

VEDP Policies and Procedural Guidelines for Performance Extensions
Approved by VEDP Board of Directors on October 25, 2018

Purpose:

The Virginia Economic Development Partnership (VEDP) Division of Incentives (Incentives Division) is tasked with monitoring and reviewing the status and progress of the performance requirements for certain economic development incentives in accordance with Section 2.2-2237.3 of the Code of Virginia of 1950, as amended (the Virginia Code).

These Policies and Procedural Guidelines outline how VEDP will implement §2.2-2237.3 D of the Virginia Code which states:

Notwithstanding any other provision of law, approval of the Board shall be required to grant an extension for an approved project to meet the investment and job creation requirements set forth in the contract or memorandum of understanding. Notwithstanding any other provision of law, approval of both the Board and the MEI Project Approval Commission shall be required to grant any additional extensions.

Written Request:

In the case of a COF Performance Agreement, each performance agreement that may allow for an extension contains specific language permitting a request for an extension similar to the following:

If the Locality, in consultation with the Authority and VEDP, deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets, the Locality may request an extension of the Performance Date by up to 15 months. Any extension of the Performance Date shall require the prior approval of the Board of Directors of VEDP. If the Performance Date is extended, the Locality shall send written notice of the extension to the Authority, the Company and VEDP and the date to which the Performance Date has been extended shall be the "Performance Date" for the purposes of this Agreement.

A locality will make a written request of VEDP requesting an extension of the performance date and the duration of the requested extension of up to 15 months. In no case should the locality notify the company that a company's request for extension has been approved prior to requesting and receiving the approval of VEDP's Board of Directors and the MEI Project Approval Commission (where appropriate).

The locality should make such request in advance of the performance period expiration date.

The locality's request must address:

- the progress of the company in reaching its performance metrics as agreed to in the performance agreement;
- the reasons for the company not meeting its targets;
- an explanation as to how the extension will enable the company sufficient time to reach its targets; and
- how the targets will be achieved.

The locality may request additional extensions of up to 15 months each. If such request is made, the locality must, in addition to addressing the above issues, secure from the company a payment equal to five percent (5%) of the Commonwealth's part of the grant.

If, however, the request for additional extensions is due to an event of *force majeure* the payment of five percent will be waived. In addition, the payment of five percent may be waived in other circumstances with the approval of the Board and the MEI Project Approval Commission.

Considerations:

Extensions will generally be considered under events such as force majeure, unforeseen delays in business operations that are beyond the direct control of the business, unexpected major changes in the market or industry, and other such major events that have a material adverse change on the company.

The Incentives Division may determine that financial projections and evidence of financing for the project are required of the company in order to make a determination as to whether the project remains financially viable. If so, the locality will obtain those from the company and any interim financial statements or other documentation to support the projections.

VEDP Project Review and Credit Committee (PRACC) Approval:

The Incentives Division will present the request to PRACC for approval.

The Incentives Division will present all data and justifications provided by the locality and the company in support of the company's and locality's request.

The Incentives Division may also request that VEDP's Research Division calculate a revised Return on Investment (ROI) in order to evaluate how the delayed completion of performance targets compares to the original ROI.

PRACC will consider the request at its weekly meeting and will make a determination on whether to recommend approval of the extension to VEDP's Board of Directors (Board).

If the recommendation is not approved, the Incentives Division will give the locality the reasons for the disapproval and sufficient guidance as to what would be necessary for a PRACC approval.

The Incentives Division will record the reasons for the approval or the disapproval in Salesforce.

Board and MEI Approval:

If the extension is recommended for approval by PRACC, the request will be taken to the Board for a decision. All data and justifications provided in support of the recommendation of the company's and locality's request will be provided to the Board.

In the event of an additional request for an extension, the request will be taken to the Major Employer and Investment Project Approval Commission (MEI) as well.

The Incentives Division will promptly notify the locality and the company of the approval decision in writing.