Appendix D
MATERIAL FACTOR FOR THE EMERGE PROGRAM

To assist the authority in determining whether the award of tax credits is a material factor in the eligible business's decision to create or retain the minimum number of new and retained full-time jobs for eligibility under the program, the authority shall require the eligible business to submit, as part of its application, a full economic analysis of all locations under consideration by the eligible business; all lease agreements, ownership documents, or substantially similar documentation for the eligible business's proposed in-State locations; and all lease agreements, ownership documents, or substantially similar documentation for potential out-of-State location alternatives, to the extent they exist.

The authority may further consider the costs associated with opening and maintaining a business in New Jersey, competitive proposals that the eligible business has received from other states, the prevailing economic conditions, and any other factors that the authority deems relevant to assist the authority in determining whether an award of tax credits is a material factor in the eligible business's decision.

Based on this information, the authority shall independently verify and confirm the eligible business's assertion using third party validation or commercially reasonable costs, that the award of tax credits under the program is a material factor in the eligible business's decision to create or retain the minimum number of new and retained full-time jobs for eligibility under the program and, in the case of retained full-time jobs, the jobs are actually at risk of leaving the State, before the authority may award the eligible business any tax credits under the Emerge Program.

Tax credits must be a material factor in the business's decision to locate the project (new jobs or retained jobs) in the State by demonstrating that the Company is considering a viable out-of-state location.

Rules provide clear guidelines on what companies can and cannot do before application:

- **Can**: spend money to investigate an option (due diligence) and validate costs within reason (costs should be comparable if looking at two different when considered)
- **Cannot:** undertake a real estate purchase prior to NJEDA board approval
- **Cannot:** have a letter of intent to buy / lease in NJ, unless it has a penalty-free contingency as required under N.J.A.C. 19:31U-1.7.
- **Cannot:** make a public announcement or publish a press release announcing the plans to move to NJ prior to NJEDA board approval
- **Cannot:** undertake significant cleanup, site preparation, demolition, or site work prior to NJEDA board approval
- **Cannot:** have open job postings for the proposed NJ site prior to NJEDA board approval

From the Rules: 54 N.J.R. 160(b)

The tax credits are a material factor in any projected creation or retention, as applicable, of new full-time jobs; and

The eligible business shall execute a non-binding letter of intent with the Chief Executive Officer of the Authority, specifying the amount and terms and conditions of tax credits that the Authority is prepared to propose for Board approval and that are intended to be a material factor in the decision by the eligible business to create or retain the proposed number of new and retained full-time jobs, and in which the eligible business certifies such tax credits are a material factor in its decision.

i. If the eligible business has taken actions to commit to the project in this State, including, but not limited to, obtained site control of the qualified business facility; signed lease without penalty-free contingency language that the lease is conditioned upon receiving the tax credits; has expended physical construction costs for a building or other structure; has taken a formal decision that selects a site; made a public announcement that it intends to locate to the State; entered into any binding contract for relocation or equipment, including, but not limited to, moving furniture, fixtures, and equipment purchases; or made non-refundable deposits prior to the execution of the letter of intent, then the Authority may rescind approval of the award of tax credits, unless the eligible business disclosed these facts prior to executing the letter of intent and the Authority determines that the award of tax credits was still a material factor in the eligible business's decision to create or retain the minimum number of new and retained full-time jobs for eligibility under the program.

ii. The letter of intent will also include a certification from the owner of the eligible business, or an authorized agent of the owner that all factual representations made by the business to the Authority since the submission of the application are true under the penalty of perjury.

iii. The Authority may make the non-binding letter of intent public, unless the Authority determines that the interests of the State require confidentiality.

(d) In determining whether the award of tax credits is a material factor in the eligible business's decision to create or retain the minimum number of new and retained full-time jobs for eligibility under the program, the Authority shall undertake a full economic analysis of all locations under consideration by the eligible business. The Chief Executive Officer of the Authority may further consider the costs associated with opening and maintaining a business in New Jersey, competitive proposals that the eligible business has received from other states, the prevailing economic conditions, and any other factors that the Chief Executive Officer of the Authority deems relevant to assist the Authority in determining whether an award of tax credits is a material factor in the eligible business's decision. Based on this information, the Authority shall independently verify and confirm the eligible business's assertion that the award of tax credits under the program is a material factor in the eligible business's decision to create or retain the minimum number of new and retained full-time jobs for eligibility under the program and, in the case of retained full-time jobs, the jobs are actually at risk of leaving the State, before the Authority may award the eligible business any tax credits under this program.

Additional Material Factor Considerations –

Risk Rating and Inducement Award Sizing Methodology

Overview

The information below seeks to provide a more detailed description of how the Authority is proposing to meet its statutory obligation to determine whether the Emerge tax credit is a material factor in the decision of the project to locate in New Jersey and, if so, the amount necessary to induce the project to make that decision.

