

Amendment 2
Broadband Infrastructure Gap Networks Grant Program
Solicitation 2024-MBI-01
Posted November 16, 2023

Section 8.2.2(A)(2) is replaced with the following new language:

2. The Applicant may submit with the application a letter from a qualifying financial institution committing to issue an irrevocable standby letter of credit in a form that is substantially similar to the model letter of credit included as Attachment 1 to this Solicitation. The letter of credit must be in an amount of no less than 20% of the requested grant amount (or such higher amount, if the Applicant proposes a Funding Match that exceeds 20%). The eligibility requirements for the issuing bank and the form of the letter of credit are as follows:
 - The amount of the letter of credit must be for the greater of: (i) 20% of the grant funding requested by the applicant; or (ii) the amount of matching funds proposed by the applicant, if higher than the minimum 20% match requirement.
 - The letter of credit must be issued by a financial institution that meets one of the following criteria:
 - A bank meeting eligibility requirements consistent with those set forth in 47 C.F.R. § 54.804(c)(2) committing to issue an irrevocable standby letter of credit, in the required form, to the applicant; or
 - Any United States credit union that (a) is insured by the National Credit Union Administration; and (b) has a credit union safety rating issued by Weiss of B- or better.
 - If the Applicant is selected to receive funding by MassTech, the Applicant must provide prior to contracting, an irrevocable standby letter of credit in the required form, acceptable in all respects to MassTech. In addition, the Applicant must provide MassTech with an opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”), the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the Applicant’s bankruptcy estate under Section 541 of the Bankruptcy Code.

Attachment 1 is added to the Solicitation:

ATTACHMENT 1

BANK Letterhead

IRREVOCABLE STANDBY LETTER OF CREDIT No. 123

Issuing Bank Name
Address of Issuing Bank

Date of Issuance: DATE
Amount: _____
Expiration Date: EXP DATE

BENEFICIARY

Massachusetts Technology Collaborative (MassTech)
Attn: Broadband Infrastructure Gap Networks Grant
Program
75 North Drive
Westborough, MA 01581

Name of Applicant
Address of Applicant

Ladies and Gentlemen:

We hereby establish, at the request and for the account of Applicant, in your favor, as required under the terms of the solicitation, issued by the Massachusetts Technology Collaborative (“MassTech”) on _____, 20____, *Broadband Infrastructure Gap Networks Grant Program*, Solicitation No.2024-MBI-01 (the “Solicitation”), our Irrevocable Standby Letter of Credit No. 123 in the amount of Amount in Words and Numbers.

This Letter of Credit shall automatically renew for one (1) year periods from the then current Expiration Date unless Issuing Bank Name gives written notice of non-renewal to MassTech by a nationally recognized overnight delivery service with a copy to the Executive Office of Economic Development (“EOED” 1 Ashburton Place, Room 2101, Boston, MA 02108), at least sixty (60) days but not more than ninety (90) days prior to the expiry thereof, or such earlier date as the Letter of Credit is terminated by MassTech (the “Expiration Date”). Capitalized terms used herein but not defined herein shall have the meanings accorded such terms in the Order.

Funds under this Letter of Credit are available to you against your draft in the form attached hereto as Annex A, drawn on our office described below, and referring thereon to the number of this Letter of Credit, accompanied by your written and completed certificate signed by you substantially in the form of Annex B attached hereto. Such draft and certificates shall be dated the date of presentation or an earlier date, which presentation shall be made at our office located at Issuing Bank Address and shall be effected either by personal delivery or delivery by a nationally recognized overnight delivery service. We hereby commit and agree to accept such presentation at such office, and if such presentation of documents appears on its face to comply with the terms and conditions of this Letter of Credit, on or prior to the Expiration Date, we will honor the same not later than one (1) banking day after presentation thereof in accordance with your payment instructions. Payment under this Letter of Credit shall be made by check or wire transfer of Federal Reserve Bank of New York funds to the payee and for the account, you designate, in accordance with the instructions set forth in a draft presented in connection with a draw under this Letter of Credit.

Partial drawings are not permitted under this Letter of Credit. This Letter of Credit is not transferable or assignable in whole or in part.

