching funds may be made available for every dollar of Investment in excess of \$2,500,000.00. Matching funds will be paid to the Applicant on an annual basis over the course of the Transformational Period. No more than \$30,000,000.00 of matching funds will be paid for any one Project.

Applicant Investment	Ratio of Applicant Investment to DED Matching Funds
\$0-\$2,500,000.00	1:2
\$2,500,000.00+	1:5 (capped at \$30,000,000.00 of matching funds)

For any year in which more than one Project qualifies for matching funds, DED will designate the full amount of matching funds to the Project with the earlier Date of Application. Matching funds for Projects with a later Date of Application will be subject to the availability of funds. DED will maintain a waitlist for subsequent Projects.

Matching funds can only be used for: (i) repayment of debt financing related to the Project, (ii) site acquisition, (iii) site preparation, (iv) utility extensions, (v) rail spur construction, (vi) assistance to an Initial Tenant engaged in manufacturing, processing, distribution, or transloading operations. Matching funds cannot be used for other purposes, including those activities listed in Chapter 1.2(E) of these Guidelines.

## **CHAPTER 2: APPLICATION, REVIEW, AND APPROVAL PROCESS**

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### **2.1 FILING AN APPLICATION**

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#### **A. Filing Instructions**

To complete the application process and establish the Date of Application, DED must receive: (i) an Applicant's application form with supporting documentation and (ii) a nonrefundable \$1,000.00 application fee. The Date of Application is thus determined upon DED's receipt of both the application form and the application fee. The Amplifund timestamp will determine the order of the application if the application fee is received by DED on or prior to the Date of Application.

Application Form: Application forms and supporting documentation are filed electronically by using Amplifund. Applicants are encouraged to review the Application Checklist prior to filling out the application form for a list of documents and information required to successfully complete the application form. Applicants follow the "Apply Now" link on the DED Nebraska Rural Projects Act [webpage](#), create a user profile in the Amplifund application portal, and complete the application form. The user profile allows for saving a partially completed application until the Applicant is ready to submit the application. The application window to submit the application form via Amplifund opens January 3, 2022 and closes on June 30, 2023. A sample application form can be found on the DED Nebraska Rural Projects Act webpage.

Application Fee: The nonrefundable \$1,000.00 application fee is remitted separately from the application form and may be transmitted to DED prior to January 3, 2022. Application fees may be remitted to DED by paper check or submitted by electronic transfer.

Questions and Assistance: Questions regarding the application process should be sent to:

**Ben Goins**  
[benjamin.goins@nebraska.gov](mailto:benjamin.goins@nebraska.gov)  
**402-471-0822**

Individuals who are hearing and/or speech impaired and have a TTY, may contact DED through the Statewide Relay System by calling (711) INSTATE (800) 833-7352 (TTY) or (800) 833-0920 (voice). The relay operator should be asked to call NDED at (800) 426-6505 or (402) 471-3111. Additional information can be found at the Nebraska Relay website <http://www.nebraskarelay.com/>.

Nebraska Relay offers Spanish relay service for our Spanish-speaking customers. Spanish-to-Spanish (711) or 1-888-272-5528/ Spanish-to-English (711) or 1-877-564-3503. Nebraska le ofrece el servicio de relevo a nuestros clientes en español. Los consumidores de TTY pueden escribir por máquina en español y las conversaciones serán retransmitidas en español y inglés.

## **B. Required Documentation**

The following documentation is required with the online application:

- A detailed description of the Project. The Project description should:
  - State whether the Project will (i) add rail access to an existing business park, (ii) add a new business park to a currently served rail site, or (iii) create a new business park and create new rail access to serve the new business park,
  - Identify the location of the proposed Project,
  - Detail the expected use of the completed Project, and
  - Highlight the projected economic impact of the Project
- A Project budget schedule completed in the Excel spreadsheet provided,
- Applicant's articles of incorporation or bylaws,
- The Applicant's IRS 501(c) determination letter

The title of each PDF or Excel document should include the name of the Applicant.

## **C. Optional Documentation**

If available, the following documentation should be uploaded to the application:

- A letter demonstrating the Applicant has a commitment from a primary rail carrier to provide service to the Project,
- Land purchase option agreement(s) to secure the location for the Project,
- Zoning approval for the Project,
- Studies/survey results conducted regarding the Project

The title of each PDF document should include the name of the Applicant.

