

Life Sciences Tax Incentive Program

Solicitation No. 2018 TAX-01

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Solicitation Issued: December 18, 2018
Applications Due: February 8, 2019 by Noon EST

1. Summary

In order to expand life sciences-related employment opportunities, promote health-related innovations and stimulate research and development, manufacturing and commercialization in the life sciences, the Massachusetts Life Sciences Center (“MLSC”) is pleased to announce that it is offering up to \$20 million in tax incentives in this round of the program to companies engaged in life sciences research and development, commercialization and manufacturing in Massachusetts.

Interested applicants will be required to submit an application that is due by Noon EST on February 8, 2019. Please see Sections 5 and 6 for more information regarding the application process.

The following key terms are used in this solicitation (“Solicitation”):

- **Application** means the Program application available online at <http://www.masslifesciences.com/programs/tax/>
- **Applicant** means the organization submitting the Application.
- **Awardee** means an eligible applicant that receives a notice from MLSC that it has been awarded a tax incentive pursuant to this Solicitation.
- **Agreement** means the tax incentive agreement to be executed between the MLSC and Awardees under the Program, a copy of which is posted on the MLSC’s website.
- **Certified Life Sciences Company** means a company that has been certified by MLSC for participation in the Program, as set forth in chapter 23I of the Massachusetts General Law (“MGL”).
- **Life Sciences** means advanced and applied sciences that expand the understanding of human physiology and have the potential to lead to medical advances or therapeutic applications including, but not limited to, agricultural biotechnology, biogenerics, bioinformatics, biomedical engineering, biopharmaceuticals, biotechnology, chemical synthesis, chemistry technology, diagnostics, genomics, image analysis, marine biology, marine technology, medical devices, nanotechnology, natural product pharmaceuticals, proteomics, regenerative medicine, RNA interference, stem cell research and veterinary science, as defined in chapter 23I, section 2 of the MGL.
- **Life Sciences Company** means a business corporation, partnership, firm, unincorporated association or other entity engaged in life sciences research, development, manufacturing or commercialization in the Commonwealth of Massachusetts, and any affiliate thereof, which is, or the members of which are, subject to taxation under MGL chapters 62, 63, 64H or 64I, as defined in the MGL, chapter 23I, section 2.
- **Life Sciences Statute** means Chapter 23I of the MGL.
- **Program** means the tax incentives offered by MLSC pursuant to this Solicitation.
- **Permanent Full-Time Employee** means a W-2 employee working for a company for at least 35 hours per week. Third party contractors, interns, and consultants are not considered permanent full-time employees under this program. Permanent part-time employees who work less than 35 hours per week may be aggregated together and counted on a full-time equivalent (FTE) basis.

2. Who We Are

The MLSC is a quasi-public agency of the Commonwealth of Massachusetts tasked with implementing the Massachusetts Life Sciences Act, a \$1 billion initiative that was signed into law in June of 2008. On June 15, 2018 Governor Charlie Baker signed Chapter 112 of the Acts of 2018, *An Act Providing Continued Investment in the Life Sciences Industry in the Commonwealth* to further invest up to \$623 million in bond authorization and tax credits over five years in education, research and development, and workforce training. The MLSC’s mission is to create jobs in the life sciences and support vital scientific research that will improve the human condition. This work includes making financial investments in public and private

institutions that are advancing life sciences research, development and commercialization as well as building ties between sectors of the Massachusetts life sciences community. For more information, visit www.masslifesciences.com.

3. Life Sciences Tax Incentive Program

3.1 General

The Life Sciences Tax Incentive Program is a set of ten different tax incentives which address the significant expenditures associated with the life sciences R&D cycle and the high costs of translating research into commercially viable products. Several of these tax incentives are refundable, enabling an awardee to receive cash from the Commonwealth, even if no income tax is paid. The incentives offered under this Solicitation may only be claimed after July 1, 2019 (including, without limitation, the calculation of estimated taxes).

The Program consists of the following incentives:

- Life sciences investment tax credit (pursuant to 62 MGL 6(m) and 63 MGL 38U)
- FDA user fees credit (pursuant to 62 MGL 6(n) and 63 MGL 31M)
- Extension of net operating losses from 5 to 15 years (pursuant to 63 MGL 30, section 17)
- Elimination of throwback provision in calculation of sales tax (pursuant to 63 MGL 38(f), section 6)
- 90% refund of already-available excess §38M research credits (pursuant to 63 MGL 38M(j))
- §38W life sciences research credit (pursuant to 63 MGL 38W)
- Deduction for qualified orphan drug expenses (pursuant to 63 MGL 38V)
- Designation as an R&D company for sales tax purposes (pursuant to 63 MGL 42B, section 3)
- Sales tax exemption for certain property (pursuant to 64H MGL 6(xx))
- Life sciences jobs incentive refundable credit (pursuant to Chapter 68 of the Acts of 2011, outside sections 63, 65, 70, and 211)

For more information about the Program in general, or about the individual incentives offered under the Program (including information provided by the Massachusetts Department of Revenue's Technical Information Release and the Life sciences jobs incentive credit), please visit our website at www.masslifesciences.com.

