



Western NY Power Proceeds Allocation Board

July 8, 2015

MEMORANDUM TO THE WESTERN NEW YORK POWER PROCEEDS ALLOCATION BOARD

FROM THE WESTERN NEW YORK REGIONAL DIRECTOR, EMPIRE STATE
DEVELOPMENT CORPORATION

**SUBJECT: Applications for Fund Benefits from the Western New York
Economic Development Fund**

SUMMARY

The Western New York Power Proceeds Allocation Board (“Allocation Board” or “Board”) is requested to recommend to the Board of Trustees of the Power Authority of the State of New York (“NYPA” or “Authority”) that an award of Fund Benefits be made to the applicant identified in Exhibit “A”, Borderworx Logistics, LLC (“Borderworx”) in the amount indicated on such Exhibit.

BACKGROUND

1. Western New York Power Proceeds Allocation Act

On March 30, 2012, Governor Cuomo signed into law the Western New York Power Proceeds Allocation Act (the “Act”). The Act provides for the creation, by the Authority, of the Western New York Economic Development Fund (“Fund”). The Fund consists of the aggregate excess of revenues received by the Authority from the sale of Expansion Power (“EP”) and Replacement Power (“RP”) produced at NYPA’s Niagara Power Project that was sold in the wholesale energy market over what revenues would have been received had such energy been sold on a firm basis to an eligible EP or RP customer under the applicable tariff or contract.

Under the Act, an “eligible applicant” is a private business, including a not-for-profit corporation. “Eligible projects” is defined to mean “economic development projects by eligible applicants that are physically located within the state of New York within a thirty mile radius of the Niagara power project located in Lewiston, New York that will support the growth of business in the state and thereby lead to the creation or maintenance of jobs and tax revenues for the state and local governments.” Eligible projects include, for example, capital investments in buildings, equipment, and associated infrastructure owned by an eligible applicant for fund benefits; transportation projects under state or federally approved plans; the acquisition of land needed for infrastructure; research and development where the results of such research and

development will directly benefit New York state; support for tourism and marketing and advertising efforts for western New York state tourism and business; and energy-related projects.

Eligible projects do not include public interest advertising or advocacy; lobbying; the support or opposition of any candidate for public office; the support or opposition to any public issue; legal fees related to litigation of any kind; expenses related to administrative proceedings before state or local agencies; or retail businesses as defined by the board, including without limitation, sports venues, gaming and gambling or entertainment-related establishments, residential properties, or places of overnight accommodation.

Fund Benefits have been provided to successful eligible applicants in the form of grants. It is anticipated that Fund Benefits will be disbursed as reimbursement for expenses incurred by an Eligible Applicant for an Eligible Project, or for proposed eligible expenditures to be incurred by the eligible applicant for an eligible project when NYPA has authorized advance disbursements.

At least 15% percent of the Fund is dedicated to eligible projects which are “energy-related projects, programs and services,” which is defined as “energy efficiency projects and services, clean energy technology projects and services, and high performance and sustainable building programs and services, and the construction, installation and/or operation of facilities or equipment done in connection with any such projects, programs or services.”

Allocations of Fund Benefits may only be made on the basis of moneys that have been deposited in the Fund. No award may encumber funds that have not been deposited in the Fund.

2. Western New York Power Proceeds Allocation Board

Under the Act, the Allocation Board is charged with soliciting applications for Fund Benefits, reviewing applications, making eligibility determinations, evaluating the merits of applications for Fund Benefits, and making recommendations to NYPA on Fund Benefit awards. The Allocation Board uses the criteria applicable to EP, RP and PP allocations, and for revitalization of industry, provided for in Public Authorities Law § 1005. Additionally, the Board is authorized to consider the extent to which an award of Fund Benefits is consistent with the strategies and priorities of the Regional Economic Development Council having responsibility for the region in which an eligible project is proposed.

At its meeting on March 4, 2013, the Board, in accordance with the Act, adopted by-laws, operating procedures, guidelines related to the application, and a form of application. A copy of the relevant criteria (collectively, “Program Criteria”), adapted from this Board’s “Procedures for the Review of Applications for Fund Benefits,” is attached as Exhibit “C” to this memorandum.