## **2.2 APPLICATION REVIEW**

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To complete the application process and establish the Date of Application, DED must receive: (i) an Applicant's application form with supporting documentation and (ii) a nonrefundable \$1,000.00 application fee. Applications must meet all eligibility requirements and all required documentation must be received for an application to be reviewed. Applications will be considered in the order in which completed applications are received. Filing an application does not guarantee matching funds will be awarded.

Once DED receives an application, DED will review the application to determine whether the applicant and location qualify for approval. If additional documentation is required to make this determination, DED will notify Applicant and Applicant will have an opportunity to provide additional information. Documentation listed as optional in Chapter 2.1(C) of these Guidelines may be required for DED to determine whether a project qualifies

for matching funds. DED will not approve any project without documentation that demonstrates that the new business park will have rail access.

## **CHAPTER 3: AWARD PROCESS**

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The following are, unless otherwise directed by DED, guidelines for all matching fund agreements under the Act. All Applicants applying for matching funds should review this section.

The GMS User Guides or GMS-generated emails may include additional instructions for Applicants. For any correspondence, please include the Applicant's name and, if applicable, agreement number in the subject line.

### **3.1 NOTIFICATION, ACCOUNT SETUP, & PROGRAM MANAGER**

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#### **A. Notification**

DED will issue a written notice of approval to successful Applicants or a written notice of denial to unsuccessful Applicants. A notice of denial will identify the basis for the denial.

#### **B. Account Setup**

Following the notice of approval, the successful Applicant will receive a GMS-generated email from AmpliFund Administrator, "no-reply@gotomygrants.com", with instructions on how to access the award. This email is sent to the Primary Contact as identified in the Application. Successful Applicants should check their spam or junk mail folder as email settings may direct this system-generated email there. If the Primary Contact's information is no longer valid, the links in the email are expired, or the email is not received within 30 days of the notice of approval, the Applicant should contact the Nebraska Rural Projects Act Coordinator.

#### **C. Identify Program Manager**

The Applicant should identify a Program Manager to receive notifications and to execute or assign various tasks necessary to implement the matching funds program (e.g. sign the Agreement, submit completed ACH form, submit the annual report and requisite documentation, etc.). In AmpliFund, the Program Manager will be referred to as the "Grant Manager." The Applicant's Program Manager is the primary point of contact for all program-related matters. All DED and GMS automated emails are directed to the Program Manager.

NOTE: The application portal is distinct from the award management side of the GMS. The URL used to apply is different from the URL used to manage the matching funds program.

### **3.2 AGREEMENT REQUIREMENTS**

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#### **A. Executing the Agreement**

An electronic PDF copy of a Nebraska Rural Projects Act agreement ("Agreement") will be issued to the Applicant within ninety (90) days of the notice of approval. The Agreement is entered into between DED and the Applicant. Applicants must review, sign, date, and submit the Agreement to DED. An authorized signatory for the Applicant must sign the Agreement. DED executes the Agreement after it is signed by the Applicant. Signatures for the Agreement are done via DocuSign.



## **B. Content**

The Agreement will specify the amount of matching funds approved for the Project. The duration of an Agreement is statutorily capped at ten years after the end of the year in which the Applicant applied and constitutes the Transformational Period. Among other requirements, the Agreement will require the Applicant to secure access to a primary rail carrier, to secure proper zoning approval and land purchase options where necessary to complete the Project and remain registered with the E-Verify Program. In executing the Agreement with DED, an Applicant agrees to undertake the Project and to submit annual reports to DED documenting the progress of the Project, Applicant Resources, and Project Investment that has been expended or earmarked for the Project.

### **3.3 APPLICANT REPORTING REQUIREMENTS**

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#### **A. Annual Report**

To receive matching funds, an Applicant is required to submit an annual report and attach the requisite documentation to DED no later than August 15<sup>th</sup> of each year during the Transformational Period. The annual report is used to ensure the Applicant is diligently undertaking the Project, to determine the amount of matching funds to be paid to the Applicant each year, and to provide DED with the information it needs to fulfill its statutory reporting obligation.

Any failure by the Applicant to timely submit the annual report and supporting documentation may result in a denial or deferral of matching funds. Applicants must complete its annual reporting obligation in the form and manner required by DED. Upon submission, DED reviews the Applicant's report for compliance and performance. If the submitted information is incomplete or requires clarification, DED will request missing items and/or request clarification. To avoid delays, be sure to submit complete source documentation, which may include but may not be limited to paid invoices, receipts, financing agreements, redacted check images (or other proof of transfer), redacted donation commitments, updated Project Schedules, etc. The annual report and supporting documentation will address the following reporting obligations:

Investment-Related Reporting Requirements: Throughout the life of the Agreement, the Applicant is to maintain accounting and financial records related to the Project, including Project Investment and Applicant Resources as they relate to site acquisition, site preparation, utility extensions, rail spur construction, assistance to an initial tenant, securing access to the primary rail carrier serving the Project, securing proper zoning, and securing all necessary land purchase options for the Project. It should be possible to compare estimated Project Investment, as identified at the time of application, with actual up-to-date Project Investment.