3.2 Administration

MLSC is responsible for administering the Program and certifying a company as a "certified life sciences company." Upon timely receipt of a certification proposal containing the information required by the Life Sciences Statute, MLSC must provide an estimate to the Secretary of Administration and Finance of the tax cost of extending incentives for a fiscal year, as approved by the Commissioner of Revenue. Tax incentives are available only to a certified life sciences company and only to the extent that the incentives are both (i) authorized by MLSC under the Program and (ii) expressly granted by the Secretary of Administration and Finance. Certification as a "certified life sciences company" pursuant to the Life Sciences Statute is valid for 5 years starting with the tax year in which certification is granted. A certified company must file an annual report with MLSC detailing whether it has met the specific targets established in its certification proposal.

Pursuant to the Life Sciences Statute, MLSC, in consultation with the Commissioner of Revenue, may annually authorize tax incentives to certified life sciences companies, in accordance with various provisions of chapters 62, 63, 64H and 64I of the MGL. MLSC may, in consultation with the Commissioner of Revenue, limit any incentive or incentives to specific dollar amounts or time duration, or in any other manner deemed appropriate by the Commissioner. The tax incentives offered under the Program are not transferable.

3.3 Annual Reports

Pursuant to Section 5(e)(1) of the Life Sciences Statute, each recipient of tax incentives under the Program shall, in connection with its status as a certified life sciences company, file with MLSC an annual report in the form to be determined by MLSC detailing whether applicant has met the specific targets established in the Application. If the Applicant fails to meet the specified targets, the Applicant's status as a certified life sciences company may be subject to revocation, as more fully described below.

For purposes of headcount reporting including establishing an Applicant's baseline Massachusetts headcount to determine compliance with their net new job creation commitment, full-time equivalents (FTE) employees (35 hours or more per week) from the following companies, subsidiaries, or divisions will be included:

- Massachusetts FTE headcount of Applicant and Applicant's wholly-owned MA subsidiaries and divisions;
- Massachusetts FTE headcount of Applicant's parent company and/or the parent company's wholly owned subsidiaries and divisions *only* if 75% or more of parent company's total global consolidated annual revenues are derived from "Life Sciences" as defined above.

3.4 Revocation

The Life Sciences Statute contains procedures for revocation of certification, and provisions regarding denial and recapture of tax benefits, if MLSC determines that representations made by a certified life sciences company in its certification proposal are materially at variance with the conduct of the life sciences company after receiving certification. In such a case, revocation of certification is effective on the first day of the tax year in which MLSC determines that a material variance commenced and may occur after the first year of a material variance. The Center's Annual Report and Multiple Awards Policy specifies the compliance outcomes based on an awardee's actual achievement for a calendar year including outcomes requiring revocation. The policy can be located at <http://www.masslifesciences.com/programs/tax/>

In the event of revocation of certification by MLSC, the Commissioner of Revenue will, as of the effective date of the revocation, disallow any incentives allowed by the original certification. In addition, the Commissioner will issue regulations concerning recapture of the value of tax incentives. In that regard, the statute directs that (i) recapture provisions of existing law with respect to investment tax credits shall apply, and (ii) where a sales and use tax exemption had been granted, the purchaser shall accrue use tax as of the date of revocation on a portion of the sales price that is proportionate to the remaining useful life of the property purchased. Recapture may also apply with regard to other tax incentives.

3.5 Program

THE MLSC HAS FULL DISCRETION AND AUTHORITY TO DETERMINE (1) WHICH CERTIFIED LIFE SCIENCES COMPANIES, IF ANY, ARE ENTITLED TO RECEIVE INCENTIVES UNDER THE PROGRAM AND (2) THE AMOUNTS OF ANY SUCH INCENTIVES. SUBMISSION OF AN APPLICATION DOES NOT GUARANTEE THE AWARD OR RECEIPT OF ANY INCENTIVES UNDER THE PROGRAM.

4. Eligibility Criteria and Requirements

4.1 Eligibility

Each Application received will be evaluated and assessed for eligibility using the following criteria.