The first area this appendix will cover is the proposed risk rating model the Authority will use as to ascertain the degree of due diligence on the applicant's claims regarding the material factor of the Emerge incentive. The goal of the model is, as objectively as possible, to determine whether there are reasons that this company would do this project in NJ without an incentive. This exercise is performed after the Authority receives an Emerge program application and determines the project meets other program eligibility criteria unrelated to material factor.

The second area this appendix will cover is the proposed method by which the Authority will address inducement – that is, the amount necessary for the project to locate to New Jersey. This occurs after the Authority has determined that the award is eligible after performing the aforementioned risk-rating analysis and conducting the corresponding level of due diligence and after determining the calculated tax credit amount. This is one of the final steps prior to staff recommending an award amount for the Members' consideration.

Risk Rating Model

As part of the eligibility requirements of the Emerge Program, the applicant must demonstrate to NJEDA that the award of the tax credit is a "material factor" in the business' decision to create or retain at least the minimum number of full-time jobs in the New Jersey.

The ERA statute requires a full economic analysis of all locations under consideration. As with Grow NJ, staff propose accomplishing this by requiring the company to complete a standard cost-comparison analysis that will result in a differential between the cost of implementing the proposed project in New Jersey as compared to the most viable alternative site in another state. This cost-comparison analysis includes both one-time costs (for example, construction and relocation) and ongoing costs for the duration of the commitment period (for example, rent and salaries).

The statute also authorizes the Chief Executive Officer to request additional information that he or she deems relevant to the material factor determination. Staff are proposing to require a and review a description of qualitative factors to ensure tax credits are needed to attract a project to the state. To ensure that this additional qualitative material factor analysis is done in a consistent and equitable manner, Staff have developed a standardized risk rating model to assess projects.

The risk rating model considers a set of questions (currently 15) across the following criteria: current location of the company, status of real estate transactions in New Jersey and alternative locations, quality of supporting real estate documents, ownership structure and location, strategic fit for New Jersey, size of the project, and the applicant's history of previous incentives with NJEDA.

The model scores the questions with different weightings based on the impact of the answer to the likelihood that a material factor exists. The higher the overall score, the less likely that the incentive is a material factor to the company's decision to undertake the project and greater due diligence is required to assist EDA in assessing the material factor validity.

If an applicant scores below a certain threshold in the risk rating model, then the qualitative analysis lends support to the applicant's claim of a material factor. If the applicant scores above the threshold on the risk rating model, Staff will perform additional due diligence and will require additional explanation and evidence from the applicant.

Staff developed this risk rating analysis based on prior experience with companies that either applied for or received incentives through predecessor programs (i.e., Grow NJ projects) and the factors that often drove decision making relative to the location of a project. Staff then created a series of qualitative questions within the risk rating model based on these factors to assess if and on what basis there are reasons to believe that it is advantageous for the project to locate in New Jersey even without the incentive award, and therefore warranted additional due diligence on the material factor claim. Staff anticipate revising and improving the criteria, questions, and weighting involved in this analysis based on experience gained from using it.

Inducement methodology

The ERA statute requires the Authority to size each tax credit award to the amount necessary to induce the applicant's project to be sited in New Jersey (as determined by the Board). This requirement is similar to the sizing utilized in the Grow New Jersey Program for projects with award calculations of over $4 million per year but now applies to all awards.

In no circumstances will an award ever be greater than the maximum calculated award (after all caps are applied) as determined by the ERA statute and rules.

Similar to the Grow NJ statutes, the ERA does not provide for a negotiation but rather a determination based on economic and policy factors. To ensure that the Authority consistently and equitably estimates the size of awards required to induce a project to be sited in the State, Staff are proposing to adopt the below inducement methodology to assess all awards before they are brought to the Board for approval. The methodology considers economic and policy factors that quantify the importance of the project to the State and the alternatives available to the applicant, including competition by other States, such as the size of the net benefit relative to the calculated award size, the gap in financing between New Jersey in comparison to alternative state sites, high priority locations, opportunities for the State to capture leadership in a targeted industry and consideration of public policy objectives.

Step 1: Determine if the maximum calculated award size is larger than the cost differential between the NJ-based project and the same project at an alternative site

- As part of the normal evaluation of applicant projects, staff determine the following data points:
    A. The maximum potential calculated award size based upon the project's characteristics (location, number of jobs, size, capital investment, bonus criteria, etc.) after applying all caps, including any cap based on the project's required net benefit ratio (e.g., must meet at 200-400% net benefit requirement depending on location);
    B. The cost differential between the applicant completing the project at their identified site in New Jersey and completing the project at the most viable out of state alternative site.
- In cases where the maximum award size (A) is less than the cost differential (B), the maximum award size shall be offered to the applicant.
- In cases where the maximum award size (A) is greater than the cost differential (B), Staff will proceed to Step 2 to determine the appropriate award size.

