

870-RICR-20-00-4

## **TITLE 870 – RHODE ISLAND COMMERCE CORPORATION**

### **CHAPTER 20 – LOANS AND GRANTS**

#### **SUBCHAPTER 00 – N/A**

##### **PART 4 – Rules and Regulations for the Innovation Voucher Program**

#### **4.1 Purpose**

These rules and regulations (the “Rules”) are promulgated to set forth the principles, policies, and practices of the Rhode Island Commerce Corporation (the “Corporation”) in implementing and administering the innovation voucher program created under R.I. Gen. Laws Chapter 42-64.28, the Innovation Initiative act (the “Act”).

#### **4.2 Authority**

These Rules are promulgated pursuant to R.I. Gen. Laws Chapter 42-64.28. These Rules have been prepared in accordance with the requirements of the Rhode Island Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

#### **4.3 Scope**

- A. These Rules shall apply to any application received by the Corporation for an innovation voucher under the Act. Notwithstanding anything contained in these Rules to the contrary, the Corporation shall have and may exercise all general powers set forth in the Act that are necessary or convenient to effect its purposes and these Rules shall be liberally construed so as to permit the Corporation to effectuate the purposes of the Act and other applicable state laws and regulations. The Corporation, upon an affirmative vote of its board of directors, may provide exemption from the application of such portion of these Rules as may be warranted by extenuating circumstances arising from such application, based upon the written recommendation of the staff of the Corporation delineating the reasons for such exemption. An applicant seeking an exemption under this provision must demonstrate extenuating circumstances by showing either
1. that the application of a component of these Rules is inconsistent with a requirement of federal, state, or local law; or
  2. that the application of a component of these Rules is not feasible or appropriate for the given project type.
- B. Under no circumstances will lack of time or ability be deemed extenuating circumstances. The Corporation will only grant such exemptions as it determines are authorized by law and consistent with the safeguarding of public funds. The

Corporation shall have no obligation to grant an exemption in any case, even if extenuating circumstances exist.

#### **4.4 Severability**

If any provision of these Rules, or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules shall not be affected thereby.

#### **4.5 Definitions**

- A. The following words and terms, when used in these Rules, shall have the following meanings, unless the context clearly indicates otherwise.
1. "Act" means R.I. Gen. Laws Chapter 42-64.28, known as the Innovation Initiative.
  2. "Applicant" means a Business that applies for a Voucher under the Act and these Rules.
  3. "Application" means the application, promulgated by the Corporation, which must be completed and submitted by an Applicant pursuant to the requirements of the Act and these Rules.
  4. "Business" means a corporation, partnership, an S corporation, a non-profit corporation, a sole proprietorship, a limited liability corporation or such other entity as approved by the Corporation in its discretion.
  5. "Corporation" means the Rhode Island Commerce Corporation established pursuant to R.I. Gen. Laws Chapter 42-64.
  6. "Employee" means a natural person who is employed in the State by a business for consideration for at least thirty-five (35) hours a week, or who is employed in the State by a professional employer organization pursuant to an employee leasing agreement between the Business and the professional employer organization for at least thirty-five (35) hours a week, and whose wages are subject to withholding.
  7. "Innovation Project" means the project for which the Applicant seeks a Voucher under the Act.
  8. "Knowledge Provider" means a Rhode Island institution of higher education or other entity located in Rhode Island that will provide services to a Voucher recipient pursuant to a Voucher Agreement; provided that Corporation may, in rare circumstances, authorize an entity located outside of Rhode Island to qualify as a Knowledge Provider or collaborate with a Rhode Island-based Knowledge Provider if an Applicant can show that no Knowledge Provider located in Rhode Island is available and able to perform all the services required for the Innovation Project.

9. "Small Business" means a Business that is resident in the State, has a business facility within the state, and has five hundred (500) or fewer Employees.
10. "State" means the State of Rhode Island and Providence Plantations.
11. "Voucher" means a certificate with a value of \$5,000 to \$50,000 that a successful Applicant can redeem to purchase research and development support or other forms of technical assistance and services from a Knowledge Provider and to fund research and development by and for Small Business Manufacturers.
12. "Manufacturer" shall mean any entity that:
  - a. Uses any premises within the state primarily for the purpose of transforming raw materials into a finished product for trade through any or all of the following operations: adapting, altering, finishing, making, processing, refining, metalworking, and ornamenting, but shall not include fabricating processes incidental to warehousing or distribution of raw materials, such as alteration of stock for the convenience of a customer; or
  - b. Is described in codes 31-33 of the North American Industry Classification system, as revised from time to time.
13. "Small Business Manufacturer" shall mean an entity that meets both the definition of Small Business and Manufacturer as defined in these Rules.

