

MICHIGAN STRATEGIC FUND

RESOLUTION

2023-072

BACKGROUND REVIEW POLICY

WHEREAS, Public Act 270 of 1984, MCL 125.2001 *et seq.* (the “MSF Act”), established the Michigan Strategic Fund (the “MSF”);

WHEREAS, the Michigan Economic Development Corporation (“MEDC”) provides administrative services to the MSF;

WHEREAS, pursuant to Section 88c(4), MCL 125.2088c(4), of the MSF Act, the MSF is required to establish requirements toward prohibiting providing incentive awards under sections 88d, 88e, 88f, 88g, 88k, 88q, and 88r and Chapter 8C to applicants with certain criminal convictions or civil liabilities, as well as any additional findings as determined by the MSF;

WHEREAS, on April 23, 2019, the MSF adopted a revised Background Review Policy (“Background Review Policy”) in accordance with Section 88c(4) of the MSF Act for all programs operated by the MSF;

WHEREAS, the MEDC recommends that the MSF Board adopt the further revised Background Review Policy attached to this Resolution;

WHEREAS, the MSF Board wishes to adopt the revised Background Review Policy attached to this Resolution; and

WHEREAS, the MEDC shall implement this revised Background Review Policy approximately 45 days from the date of approval, starting June 12, 2023 (the “Implementation Date”).

NOW, THEREFORE, BE IT RESOLVED, the MSF adopts the revised Background Review Policy attached to this Resolution.

Ayes: Britany L. Affolter-Caine, John Groen (on behalf of Director Corbin, designation attached), Dimitrius Hutcherson, Michael B. Kapp (on behalf of Acting Director Wieferich, designation attached), Andrew Lockwood (on behalf of Treasurer Eubanks, designation attached), Quentin L. Messer, Jr., Charles P. Rothstein, Susan Tellier, Cindy Warner

Nays: None

Recused: None

Lansing, Michigan
April 25, 2023

PROCEDURAL HISTORY

The Michigan Strategic Fund Act (“MSF Act”) (MCL 125.2088 § 88c(4)) requires the Michigan Strategic Fund (“MSF”) Board to “establish requirements to ensure that money expended under sections 88d, 88e, 88f, 88g, 88k, 88q, and 88r and chapter 8C shall not be used for any of the following:

- (a) Provision of money to a person who has been convicted of a criminal offense incident to the application for or performance of a state contract or subcontract. As used in this subdivision, if a person is a business entity, person includes affiliates, subsidiaries, officers, directors, managerial employees, and any person who, directly or indirectly, holds a pecuniary interest in that business of 20% or more.
- (b) Provision of money to a person who has been convicted of a criminal offense, or held liable in a civil proceeding, that negatively reflects on the person’s business integrity, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or violation of state or federal antitrust statutes, or for any additional findings as determined by the MSF Board. As used in this subdivision, if a person is a business entity, person includes affiliates, subsidiaries, officers, directors, managerial employees, and any person who, directly or indirectly, holds a pecuniary interest in that business entity of 20% or more.
- (c) Provision of money to a business enterprise to induce qualified businesses or small businesses to leave this state.
- (d) Provision of money that would contribute to the violation of internationally recognized workers rights, as defined in section 507(4) of the trade act of 1974, 19 USC 2467(4), of workers in a country other than the United States, including any designated zone or area in that country.
- (e) Provision of money to a corporation or an affiliate of the corporation who is incorporated in a tax haven country after September 11, 2001, while maintaining the United States as the principal market for the public trading of the corporation’s stock. As used in this section, “tax haven country” includes a country with tax laws that facilitate avoidance by a corporation or an affiliate of the corporation of United States tax obligations, including Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the principality of Liechtenstein, the principality of Monaco, and the Republic of the Seychelles.

The guidelines and procedure outlined in this Background Review Policy (the “Policy”) shall be used to satisfy the requirements of the MSF Act listed above, and as part of the due diligence process for programs and activities created and operated by the MSF. The Michigan Economic Development Corporation (“MEDC”) will perform the civil and criminal background reviews for the MSF in accordance with this Policy.

DEFINITIONS

Applicant: The entity that will receive the benefit from an incentive with the MSF or would receive the benefit of the contemplated incentive.

Background Review: A review of information related to the Applicant, its Key Owners, and Key Individuals, conducted by MEDC Legal staff using Westlaw, LexisNexis, or another similar program, or in cases of a publicly traded company the company's required filings with the United States Securities and Exchange Commission, with the intent of addressing any issues detailed in Section 88c(4) of the MSF Act.

Chief Executive Officer: A Key Individual; the individual in charge of the Applicant's executive operations.

Chief Financial Officer: A Key Individual; the individual in charge of the Applicant's financial affairs.

Chief Operating Officer: A Key Individual; the individual in charge of the Applicant's daily operations.

Key Owner: a Key Owner holds a 20% or greater Ownership Interest in an entity.