The Board also defined “retail business” to mean “a business that is primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain goods or services.”

Finally, the Board designated the Western New York Regional Director for Empire State Development (“ESD”) to act on its behalf for administrative matters and along with NYPA, to

provide staff services (“Staff”). Among other things, Staff was authorized to perform analyses of applications seeking Fund Benefits and to make recommendations to the Board on the applications.

3. Application Process

Initially, the Allocation Board established a series of application due dates coupled with a schedule of dates through the end of 2015 on which dates the Board expected to meet to consider applications. In addition, the application process was promoted through a media release and with assistance from state and local entities, including the Western New York and Finger Lakes Regional Economic Development Councils, ESD and local and regional economic development organizations within the State. A webpage was created that is hosted on WWW.NYPA.GOV/WNYPPAB with application instructions, a link to the approved application form and other program details including a contact phone number and email address staffed by the Western New York Empire State Development regional office.

In this twelfth round, the Allocation Board has before it three applications. Staff analyzed the applications and is now making recommendations to the Board on these applications.

DISCUSSION AND RECOMMENDATIONS TO THE BOARD

1. Recommendations for Awards of Fund Benefits

The Borderworx application indicates that the total amount to be expended on the project by the applicant is approximately \$2,960,980.

Based on a review of this application and consideration of relevant Program Criteria, Staff recommends that the Allocation Board recommend to the NYPA Trustees that the applicant receive an award of Fund Benefits in the amount indicated on Exhibit “A”.

Staff has been advised that the Borderworx application may propose a project that must receive approvals and/or comply with other legal requirements, such as the State Environmental Quality Review Act, before it may proceed. Staff recommends that any affirmative recommendation by the Board for such project not be forwarded to the NYPA Board of Trustees for action until after the Board receives appropriate notification that all such approvals and requirements have been satisfied, and that such recommendations be made subject to further consideration by the Board in the event that such approvals and/or legal requirements are not satisfied.

2. Applications for Future Consideration

The Board is also requested to defer the applications listed on Exhibit “B” for future consideration to allow staff more time to evaluate them.

PROJECT STATUS

Under the Act, recommendations for Fund Benefits by the Allocation Board are a prerequisite to an award of Fund Benefits by NYPA. Upon a showing of good cause, NYPA has discretion to adopt the Allocation Board’s recommendations or to award Fund Benefits in different amounts or on different terms than recommended by the Board. In addition, the Authority is authorized to include in any contract providing for the implementation of an award (“Award Contract”) any terms and conditions that NYPA deems appropriate.

Given the preliminary stage of the project identified in Exhibit “A”, Staff is not in a position to recommend definitive terms and conditions that should be included in any Board recommendation for an award, but Exhibit “A” does list some potential terms and conditions for NYPA’s consideration. It is anticipated that NYPA staff, in consultation with Staff, would negotiate final terms and conditions if an award is made after the receipt of more detailed information concerning the project.

RECOMMENDATION

Based on the foregoing discussion and information, Staff recommends that the Allocation Board:

1. Recommend to the NYPA Board of Trustees that the applicant listed in Exhibit “A” receive an award of Fund Benefits in the amount recommended in the Exhibit for the project proposed; and

2. Defer consideration of the applications listed in Exhibit “B” for a later time.

For the reasons stated, Staff recommends the adoption of the above-requested action by adoption of a resolution in the form of the attached draft resolution.