#### **4.6 Voucher Uses and Amounts.**

- A. An Applicant can receive a Voucher of \$5,000 to \$50,000 to pay or defray the costs of any of the following services or activities:
  1. access to research or scientific expertise, including preparatory work for research and development;
  2. technological development or technology exploration;
  3. product, service, or market development or commercialization, including prototyping, testing, or validation trials for new or enhanced products or services; or
  4. improved business practices that implement strategies to grow business and create operational efficiencies; or
- B. A Small Business Manufacturer can receive a Voucher to provide funding to finance internal research and development including, but not limited to, research, technological development, product development, commercialization, market

development, technology exploration, and improved business practices that implement strategies to grow business and create operational efficiencies.

- C. Knowledge Providers are expected to charge on a fee for service basis and at reasonable market rates, and indirect costs charged by a Knowledge Provider shall not exceed twenty-five percent (25%).
- D. Vouchers cannot be used for ordinary and necessary business expenses or any of the following:
  - 1. any expenditure of time by in-house personnel of the Applicant unless the Applicant is seeking a Voucher for internal research and development as a Small Business Manufacturer;
  - 2. standard training;
  - 3. software purchases or basic software, web, or application development;
  - 4. routine testing or maintenance;
  - 5. general marketing or sales activities;
  - 6. general business advice or consulting, or basic professional services;
  - 7. costs associated with applying for grants and programs;
  - 8. costs of internships or support for students of Knowledge Providers; or
  - 9. entertainment or hospitality costs.

#### **4.7 Eligibility**

- A. The following conditions must be met for an Applicant to be eligible for a Voucher under the Act:
  - 1. the Applicant must be a Small Business;
  - 2. the Applicant must be registered to do business in the State;
  - 3. the Applicant must obtain a signed letter from a Knowledge Provider demonstrating that the Knowledge Provider is capable and willing to provide the services that will be supported by the Voucher unless the Applicant is seeking a Voucher for internal research and development as a Small Business Manufacturer; and
  - 4. the personnel at the Knowledge Provider who are to provide services to an Applicant must be independent from the Applicant and there must be no existing commitments between the Applicant and such personnel, other than commitments facilitated by a Voucher granted under the Act.

- B. An Applicant is eligible to be awarded no more than two vouchers within a 12-month period. Unused Vouchers not cancelled by the Applicant shall count for purposes of implementing this provision.
- C. A business shall not be entitled to claim a tax credit provided for in R.I. Gen. Laws § 44-32-3 in relation to a project for which the applicant has received a Voucher, except:
  - 1. A Small Business Manufacturer may claim a tax credit for the cost of a research and development project. However, a Small Business Manufacturer may only claim a credit for the amount of research and development project costs that exceed the amount of the Voucher.

## **4.8 Application**

- A. The Applicant shall file an Application in the form prescribed by the Corporation and available on the Corporation's website. The Application shall require, at a minimum, that the Applicant provide the following information:
  - 1. the name of the Applicant and contact information for the individual(s) primarily responsible for oversight and management of the Application;
  - 2. the Applicant's federal and State tax identification numbers;
  - 3. the Applicant's total number of Employees;
  - 4. the requested Voucher amount;
  - 5. a description of the technology areas in which the Applicant generally operates and the Applicant's or its employees' experience in the development and commercialization of innovative new products or services;
  - 6. a description of the Innovation Project, including background on the industry and market, the opportunity to be explored, the approach that will be undertaken, identification of the Knowledge Provider, estimated costs, timeline, and deliverables;
  - 7. a clear explanation of how the Innovation Project will address existing challenges, enhance the innovation capacity of the Applicant, and/or have a catalytic impact on the Applicant's business;
  - 8. a signed letter from a Knowledge Provider demonstrating that the Knowledge Provider is capable and willing to provide the services that will be supported by the Voucher unless the Applicant is seeking a Voucher for internal research and development as a Small Business Manufacturer;
  - 9. a disclosure of any known conflicts of interest between the Applicant and the Knowledge Provider and a documentation of a plan for managing such

conflicts unless the Applicant is seeking a Voucher for internal research and development as a Small Business Manufacturer;

11. a delineation of any other federal, State, or municipal incentives, grants, tax credits, or other aid that will or may be received or requested by the Applicant in relation to the Innovation Project;
  12. and such other information as the Corporation deems appropriate.
- B. An Applicant may be charged a one-time, non-refundable application fee by the Corporation. The Corporation shall annually publish a fee schedule on its website commencing on or before December 31, 2015.

