

A Review of the Discretionary Economic Incentive Process

by **Kelley Rendziperis**, on Aug 18, 2023 9:00:00 AM

Economic incentives encourage corporate development and vary in nature across states. The magnitude of incentive awards depends on various factors, such as the type and amount of investment, degree of job creation and/or retention, industry type, employee wages and the project location. With the rising trend of increasingly large announced incentive awards throughout the U.S., Site Selection Group thought it would be beneficial to take a step back and review the overall process of securing discretionary state and local economic incentives.

Economic incentive triggers and types

Economic incentives are generally considered either statutory or discretionary in nature. This blog focuses on the process for securing discretionary incentives which are benefits negotiated with state and local governments, also referred to as negotiated incentives, and are deemed a material factor in making a final site decision. The primary drivers which trigger economic incentives are:

- Headcount
- Wages
- Capital investment
 - Real property
 - Personal property
 - Inventory

- Location
 - State or federally designated areas/zones may influence the availability or level of incentives offered (e.g., Opportunity Zones, Enterprise Zones, County Tier Designations)

The benefits associated with discretionary economic incentives across the states may include:

- Discretionary Tax Credits
- Training Grants
- Tax Revenue Sharing
- Capital Offsets
- Tax Abatements
- Real Estate Grants
- Low-Cost Financing
- Utility Rebates
- Cash Grants
- Fee Waivers
- Infrastructure Grants
- Special Tax Districts
- Payroll Rebates
- Enterprise/Empowerment Zones
- Energy Credits

These types of incentives are meaningful to improve the overall return on investment of a project and should be pursued in a detailed and systematic manner.

An effective discretionary economic incentive process

The following list shows the most common process employed to identify, negotiate and secure discretionary incentives.

Step 1

Finalize the Project Parameters

The project parameters should attempt to define committable headcount, wages and capital investment. While it may feel like looking in a crystal ball, a company should make its best estimate. It is common to provide project investment in phases or reflect a high and low end. Jurisdictions vary in how they may analyze the information, so at this juncture of the process being able to fully understand the scope of the project is most important.

Step 2

Connect with State and Local Economic Development

At this point in the project, it is typical that relationships will have already been developed through the overall site selection process; however, if this is a pure economic incentive project, then initiating contact with state and local representatives is the next step in the process to introduce the project and garner early support. It is also at this juncture that a company should enter into nondisclosure agreements (NDAs) to maintain confidentiality if desired. Note that most NDAs will be subject to each state's open records act.

Step 3

Submit Request for Incentives

After introductions with relevant stakeholders, the next step is to submit a request for incentives (RFI), or other similarly named document. Effective RFIs should include:

- Company overview, including key management and ownership
- Detailed project description, including markets served
- Project parameters
- Estimated projected taxable revenues
- Specific requests for incentives relevant to the project
- Timeline for response

Each project is unique, but SSG recommends providing at least two weeks for a comprehensive response from utilities and state and local entities. We also provide a template for responses to gather and organize the information, as well as delineate the estimated timeline of realizing benefits.

Step 4

Evaluate Incentive Offers

Review economic incentive offerings and determine which benefits are truly discretionary, as opposed to statutory benefits. While this distinction is important to determine what the jurisdiction is offering to truly compete for a project, all incentive types should be incorporated into an overall operating costs analysis to identify which incentives are realizable based on a company's operations and to identify remaining cost gaps among finalist locations. It is also important to validate all assumptions used by jurisdictions in their estimations, including tax rates, depreciation, average wages, timing of investment or headcount ramp-up, etc.

Step 5

Maximize Benefits

Some consultants may refer to this as the "negotiation" phase. We see this more as an opportunity to maximize the incentives offered. This is a time to shift values that may not be realizable by the company to other areas. It is also an appropriate time to request additional assistance necessary to offset cost gaps, as well as any infrastructure needs identified through site due diligence. Other factors that should be considered are to mutually discuss and determine key contractual terms for each incentive, including timing of project commitments, definitions and recapture/clawback provisions. It is critical to understand these elements before moving too far toward a site decision.

Step 6

Submit Applications and Obtain Approvals

Once a company has evaluated offers and incorporated the benefits into a cost analysis, they usually are able to identify a preferred option. At this point, formal applications will need to be submitted to start the clock on the necessary due diligence, review and approval process. It is common for multiple applications to exist for different benefits. Note that some jurisdictions may require a formal application prior to receiving an offer in lieu of responding to an RFI. After review and approval, formal approvals will occur through whatever pre-determined process is in place (e.g., city council meetings, county commissioner meetings, state economic development agency meetings, etc).

Step 7

Coordinate Announcements

After incentives are finalized and approved and a site has been determined, a company will work with all relevant stakeholders at the state and local level to draft a press release and/or plan a live event. Many states require a public announcement in exchange for offering incentives. It is important to ensure that an announcement is not made prematurely and includes all interested parties.

Step 8

Finalize Agreements

At this point in the process, everyone is excited and moving forward with a project, and the one remaining task is to memorialize the incentives. To do this, all necessary economic development agreements are drafted and executed by all parties. It is possible that some jurisdictions will require that formal agreements are completely finalized and agreed to prior to seeking formal approvals, and then executed after approval. This tends to slow down the overall site selection process based on legal review, etc., but it also eliminates any surprises regarding key contract terms that may come up after having already committed to a site.

Step 9

Compliance

Economic incentive compliance is often overlooked in the process of securing discretionary incentives. It is imperative to understand the requirements for each incentive at the time they are secured and have a plan in place for timely reporting and realizing the incentives awarded. Compliance can be performed in-house or contracted out to a third party with an economic incentive management platform, like [IncenTrak®](#).

Conclusion

While economic incentives are rarely the reason for a site decision, they do play a pivotal role in the overall process and provide a meaningful impact on the return on investment. It is also worth noting that the process laid out above does not only involve incentives during the site selection process, but also when identifying opportunities for benefits for consolidations, relocations or expansion projects. Following a well-established and structured process will yield greater results and avoid unwelcome hurdles.

In addition, there are several less-than-obvious factors that escalate cost structures in Mexico that U.S. companies often take for granted. For example, it is customary for large industrial employers to provide transportation for their workforce. Most large industrial employers also offer on-site health care for employees (and sometimes their families). Additionally, it is common to provide meals to the workforce.

Please contact me at krendziperis@siteselectiongroup.com with any questions or comments.

Contributions by [Billie Rodman](#).

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