This Letter of Credit shall be canceled and terminated upon receipt by us of the MassTech's certificate purportedly signed by two (2) authorized representatives of MassTech and countersigned by EOED's authorized signatory in the form attached as Annex C.

This Letter of Credit sets forth in full the undertaking of the Issuer, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except only the certificates and the drafts referred to herein and the ISP (as defined below); and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such certificates and such drafts and the ISP.

This Letter of Credit shall be subject to, governed by, and construed in accordance with, the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 (the "ISP"), which is incorporated into the text of this Letter of Credit by this reference, and, to the extent not inconsistent therewith, the laws of the Commonwealth of Massachusetts, including the Uniform Commercial Code as in effect in the Commonwealth of Massachusetts. Communications with respect to this Letter of Credit shall be addressed to us at our address set forth below, specifically referring to the number of this Letter of Credit.

Signature
Name of Signatory
Title of Signatory

ANNEX A

Form of Draft

To: Name of Issuing Bank
DRAWN ON LETTER OF CREDIT No: 123

AT SIGHT

PAY TO THE ORDER OF MASSACHUSETTS TECHNOLOGY COLLABORATIVE
("MASSTECH") BY CHECK OR WIRE TRANSFER OF FEDERAL RESERVE BANK OF
NEW YORK FUNDS TO:

Account (_____)
As to Broadband Infrastructure Gap Networks Grant

Program [AMOUNT IN WORDS] DOLLARS AND NO/CENTS

[\$AMOUNT IN NUMBERS]

Massachusetts Technology Collaborative

By: _____

Name:

Title:

ANNEX B

Draw Certificate

The undersigned hereby certifies to Name of Issuing Bank (the “Bank”), with reference to (a) Irrevocable Standby Letter of Credit No. 123 (the “Letter of Credit”) issued by the Bank in favor of the Massachusetts Technology Collaborative (“MassTech”) and the Solicitation issued by MassTech on October 25, 2023, *Broadband Infrastructure Gap Networks Grant Program*, Solicitation No.2024-MBI-01 (the “Solicitation”), pursuant to which Name of Applicant (the “Applicant”) has provided the Letter of Credit (all capitalized terms used herein but not defined herein having the meaning stated in the Order), that:

Name of Applicant has [describe the event that triggers the draw], which is evidenced by a letter signed by the Executive Director of MassTech or [his/her] designee, dated _____, 20__, a true copy of which is attached hereto. Accordingly, a draw of the entire amount of the Letter of Credit No.123 is authorized.

OR

MassTech certifies that given notice of non-renewal of Letter of Credit No. 123 and failure of the account party to obtain a satisfactory replacement thereof, pursuant to the Solicitation, MassTech is entitled to receive payment of \$ _____, representing the entire amount of Letter of Credit No. 123.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of [specify time of day] on the ____ day of _____, 20__.

Massachusetts Technology Collaborative

By: _____
Name:
Title:

ANNEX C

Certificate Regarding Termination of Letter of Credit

The undersigned hereby certifies to Name of Issuing Bank (the “Bank”), with reference to (a) Irrevocable Standby Letter of Credit No. 123 (the “Letter of Credit”) issued by the Bank in favor of the Massachusetts Technology Collaborative (“MassTech”), and (b) the Solicitation issued by MTC on October 25, 2023, Broadband Infrastructure Gap Networks Grant Program, Solicitation No.2024-MBI-01 (the “Solicitation”), (all capitalized terms used herein but not defined herein having the meaning stated or described in the Order), that:

- (1) [include one of the following clauses, as applicable]
 - (a) The Order has been fulfilled in accordance with the provisions thereof; or
 - (b) Name of Applicant has provided a replacement letter of credit satisfactory to MassTech.

- (2) By reason of the event or circumstance described in paragraph (1) of this certificate and effective upon the receipt by the Bank of this certificate (countersigned as set forth below), the Letter of Credit is terminated.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the ____ day of _____, 20__.

Massachusetts Technology Collaborative

By: _____
Name:
Title:

COUNTERSIGNED:
Massachusetts Executive Office of Economic Development

By: _____
Name:
Its Authorized Signatory