4.1.1 Eligible Entity

The Applicant must be a legally organized, “for-profit” entity engaged in life sciences research, development, manufacturing or commercialization in the Commonwealth of Massachusetts. As defined in the Life Sciences Statute, life sciences means “advanced and applied sciences that expand the understanding of human physiology and have the potential to lead to medical advances or therapeutic applications including, but not limited to, agricultural biotechnology, biogenerics, bioinformatics, biomedical engineering, biopharmaceuticals, biotechnology, chemical synthesis, chemistry technology, diagnostics, genomics, image analysis, marine biology, marine technology, medical devices, nanotechnology, natural product pharmaceuticals, proteomics, regenerative medicine, RNA interference, stem cell research and veterinary science.”

4.1.2 Certified Life Sciences Company

The Applicant must be certified by MLSC as a Certified Life Sciences Company. Part I of the Application constitutes the application for certification. **A decision on certification will not be made independent of a decision to award a tax incentive under the Program.**

4.1.3 Minimum Headcount and Hiring Commitment

The Applicant must employ at least ten permanent full-time employees as of December 31, 2018 in Massachusetts. The Applicant must commit to creating at least ten permanent full-time employees for the calendar year 2019 in order to be eligible for the program.

4.2 Requirements of Award

The following criteria must be met by an Applicant in order for MLSC to consider and evaluate an Application.

4.2.1 Acceptance of Terms

Applicants are required to indicate that they have read, understood, and are willing to accept the terms of the tax incentive for which they are applying.

4.2.2 Business Location

Consistent with the purpose of the Program and the requirements of the Life Sciences Statute that its provisions for financial assistance be tied to the development of maximum benefits for citizens of the Commonwealth, Awardees are required to perform life sciences research, development, manufacturing or commercialization in Massachusetts. Applicants are encouraged to form or make use of any partnerships and supplier relationships within Massachusetts. Applicants will be asked in the Application to represent how the proposed business benefits Massachusetts and its citizens.

4.2.3 Information Requirements

During the course of MLSC’s evaluation of applications, MLSC staff or its qualified contractors may contact the Applicant to request supplemental information, or to request an interview with or presentation by Applicant. Applicant may also be required to host site visits by MLSC staff and contractors for purposes of evaluation. Should an Award be made, the Awardee will be required to provide MLSC with certain information to help MLSC track information pertaining to: employment figures, revenue generation,

amount of private capital leveraged, and information as to the recipient's operations and business affairs.

4.2.4 Good Standing / Prior MLSC Tax Incentive Program Awards

Applicants must be in Good Standing with the Commonwealth of Massachusetts Secretary of State, and Department of Revenue. If Applicant has an existing MLSC Tax Incentive award(s), Applicant must have achieved the thresholds specified in The Center's Annual Report and Multiple Awards Policy and abide by all policies of the Life Sciences Tax Incentive Program which can be located at www.masslifesciences.com. It is the responsibility of the Applicant to check the MLSC's website for the latest policies.

4.2.5 Requirements for Submission of Confidential Information

See Sections 5.1 and 8.1 for a discussion of public disclosure requirements and procedures for handling documents submitted to MLSC and identified by the Applicant as "Confidential Information."

5. Application Process

5.1 General Requirements

Applicants are cautioned to read carefully and conform to the requirements of this specific solicitation. Failure to comply with the provisions of this solicitation may serve as grounds for rejection of a proposal.

Any and all data, materials and documentation submitted to MLSC in response to this solicitation shall become MLSC's property and shall be subject to public disclosure under the Massachusetts Public Records Act, with the exception of information that may be eligible as trade secrets or commercial or financial information regarding the operation of any business. **PLEASE NOTE: BY EXECUTING THE AUTHORIZED APPLICANT'S SIGNATURE AND ACCEPTANCE FORM CONTAINED AS PART OF THE APPLICATION AND SUBMITTING A RESPONSE TO THIS SOLICITATION, APPLICANTS CERTIFY THAT THEY ACKNOWLEDGE AND UNDERSTAND THAT ALL MATERIALS SUBMITTED AS PART OF THIS APPLICATION ARE SUBJECT TO DISCLOSURE UNDER THE MASSACHUSETTS PUBLIC RECORDS LAW. FURTHERMORE, APPLICANT ACKNOWLEDGES AND UNDERSTANDS THAT APPLICANT HAS FOLLOWED THE PROCEDURES SET FORTH IN SECTION 8.1 OF THIS SOLICITATION FOR ANY DOCUMENTS THAT APPLICANT BELIEVES MAY BE PROPRIETARY IN NATURE AND THAT MAY FALL WITHIN THE PARAMETERS OF THE MLSC'S TRADE SECRETS EXEMPTION; AND THAT THE MLSC'S RECEIPT OF SUCH DOCUMENTS DOES NOT REPRESENT A FINDING BY THE MLSC OR THE SUPERVISOR OF PUBLIC RECORDS THAT SUCH DOCUMENTS FALL WITHIN THE TRADE SECRET EXEMPTION.**

Furthermore, Applicants are cautioned to review the procedures regarding the submission of confidential information contained in Section 8.1 prior to submitting an electronic copy of any documents in response to this Solicitation.