#### **4.9 Application Review and Approval**

- A. Each Application shall be reviewed to confirm compliance with the Act and these Rules, and the Corporation may reject any incomplete or deficient Application.
- B. The Corporation may require the submission of additional information in connection with any Application or the revision of an Application, and may permit the resubmission of an Application rejected as being incomplete or deficient.
- C. After submission of a complete Application and review by the Corporation in accordance with the requirements of the Act and these Rules, the Corporation will determine whether to award a Voucher to the Applicant. In determining whether to approve a Voucher, priority will be given to Innovation Projects with the greatest commercial potential. Other factors considered may include:
1. quality of the organization and design of the Innovation Project;
  2. qualifications and experience of the team conducting the Innovation Project;
  3. the Innovation Project's ability to further the development or commercialization of new or enhanced innovative products or services;
  4. capacity for implementing and sustaining the results and findings of the Innovation Project;
  5. potential for the Innovation Project to result in the creation of new full-time jobs;
  6. level of the Applicant's own cash or in-kind investment in the Innovation Project, and the potential for additional investment;
  7. the catalytic impact successful completion of the Innovation Project will have for the Applicant; and
  8. potential for further collaboration between the Applicant and Knowledge Provider after the completion of the Innovation Project unless the Applicant

is seeking a Voucher for internal research and development as a Small Business Manufacturer.

- D. If the Corporation determines that it will not approve a Voucher for an Applicant, it shall notify the Applicant in writing of such decision.
- E. The Corporation may set periodic Application deadlines that will be published on the Corporation's web site from time to time.

#### **4.10 Voucher Agreement**

- A. Upon approval of a Voucher for an Applicant, the Corporation and the Applicant will enter into a Voucher Agreement. The Corporation in its sole discretion may cancel an approval if mutually agreeable terms cannot be met within 30 days of notification of the approval.
- B. In order to safeguard the expenditure of public funds and ensure that the disbursement of funds further the objectives of the Act, the Voucher Agreement shall include, among others, the following terms:
  - 1. the maximum Voucher amount;
  - 2. a description of the Innovation Project and a requirement that the Voucher can only be redeemed for work outlined in that description;
  - 3. a requirement that the Voucher can only be redeemed upon completion of the Innovation Project milestones and the receipt of the Corporation of adequate proof of project expenses;
  - 4. a requirement that the Voucher be redeemed within 12 months of the date of the execution of the Voucher Agreement, subject to any no cost extension granted by the Corporation for good cause shown;
  - 5. an indemnification provision;
  - 6. reporting and program evaluation requirements;
  - 7. a provision prohibiting transfer of the Voucher; and
  - 8. any other provisions that the Corporation determines are appropriate.

#### **4.11 Revocation**

- A. In the event that any information provided by the Applicant in its Application is found to be willfully false, the Corporation shall deny the issuance of or revoke any Voucher in whole or in part, which revocation shall be in addition to any other criminal or civil penalties that the Applicant and/or the relevant officials of the Applicant may be subject to under applicable law.

- B. The Corporation shall deny the issuance of or revoke any Voucher if an Applicant or its successor-in-interest is convicted of bribery, fraud, theft, embezzlement, misappropriation, and/or extortion involving the State, any state agency or political subdivision of the state.
- C. The Corporation may provide for additional rights and remedies in any Voucher Agreement, which will be in addition to the rights provided under this Rule.

#### **4.12 Discretion and Judicial Review**

- A. The Corporation shall not have any obligation to issue any Voucher make any award or grant any benefits under the Act or these Rules, and may decline to grant Vouchers to any Applicant, including those who have submitted a completed Application that meets the eligibility requirements of § 4.7 of this Part.
- B. A review of an Application shall not constitute a “contested case” under the Administrative Procedures Act, R.I. Gen. Laws § 42-35-9 , and no opportunity to object to an Application shall be afforded, nor shall judicial review be available from a decision rendered by the Corporation in connection with any Application.

#### **4.13 Administration and Examination of Records**

The Corporation may examine any books, paper, records or memoranda bearing upon the approval of incentives awarded under the Act, and may require the attendance of any person executing any Application, report or other statement, or of any officer or employee of any taxpayer, or the attendance of any other person, and may examine such person under oath respecting any matter which the Corporation deems pertinent or material in determining eligibility for incentives claimed under the Act.

#### **4.14 Inspection Rights.**

The Corporation shall have the right at reasonable times to make an inspection and to enter upon any property that is the subject of an Application during the term of an Incentive Agreement to verify compliance with the Act, the Rules and such other conditions imposed by the Corporation.