

COUNCIL ON DEVELOPMENT FINANCE

August 22, 2011

PUBLIC HEARING MINUTES 375

THOSE PRESENT:

Mr. Andy Lubin, Chairperson
Mr. Fred Sears
Honorable Nancy Cook
Mr. Tom Gilligan
Mr. Jack Riddle
Representative Darryl Scott

Director Alan Levin
Mr. Gary Smith
Mr. Stephen Bach
Mrs. Rachael Mears
Mrs. Lee Porter
Ms. Beverly Ennis
Ann Marie Johnson, DAG
Mrs. Barbara DeHaven
Ms. Nikki Lavoie

ALSO PRESENT: Mr. Michael Morton, Controller General's Office; Ms. Andrea Godfrey – Office of Management and Budget; Mr. Paul Sample, PhD. Of Samples, Inc., Mr. Jon Starkey, *News Journal*; Ms. Sal N. DiDfib; Representing Projects: **Spectrum Magnetics, LLC** – Ms. Jianrong Lin and Mr. Stoyan Stoyanov; **Jackson & Sharp** – Mr. Andrew Diffley and Mr. Bryce Bennett; **Data Management Internationale** – Mr. William A. Swezey, II and Mr. Hugh J. Gardinsky; **Liberty Life Insurance Company** – Mr. Grant Kvalhein and Mr. Chris Grady; **Discover Bank** – Ms. Chris Favilla, Mr. Jon Drummond and Mr. Mike Rickert

LOCATION: Buena Vista, 661 South DuPont Highway, New Castle, Delaware 19720

TIME: 9:00 A.M.

CALL TO ORDER

The meeting was called to order at 9:05 A.M. by Mr. Lubin, Chairperson, on Monday, August 22, 2011.

OLD BUSINESS:

Mr. Gilligan made a motion that the minutes of the July 25, 2011 Council on Development Finance meeting be approved as presented. Representative Scott seconded the motion which was then adopted by unanimous vote.

NEW BUSINESS:

Spectrum Magnetics, LLC (“Spectrum” or the “Applicant”) – The Applicant is requesting a grant from the Delaware Strategic Fund SBIR program in the amount of \$50,000. The Applicant proposes to use the funds to provide bridge funding from Phase 1 to Phase 2 for its current project involving the development of a radio frequency direction finding sensor to combat Low Probability of Intercept (LPI) radar, which will be conducted at its current facility located in the First State Industrial Park in Wilmington, Delaware (the “Project”).

Mrs. DeHaven presented this request to the Council. Ms. Lin stated that Spectrum was founded in 2005. She stated that Spectrum was the only company invited to submit a Phase II for this technology. She also stated that Spectrum’s commercial sales were up by eleven percent.

Mr. Stoyanov handed out to the Council a detailed report, copy attached, describing the research and specifics of this Project. Mr. Stoyanov explained that the technology in their camera detection system is very sensitive and accurate while also being a very compact and light device.

Mr. Lubin asked if Spectrum would have to create software. Mr. Stoyanov indicated that the software exists, but that they don’t have access to it.

Mr. Gilligan asked about the existing business and to whom did they sell. Mr. Stoyanov stated that Spectrum sells to the government. Mr. Gilligan asked how businesses would find out about Spectrum. Ms. Lin stated that companies can find out about them from the internet, their website and by word of mouth. Some companies became aware of them because of the Phase II invitation, and they obtained some additional orders as a result.

After duly considering, inter alia, the nature of the business, that the Applicant is a “small business” within the meaning of 29 Del. C. §5035 (b)(3), that the Applicant has won a Phase I award in the Federal SBIR Program, that the Applicant has submitted a proposal for a Phase II SBIR award but has not yet received such award, that the Applicant’s principal place of business will be located in the State of Delaware; and that the research to be conducted will benefit the Delaware economy, and other requirements under applicable statutory and regulatory provisions, Representative Scott made a motion that the Council recommend to Mr. Alan Levin, Chairperson of The Delaware Economic Development Authority, approval of a grant in an amount not to exceed Fifty Thousand Dollars (\$50,000) to be disbursed from the Delaware Technical Innovation Program (“DTIP”), to be used for the Project, contingent upon the approval remaining in effect through and including August 21, 2012. Mr. Sears seconded the motion, which was then adopted by unanimous vote.