Step 2: Determine the minimum award size (C) and the gap between the maximum award size and minimum award size (D)

- For projects where the maximum award size (A) is greater than the cost differential (B), the minimum award size (C) should be equal to:
    - The cost differential (B) in all cases where there is a *positive cost differential* (i.e., it is more expensive to do the project in New Jersey than in the alternative location); or
    - Zero when there is a *negative cost differential* (i.e., it is less expensive to do the project in New Jersey than in the alternative location). Because this inducement analysis is applied after the business is reviewed for eligibility, Staff will have determined that the business has described sufficient reasons to demonstrate a material factor to locate the project in the State even though there is a negative cost differential. Examples are credible financial assistance from another State or a demonstrable qualitative reason the project is more likely to be located in another State.
- The gap (D) between the maximum award size (A) and the minimum award size (C) is then determined (A - C = D).
- The balance of the inducement methodology determines the *percentage* of the gap (D) that will be offered to the applicant to attract their project to New Jersey.

Step 3: Determine how much Excess Net Benefit (G) is offered to the State by the project

- Projects that with a net benefit to the State that exceeds the minimum thresholds set in the statute are high-benefit projects for which the State should offer additional tax credits to induce the project to site in New Jersey
- As part of the normal evaluation of applicant projects, staff determine the following:
    - The calculated net benefit of the project to the State in percentage terms (E)
    - The required net benefit for the project as set in statute, based upon the project's characteristics (location, size, etc.)
- The Excess Net Benefit (G) will be determined by looking at the difference between the calculated net benefit (E) and the required net benefit (F) (i.e., G = E – F in percentage points).

Step 4: Determine any location-based inducement factors (H)

- Projects with a qualified business facility that locate in more highly distressed locations within the State will generate greater benefits to the State by helping to attract additional organic economic investment, catalyze community development, and support increased local vibrancy. Thus, it is in the State's interest to offer additional tax credits to induce the project to these locations. If a project has more than one qualified business facility in different locations, the highest percentage points will be scored based on the location listed below:
- A location-based inducement factor (H) will be determined based on the following schedule:
    - Government restricted municipalities – 30 percentage points
    - Enhanced areas – 30 percentage points
    - Distressed municipalities – 20 percentage points
    - Qualified opportunity zones – 20 percentage points
- Projects with qualified business facilities in other employment or investment corridors or "other incentive areas" will not get a location-based inducement factor.

Step 5: Determine the total policy-based inducement factors (I)

- Projects that commit to implementing initiatives that are aligned with the State's broader stronger and fairer economic development approach provide greater societal and economic benefits to the State and set an example for other private companies in the state and support faster and more equitable economic growth. Thus, it is in the State's interest to offer additional tax credits to induce these policy-aligned projects to New Jersey.
- The State's policy priorities for the Emerge program are codified in the list below for the program. The policy-based inducement factors will be calculated at the time of approval. The determination of whether a company receives any of these policy-based inducement factors will be based on whether a company qualifies for the corresponding bonus at the time of certification.
- A project may commit to multiple policy priorities of the State and therefore the total policy-based inducement factor (I) should be the sum of all objectives that a project meets based upon the following schedule:

  - Establishes an incubator facility – 5 percentage points
  - Utilizes a labor harmony agreement – 5 percentage points
  - Is a LEED certified (silver or gold) project – 5 percentage points
  - Utilizes on-site solar (or other renewable energy sources) – 5 percentage points
  - Has established a collaborative research partnership with a university – 5 percentage points
  - Has established a training program in a targeted industry – 5 percentage points
  - Provides high-quality childcare to employees – 5 percentage points
  - Has a prisoner re-entry program – 5 percentage points
  - Has a diverse board of directors – 5 percentage points

Step 6: Determine an industry leadership inducement factor (J)

- Projects that offer the opportunity for New Jersey to become a leader in a high-growth sector or sub-sector or technology area have the potential to seed an industry ecosystem and attract additional high-quality projects to the State organically. In addition, global, national, and regional headquarters offices tend to attract additional investment from firms as they look to further expand. Thus, this is another area in which making an offer of additional tax credits to induce projects with these characteristics to New Jersey is in the best interest of the State.
- An industry leadership inducement factor (J) shall be determined based upon the following schedule:
  - A project that creates the opportunity for New Jersey to demonstrate leadership in a new industry. The Authority may consider whether a business fits into another innovative industry that disrupts current technologies or business models, by assessing factors such as, whether businesses in the industry are offering products or services that significantly improve current market offerings on the basis of price or other performance levels, whether the new industry creates opportunities for new firms to enter and redefine the supply chain or value chain of an industry, or whether the industry utilizes new technology or business processes that allow New Jersey-based firms to collect a share of revenues that were traditionally only available to companies in other geographies.- 50 percentage points
  - A global or national headquarters – 20 percentage points
  - A regional headquarters – 10 percentage points

Step 7: Determine the final award offered to the applicant to induce the project to New Jersey

- To determine the final award, the gap (D) is multiplied by the final total inducement factor score (K)
- The total inducement factor score (K) is calculated by summing the percentage points calculated through Steps 3-5 (G + H + I + J). If the sum is greater than 100 percentage points, then the total inducement factor score will be 100 percentage points.
- Staff will multiply the total inducement factor score (K) by the gap (D) and add that to the minimum award size (C) to determine the final award offer.