Project Schedule Reporting Requirement: The Project Schedule should contain a timeline with start dates, end dates, milestones, necessary work to complete Project-related deliverables, Investment associated with each task, task duration, etc.

NOTE: Independent of its annual reporting obligations, Applicants are to notify DED immediately of any material changes to the Project schedule, Investment, or Applicant Resources. Applicants are to notify DED immediately if efforts to secure access to a primary rail carrier, proper zoning, or land purchase agreements are rejected or delayed.

## **3.4 MATCHING FUNDS**

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### **A. Disbursing Matching Funds**

Subject to appropriation of funds and the Applicant's compliance with the Agreement and all Act requirements, DED will issue matching funds to the Applicant throughout the life of the Agreement. The amount of the matching funds is determined by the information contained in the Applicant's reports to DED. All Investment used as a basis for matching funds must be expended within the Agreement's effective dates. All such Investment must be supported by verifiable supporting documentation and proof of payment. Following DED's review of Applicant's reports, supporting documentation and proof of payment, payments will be made by direct deposit. Match payments will be the lesser of the match earned or \$5,000,000. Once Applicants have expended a matching fund payment, Applicants will be required to complete an updated report and request for funds to receive additional match payments. DED will complete its review process within 30 days of having a complete submission. However, actual transmittal of payment may take up to 45 days.

### **B. Denying Matching Funds**

DED will issue written notice to the Applicant if it determines that any portion of Applicant's Investment is ineligible for matching funds. The written notice will identify the ineligible Investment and provide an explanation as to why the identified Investment is not eligible to receive matching funds.

### **C. Repayment of Disbursed Matching Funds**

To the extent it is discovered that matching funds were disbursed to an Applicant in error or an Applicant failed to comply with the terms of the Agreement, including a failure to diligently undertake the Project or to submit its annual report, DED shall have the ability to recapture matching funds already disbursed to the Applicant. DED will issue a written notice of any recapture determinations.

### **D. De-obligation of Funds and Removal from Priority or Waitlist Position**

If it is determined that an Applicant has failed to comply with the terms of the Agreement, including a failure to diligently undertake the Project or to submit its annual report, DED shall have the ability to de-obligate matching funds not yet disbursed and to remove the Applicant from its priority or waitlist position, as previously determined by the Date of Application. DED will issue a written notice of any decisions to de-obligate matching funds.

## **CHAPTER 4: APPEAL PROCESS**

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### **4.1 PROTESTING A DETERMINATION**

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#### **A. Appealable Determinations**

An Applicant may protest the following written determination notices: (i) the Applicant does not qualify as a nonprofit economic development corporation, (ii) the Project location is not a qualified location, (iii) the proposed Project does not qualify as a new industrial rail access business park, (iv) certain Investment does not qualify for matching funds, or (v) matching funds already disbursed to the Applicant must be repaid.

#### **B. Appeal Process**

To protest a written determination notice and request an agency hearing, Applicant must file a petition with DED by mail to: Nebraska Department of Economic Development, Attn: Incentives Division, 301 Centennial Mall South, PO Box 94666, Lincoln, NE 68509-4666. Petitions must be filed with DED within sixty (60) days from the postmark date of the DED determination notice that is the subject of the protest. If an Applicant does not file a petition with DED within sixty (60) days, the determination notice becomes a final determination. The petition must: (i) attach a copy of the determination(s) the Applicant is protesting, (ii) state the material factual allegations, (iii) provide an explanation as to why Applicant believes the determination was in error, and (iv) state the action that DED is being requested to take.

**C. Formal Agency Hearing, Written Order, & Further Appeal**

A formal agency hearing will be held within ninety (90) days of filing the petition. The agency hearing may be continued to a later date upon the mutual agreement of the Applicant and DED. The hearing may allow witness testimony, introduction of evidence, and oral arguments.

Within thirty (30) days following the agency hearing, the DED Director, or his/her designee, shall issue a written order (“Order”) affirming or reversing the challenged DED determination(s). The Order shall constitute the final administrative decision of the agency. The Order may be appealed to the Lancaster County District Court pursuant to Neb. Rev. Stat. § 84-917 of the Nebraska Administrative Procedure Act.