Jackson & Sharp (the “Applicant”) – The Applicant received approval for a \$100,000 Delaware Strategic Fund Brownfield Assistance Program grant on August 23, 2010 by the Council on Development Finance. The proceeds were to be used for the redevelopment of approximately 1 acre of land located at 1101 East 8th Street in

Wilmington, Delaware. Today Jackson & Sharp is requesting an extension of this original approval (the "Request").

Mrs. Mears presented this request to the Council. She stated that as of today, no funds have been requested as the Applicant has experienced various delays.

Mr. Diffley stated that the biggest delay was due to the contaminants in the soil. He stated that there is 200-300 tons of soil that has to be trucked to the State of New York which will cost about \$60,000. He stated that they want to make sure the remediation is done before they transfer that soil. Mr. Diffley stated that they are about 95% done and hope to be done shortly. He stated that they had hoped to be done about a month ago but it has taken longer than they anticipated.

Mr. Riddle asked if anything else had changed in the scope of the project such as original costs, time line, permits, etc. Mr. Diffley stated that they are still on track and that the costs may have gone up a little bit but no huge surprises. He explained that the "mildly" contaminated soils can go back into a prepared hole and then capped; the highly contaminated soil must actually be taken off site.

Mr. Lubin asked if there were any public comments; there were none.

After consideration, Mr. Sears made a motion that the Council recommend to Mr. Alan Levin, Chairperson of The Delaware Economic Development Authority, approval of the Request, contingent upon the approval remaining in effect through and including August 21, 2012. Mr. Gilligan seconded the motion, which was then adopted by unanimous vote.

Data Management Internationale ("DMI" or the "Applicant") – DMI received approval for a \$250,000 Delaware Strategic Fund loan on July 26, 2006. Today, the Applicant is requesting a two-year extension on its balloon payment of \$168,788.19 which is due on September 1, 2011 (the "Request").

Mrs. Mears presented this request. Mr. Gardinsky stated that this has been a tough period for DMI the last couple of years and it is a struggle day to day determining which bills to pay. He stated this situation has been caused by a couple of losses during the years of 2006-2009. Mr. Gardinsky stated that he believes DMI has reversed that situation and that the first months of 2011 have been profitable and an increase in profits over the next 12 months is projected. Mr. Gardinsky explained that a lot of the problem has been gross margin; DMI has been under pricing some bids and unfortunately, it didn't work out well. DMI has become more disciplined in pricing and has increased its efficiencies.

Mr. Gardinsky stated that DMI has some good prospects for some new businesses. He informed the Council that DMI is working on refinancing its existing first mortgage of

about \$2,000,000 and some other debt which would improve its cash flow. He stated that the facility was recently conservatively appraised at \$4,000,000.

Mr. Swezey stated that DMI has been able to turn around its profitability and maintain its employment base which is approximately 46 employees. He stated that they would like to hire some additional employees to assist in marketing efforts.

Mrs. Mears informed the Council that Mr. Swezey had been very open in communications with DEDO and had been very proactive.

Mr. Riddle questioned the refinancing and asked if DMI would repay its current loan to DEDO. Mr. Gardinsky stated that DMI would primarily repay Meridian but would continue loan payments to DEDO. It was clarified that DEDO has a second lien position on the building behind Meridian. Mr. Riddle asked if DEDO would be asked to re-subordinate on the first mortgage with adding the existing DMI term loans from Meridian, as he would like to avoid DMI having to come back before the Council for an additional request.

Mr. Sears asked about the accounts receivable. Mr. Swezey stated that about 75 percent of the contracts are with state, local and the federal government which is the largest customer. Mr. Swezey stated that the federal government actually pays in twenty days because they have an automated payment process that basically sends the payment right through.

Mr. Levin stated that he feels that DMI has done a good job and weathered a lot of storms. He stated that he has visited the facility and believes that DMI did what they had to do to correct the situation. He stated that even though they are not at 100 percent, he believes that they are a lot closer than they were.

Mr. Gilligan asked the gentlemen how confident they were that they would be able to make the balloon payment in 2013. Mr. Gardinsky stated that he was fairly confident, not 100 percent, but pretty sure that DMI could do it. He believes DMI is on the right track and that they will continue to be profitable.