Companies are limited to one application each program year. Please note, however, that companies are permitted to request more than one tax incentive in any given year, as set forth on the Application.

5.2 Application Process

(a) All applications must be submitted online at <http://www.masslifesciences.com/programs/tax/>. Applicants are cautioned to review the procedures regarding the submission of sensitive information contained in Section 8.1 prior to submitting the electronic copy of their Application.

Pursuant to those procedures, Applicants should consider deleting information from the electronic copy that they contend is confidential.

(b) A certification must be included with the Application, indicating compliance with the terms, conditions and specifications contained in this solicitation.

5.3 Schedule

The solicitation process will proceed according to the following anticipated schedule:

Deadline for Submission of Application February 8, 2019 at Noon EST

Awards Notification By the end of April 2019

6. Application Requirements

Applications must be completed and submitted online through MLSC's website:
<http://www.masslifesciences.com/programs/tax/>

Applications not completed online will not be accepted. Consult your tax advisor for tax advice. The Center does not provide tax advice or guidance regarding which tax incentives are appropriate for your company.

Applications must include the following:

1. Completed Tax Incentive Program Application
2. Completed Authorized Applicant's Signature and Acceptance Form (attached to Application)
3. Certificate of Good Standing from the Secretary of State (in PDF format)
4. Certificate of Good Standing/Letter of Compliance from the Department of Revenue (in PDF format)

7. Application Assessment

7.1 General

Applications will be evaluated according to the criteria outlined below. MLSC staff will review the Applications, and will present their recommendation for incentive awards to the MLSC Board of Directors. MLSC reserves the right to make an award only to Applicants that, in its sole judgment, meet the following criteria. MLSC reserves the right to consider other criteria in making an award among comparably qualified Applicants. The order of the criteria listed does not denote relative importance.

MLSC has established a two-step process for evaluating Applications:

1. Threshold Criteria – Evaluation of the Application to verify Applicant certification eligibility and credibility.
2. Programmatic Criteria – Evaluation of the Application against the objectives of MLSC and the Program, as described below.

7.2 Programmatic Criteria

Portfolio Objectives: MLSC may favor Applications that contribute to a balanced and strong portfolio of tax beneficiaries, including but not limited to factors such as:

- a. Ability to create and retain jobs for five (5) years. **It therefore is imperative that Applicants provide accurate information regarding actual, permanent full-time Massachusetts employees (over 35 hours per week) and credible estimates regarding projected employment targets. Third party contractors or employees paid by employment agencies should not be counted as employees under the program.**

- b. Wide geographic distribution of life sciences operations in Massachusetts;
- c. Wide distribution of life sciences technologies and industries supported by MLSC; and
- d. Diversity among businesses at different stages of product development and commercialization.

The MLSC is encouraging first time applicant companies outside of the greater Boston area to apply to the Tax Incentive Program. This Program is for life science companies of all sizes located in Massachusetts.

8. General Conditions

8.1 Notice of Public Disclosure

8.1.1 General Statement.

The MLSC is subject to the requirements concerning disclosure of public records under the Massachusetts Public Records Act, M.G.L. c. 66 (Public Records Act), which governs the retention, disposition and archiving of public records. For purposes of the Public Records Act, "public records" include all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by MLSC. As a result, any information submitted to MLSC by a company is subject to public disclosure as set forth in the Public Records Act.

The foregoing notwithstanding, "public records" do not include certain materials or data which fall within a specifically enumerated exemption set forth in the MLSC's enabling act, M.G.L. Chapter 23I. Such exemption that may be applicable to documents submitted by a company is for any documentary materials or data made or received by MLSC that consists of trade secrets or commercial or financial information regarding the operation of any business conducted by the company, or regarding the competitive position of such company in a particular field of endeavor (Trade Secrets Exemption). In the event that a company wishes to submit certain documents to MLSC and believes such a document or documents may be proprietary in nature and may fall within the parameters of the Trade Secrets Exemption, the company should identify such materials in its application as Confidential.