Key Individual: a Key Individual is the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, or the person in an equivalent role, of an entity, as well as the Person Responsible for Managing the Incentive. A Key Individual may serve an Applicant in more than one role.

Ownership Interest: direct or indirect (intentionally distributed) pecuniary or beneficial interest in an entity.

Person Responsible for Managing the Incentive: A Key Individual; the individual who is responsible for managing the incentive for the Applicant.

POLICY

1. All Applicants for MSF incentives totaling \$15,001 or more shall certify prior to the approval of the incentive that to the best of its knowledge, the Applicant, its Key Owners, and its Key Individuals do not have criminal convictions or civil liabilities that negatively reflect on the Applicant's business integrity as described in MCL 125.2088 § 88c(4)(a) and (b), and will not use the funds for the prohibited purposes described in (MCL 125.2088 § 88c(4)(c)-(e)).

2. Prior to the approval of the incentive, the business unit working with the Applicant shall conduct a search of publicly available information. If the search returns any of the issues detailed in Section 88c(4) of the MSF Act, the business unit will request a Background Review from MEDC Legal.

3. The MSF President, MSF Fund Manager, or the MSF Board may request a Background Review at any time for any incentive.

4. If either (1) MEDC Legal's Background Review determines that there are Section 88c(4) issues that need to be addressed prior to MSF approval, (2) the Applicant cannot certify to the language in the certification as part of the intake process, or (3) the Applicant cannot certify to the language required in the representations and warranties in the final agreement, the Applicant may, at its discretion, submit in writing to the MSF President the following:

- a. An explanation of the circumstances surrounding the inability to certify;
- b. An explanation of the mitigating steps that the entity has taken to mitigate the issue; and

- c. An explanation that the circumstances surrounding the inability to certify do not negatively reflect on the business integrity of the Applicant.

If an Applicant fails to provide such a writing the Applicant is unable to move forward with the contemplated MSF incentive.

The MSF President, MSF Fund Manager, or MSF Board may request that the Applicant provide such a writing at their discretion for any issue detailed in either the business unit search or a Background Review.

The MSF President may, but is not obligated to, consider the explanation provided by the Applicant and, at their sole discretion, may allow the incentive to move forward.

5. All final written agreements memorializing an incentive from the MSF shall include language requiring the Applicant to represent and warrant that, to the best of its knowledge, the Applicant does not have criminal convictions or civil liabilities that negatively reflect on the Applicant's business integrity as described in MCL 125.2088 § 88c(4)(a) and (b), and will not use the funds for the prohibited purposes described in (MCL 125.2088 § 88c(4)(c)-(e)).



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY
LANSING

SUSAN CORBIN
ACTING DIRECTOR

June 15, 2021

Ms. Katelyn Wilcox
Board Relations Liaison
Michigan Strategic Fund
300 N. Washington Square
Lansing, MI 48913

Re: Michigan Strategic Fund Board Meeting Designee

Dear Ms. Wilcox:

Pursuant to MCLA 16.51, I hereby confirm my designation of John Groen in addition to Jonathan Smith as the persons authorized and empowered to act in my stead as a member of the Michigan Strategic Fund Board for scheduled meetings I am unable to attend.

If you need anything additional, please contact Diane Burton at (517) 230-5454. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Susan R. Corbin".

Susan R. Corbin
Acting Director



STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

GRETCHEN WHITMER
GOVERNOR

BRADLEY C. WIEFERICH, P.E.
ACTING DIRECTOR

January 3, 2023

Ms. Rhonda Bishop
Board Relations Liaison
Michigan Strategic Fund Office
300 N. Washington Square
Lansing, Michigan 48913

Dear Ms. Bishop:

I hereby confirm and ratify my designation of Michael B. Kapp, Administrator, Michigan Department of Transportation, as the person authorized and empowered to act in my stead for Michigan Strategic Fund meetings that I am unable to attend.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bradley C. Wieferich".

Bradley C. Wieferich, P.E.
Acting Director

cc: M. Kapp
Executive File



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

GRETCHEN WHITMER
GOVERNOR

RACHAEL EUBANKS
STATE TREASURER

January 6, 2023

Valerie Hoag
MSF Fund Manager
Michigan Economic Development Corporation
300 N. Washington Square
Lansing, MI 48913

Re: Michigan Strategic Fund Board Meeting and Michigan Strategic Fund Finance
and Investment Subcommittee Designee for Treasurer Eubanks

Dear Ms. Hoag:

I hereby designate Andrew Lockwood to attend all Michigan Strategic Fund Board Meetings and Michigan Strategic Fund Finance and Investment Subcommittee meetings that I am unable to attend in 2023.

If you need anything additional, please contact Kara Kabia at (517) 241-2624.

Sincerely,

A handwritten signature in cursive script that reads "Rachael Eubanks".

Rachael Eubanks
State Treasurer

Cc: Eric Bussis
Andrew Lockwood