Mr. Lubin asked if there were any public comments; there were none.

After consideration, Mr. Sears made a motion that the Council recommend to Mr. Alan Levin, Chairperson of The Delaware Economic Development Authority, approval of the Request to extend the existing balloon payment for two years, but to cap any further subordination of DEDO's priority behind a first lien creditor-\$2.8 Million, contingent upon the approval remaining in effect through and including August 21, 2012. Senator Cook seconded the motion, which was then adopted by unanimous vote.

Liberty Life Insurance Company (“Liberty” or the “Applicant”) – The Applicant is requesting a grant from the Delaware Strategic Fund program in the amount of \$350,730.

The Applicant proposes to use the funds to establish a sales and marketing organization to support new business and operations and the creation of new jobs (the "Project").

Director Levin presented this Project to the Council. He stated that Athene acquired Liberty Life from RBC in Canada. He stated that Liberty has already rented space and it is Liberty's intention to set up a sales and marketing office in Wilmington, creating eighteen new jobs. Director Levin stated that DEDO has offered Liberty a \$350,730 Delaware Strategic Fund grant.

Mr. Brady stated that Athene is a relatively young company founded two years ago. The original intention was to reinsure most of Liberty's deferred indexed annuity basis. He stated that they acquired the company intending to treat it as a closed block of insurance. Mr. Brady stated that it is now Liberty's intention to build a new team in Wilmington Delaware and to grow the business.

Mr. Grant stated that as Liberty was going through the re-evaluation process, the biggest issue coming up with the decline of pension fund value was consumer need for other retirement solutions. Wilmington was chosen due to its location, the proximity to major financial institutions, and the availability of its transportation hub. He stated that they believe they were able to get great space in which there will be three major components: product design, marketing and sales organization. He stated that they are going to have an overall organization of fifty people.

Mr. Grant stated that in July, Liberty acquired a second insurance company, Investors Insurance Company. He stated that they have submitted an application with the Delaware Insurance Commissioner's Office to reactivate Liberty and have it renamed as Athene.

Mr. Gilligan asked if the company was closing the Kansas City office. Mr. Brady stated that there will be one person kept in that office.

Mr. Riddle mentioned that one of the company's biggest investors was South Carolina Pension Fund and as an investor he asked if South Carolina was upset about Liberty moving out of the state. Mr. Grant stated that there will be some physical operations there but that most of the growth will be in Delaware. He stated that in fact, South Carolina is investing more money.

Mr. Lubin asked about Liberty's bond rating. Mr. Brady stated that the rating is B++ and he believes it is because they are a new company and they need to develop more of a track record in the market. He stated that the CEO of the company feels the rating will be upgraded by the end of the year, although Mr. Brady felt that it might take into the next year.

Mr. Lubin asked if Liberty was actually investing \$600,000 or was it a combination of part investment, part landlord improvements. Mr. Brady stated that it was a combination

of both. He further stated that Liberty is spending \$90.00 a foot to build a very nice place for its operations.

Mr. Lubin asked if there were any public comments; there were none.

After duly considering, inter alia, the nature of the business, its competitive situation in Delaware, its location, the employment and other requirements under applicable statutory and regulatory provisions, the Council made the following findings: (i) the Project will contribute to maintaining or providing gainful employment of the citizens of the State, (ii) the Project will serve a public purpose by contributing to the prosperity, health or general welfare of the State; (iii) the Project will require a capital investment of at least \$10,000, which funds, including the loan proceeds, will be available or expended on the date on which The Delaware Economic Development Authority disburses the requested loan funds; (iv) the loan will effectuate the purposes of Chapter 50, Subchapter IV of Title 29 of the *Delaware Code*, and (v) the Applicant is a financially responsible person to the extent required by statute and has not been convicted of a major labor law violation or other illegal conduct involving moral turpitude by any agency or court of the federal government or agency or court of any state in the two-year period immediately prior to the approval of the Applicant's application for assistance, Senator Cook made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of a grant in an amount not to exceed Three Hundred Fifty Thousand Seven Hundred Thirty Dollars (\$350,730) to be disbursed from the Delaware Strategic Fund, for the Project, contingent upon the approval remaining in effect through and including August 21, 2012. Mr. Gilligan seconded the motion, which was then adopted by unanimous vote.