8.1.2 Procedures for Handling Documents Identified as "Confidential Information"

In the event that Applicant's response to the Solicitation includes the submission to the Center of documents that Applicant believes may be proprietary in nature and may fall within the parameters of the MLSC Trade Secrets Exemption and/or some other applicable exemption, the following procedures shall apply:

- A) At the time of the Applicant's initial submission of documents to the Center, the Applicant must clearly and unambiguously identify each and every such document that it contends is subject to an exemption from public disclosure as "Confidential Information." It is the Applicant's responsibility to ensure that all such documents are sufficiently identified as "Confidential Information," and Applicant's designation must be placed in a prominent location on the face of each and every document that it contends is exempt from disclosure under the Public Records Act.
- B) Documents that are not properly identified by the Applicant as "Confidential Information" at the time of their initial submission to the Center may be subject to disclosure under the Public Records Act, and the procedures for providing the Applicant with notice of any formal public records request for documents, as set forth below, may be inapplicable.

- C) At the time the Center receives documents from Applicant in response to the solicitation, any such documents designated by Applicant as “Confidential Information” shall be stored in a secure filing area when not being utilized by appropriate Center staff for purposes of evaluating the application for funds. By submitting a signed application to the Center, Applicant certifies, acknowledges and agrees that the Center’s receipt and storage of documents designated by Applicant as “Confidential Information” does not represent a finding by the Center that such documents fall within the MLSC Trade Secrets Exemption or any other exemption to the Public Records Act, or that the documents are otherwise exempt from disclosure under the Public Records Act.
- D) In the event that the Center receives a formal, written public records request for documents submitted by Applicant in response to the solicitation, the Center shall notify the Applicant and may, but shall not be required to, provide Applicant an opportunity to present the MLSC with information and/or legal arguments concerning the applicability of the MLSC Trade Secrets Exemption or some other exemption to the subject documents. The Center shall then produce all non-confidential, responsive documents.

The Center’s General Counsel is the sole authority within MLSC for making determinations on the applicability and/or assertion of an exemption to the Public Records Act. No employee of the Center other than the General Counsel has any authority to address issues concerning the status of “Confidential Information” or to bind the Center in any manner concerning the Center’s treatment and disclosure of such documents.

- E) In the event that the Center determines that the subject documents are exempt from disclosure, the requesting party may seek review of the Center’s determination before the Supervisor of Public Records, and the Center shall notify the Applicant in writing in the event that the requesting party pursues a review of the Center’s determination.
- F) In the event the requesting party pursues a review of the Center’s determination that the documents are exempt from disclosure and the Supervisor of Public Records concludes that the subject documents are not exempt from disclosure and orders the Center to disclose such documents to the requester, the Center shall notify the Applicant in writing prior to the disclosure of any such documents, and Applicant may pursue injunctive relief or any other course of action in its discretion.

Applicant’s submission of an Application, with or without supporting documentation, shall require a signed certification that Applicant acknowledges, understands and agrees with the applicability of the foregoing procedures to any documents submitted by applicant in response to the solicitation, including but not limited to the acknowledgements set forth in Paragraph C) above, and that Applicant shall be bound by the procedures set forth herein.

All documents submitted by Applicant, whether designated as “Confidential Information” or not, are not returnable to Applicant.

8.2. Contractual Requirements

The Center intends to enter into an Agreement with the Awardees containing certain standard provisions. A copy of the standard Agreement (which includes the loan agreement, promissory note, and warrant) is available on the Center’s website. The Center reserves the right to amend the Agreement without further issuance of another solicitation. Please be advised that this standard Agreement must be executed in substantially the form provided and the terms and conditions therein are non-negotiable. Applicants who are successful in receiving awards should advise their attorneys accordingly to minimize the cost of legal review.

8.3 Waiver Authority

The Center reserves the right, at its sole discretion, to waive minor irregularities in submittal requirements, to request modifications of the application, to accept or reject any or all applications received, and/or to cancel all or part of this solicitation at any time prior to awards.

8.4 Disclaimer

This solicitation does not commit the Center to award any funds, pay any costs incurred in preparing an application, or procure or contract for services or supplies. The Center reserves the right to accept or reject any or all applications received, negotiate with all qualified Applicants, cancel or modify the solicitation in part or in its entirety, or change the application guidelines, when it is in its best interests.

8.5 Changes/Amendments to Solicitation

This Solicitation has been distributed electronically using the Center's website. It is the responsibility of Applicants to check the Center's website for any addenda or modifications to the Solicitation to which they intend to respond. The Center, the Commonwealth of Massachusetts, and its subdivisions accept no liability and will provide no accommodation to Applicants who submit an application based on an out-of-date solicitation document.