Discover Bank (“Discover” or the “Applicant”) - The Applicant is requesting a grant from the Delaware Strategic Fund program in the amount of \$7,387,000. The Applicant proposes to use the funds to maintain its current employment base in the State of Delaware as well as to offset \$12,900,000 in planned capital investments to modernize its existing facility in New Castle, Delaware (the “Project”).

Mr. Smith presented this request to the Council. He stated that this is a two-fold project with an employment retention portion in an amount up to \$7,000,000 and a capital expenditures portion in an amount up to \$387,000.

Mr. Smith stated that Discover is remaining at its current location and has been a major player with the State of Delaware, being one of the initial credit card operations set up in Delaware. Discover started operations in Greenwood.

Mr. Smith stated that this is a unique proposal with the typical requirements such as retaining employment, etc. He stated that in addition to retaining its employment in Delaware, Discover will be required to invest \$7,500,000 on an annual basis via purchase of: U.S. Small Business Administration 7a loans, New Market Tax Credits, and; eligible State Housing Authority and The Delaware Economic Development Authority Industrial

Revenue bonds through its CRA program. Further, that in an effort to reduce the total project costs, and as an additional incentive for the project lead to provide financing, Discover has agreed to purchase the investments at below market rates.

Ms. Chris Favilla, President of Discover, stated that this year earmarks Discover Bank's 100 year anniversary and the 25th year anniversary of Discover Card. She further stated that the key reason Discover located in Delaware twenty-five years ago, was because of Delaware's favorable banking regulations environment. She stated that Discover has made a deep commitment to the State of Delaware, and employed 900 people. Ms. Favilla commented that Discover is most proud of its robust reinvestment program where Discover has funded over \$504 million in loans, investments and grants of which \$431 million has directly benefitted the low to moderate income citizens of the lower part of Delaware. She further stated that as Discover continues, so will its CRA investments.

Ms. Favilla stated that three years ago when Discover spun off from Morgan Stanley, it took a look at its situation. Because the lease on its current site was up in 2012, it was felt that this was the perfect opportunity to look at its options.

Mr. Lubin asked if there were any public comments; there were none.

After duly considering, inter alia, the nature of the business, its competitive situation in Delaware, its location, the employment and other requirements under applicable statutory and regulatory provisions, the Council made the following findings: (i) the Project will contribute to maintaining or providing gainful employment of the citizens of the State, (ii) the Project will serve a public purpose by contributing to the prosperity, health or general welfare of the State; (iii) the Project will require a capital investment of at least \$10,000, which funds, including the loan proceeds, will be available or expended on the date on which The Delaware Economic Development Authority disburses the requested loan funds; (iv) the loan will effectuate the purposes of Chapter 50, Subchapter IV of Title 29 of the *Delaware Code*, and (v) the Applicant is a financially responsible person to the extent required by statute and has not been convicted of a major labor law violation or other illegal conduct involving moral turpitude by any agency or court of the federal government or agency or court of any state in the two-year period immediately prior to the approval of the Applicant's application for assistance, Senator Cook made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of a grant in an amount not to exceed Seven Million Three Hundred Eight-Seven Thousand Dollars (\$7,387,000) to be disbursed from the Delaware Strategic Fund, for the Project, contingent upon the approval remaining in effect through and including August 21, 2012. Mr. Gilligan seconded the motion, which was then adopted by unanimous vote.

Executive Session - Mr. Lubin made a motion that the Council go into executive session to discuss confidential and privileged commercial and financial information in accordance with 29 Del. C. §10004(b)(2). The motion was seconded by Mr. Sears, which was then adopted by unanimous vote.

Mr. Sears made a motion that the Council go out of executive session. The motion was seconded by Mr. Riddle which was then adopted by unanimous vote.

ADJOURNMENT

The meeting adjourned at 10:50 a.m.

Respectfully submitted,

Lee Porter, Secretary

LKP

cc: Members of the Council on Development Finance
Director Alan Levin
Ann Marie Johnson, Esquire

The next CDF meeting is scheduled for Monday, September 26, 2011 at 9:00 A.M. at Buena Vista in New Castle, Delaware.