RESOLUTION

NOW THEREFORE BE IT RESOLVED, That the Western New York Power Proceeds Allocation Board (“Allocation Board”) hereby recommends that the Power Authority of the State of New York (“NYPA”) grant an award of Fund Benefits to the applicant listed in Exhibit “A” in the amount recommended therein, for the reasons set forth in the attached memorandum and the attachments thereto; provided that (i) if an application proposes a project that must receive approvals and/or comply with other legal requirements, such as the State Environmental Quality Review Act, before it may proceed, the recommendation for such application shall not be forwarded to NYPA until Staff, on behalf of the Board, receives appropriate notification that such legal approvals and/or requirements which are necessary for the project(s) to proceed have been satisfied, and (ii) such recommendations shall be subject to further Board review in the event that such approvals and/or legal requirements are not satisfied; and be it further

RESOLVED, That the Allocation Board hereby finds and determines that the applications listed on Exhibit “B” will be deferred for consideration at a later time; and be it further

RESOLVED, That Staff is authorized on behalf of the Allocation Board to transmit the Board’s decision and recommendations to NYPA subject to the qualification stated above regarding legal approvals and/or requirements, and to do any and all things and take any and all actions to effectuate the Board’s decision and the foregoing resolution.



Western NY Power Proceeds Allocation Board

Western New York Economic Development Fund Recommendation Memorandum

EXHIBIT A

Applicant Name:	Borderworx Logistics, LLC	REDC Region:	WNY
Project Type:	Business Investment	County:	Niagara
Industry:	Process, Physical Distribution, and Logistics Consulting Services	Locality:	Town of Sanborn
Amount Requested:	\$300,000	Start Date:	July 2015
		Finish Date:	January 2016
RECOMMENDED OFFER			
Recommended Total Award:	\$285,000		
Total Project Cost:	\$2,960,980		
% of Project Cost Recommended:	Approx. 10%		
PROJECT BUDGET- 50,000 sq. ft., pre-engineered building			
Use of funds	Amount	Source of Funds	Amount
Construction	\$2,691,800	Committed: First Niagara Bank	\$1,425,000
10% Contingency	\$269,180	Committed: Equity Investment	\$560,980
		Potential: NYBDC	\$675,000
		WNYPPAB	\$300,000
Total:	\$2,960,980	Total:	\$2,960,980
REGIONAL IMPACT MEASUREMENTS			
Number of Jobs Retained:	10		
Number of Jobs Created:	1		
Average Salary of Jobs:	\$36,000		
Indirect Jobs Created:			
Other Impact:	Operation of a designated Foreign Trade Zone for Niagara County. Phases II and III of the project are expected to create a total of 75 additional jobs (source: ESD job commitments for Phase II and III).		



Western NY Power Proceeds Allocation Board

Western New York Economic Development Fund Recommendation Memorandum

EXHIBIT A

PROJECT DESCRIPTION (Adapted from Application)

Borderworx, Inc. is a third party logistics company headquartered in Halton Hills, Ontario. In 2008, it established Borderworx Logistics, LLC (“Borderworx”) a NY corporation in Grand Island, NY, where the company currently leases space. Borderworx has outgrown its Grand Island location and has been actively reviewing alternative locations in both the US and Southern Ontario. To respond to its growth needs the company plans to purchase 31 acres in the Vantage Center Industrial Park in Niagara County, which is located in an inactive Foreign Trade Zone (FTZ) and in close proximity to the Niagara Falls International Airport.

The company has established a three-phased initiative to develop the property. The first phase is the subject of this project and entails the construction of a 50,000 square foot distribution center (the “Distribution Center”). The majority of the constructed building (approximately 40,000 sq. ft.) will be used to receive, inventory and distribute finished goods for various client industries. These clients are non-resident companies from Canada and overseas who will use this location as their business presence in the US market. The services Borderworx provides on behalf of these companies include, but are not limited to: (1) inventory storage, (2) order processing and distribution, (3) returns management, (4) accounting and finance, and (5) meeting space and work areas. This facility will also be used to support some light manufacturing and assembly work for distribution clients and house administration and IT departments.

Borderworx will use the facility built in Phase I to attract more Canadian businesses as clients. In Phases II and III Borderworx will construct other buildings suitable for light manufacturing on the remaining acres purchased.

OTHER ECONOMIC DEVELOPMENT BENEFITS RECEIVED

ESD: Excelsior Tax Credits- Job Growth Track for Phase I, II, & III	Up to \$590,000	NYPA: NA	\$
IDA: PILOT, Sales Tax & Mortgage Recording	\$ 582,000	Other: N/A	\$



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Western New York Economic Development Fund Recommendation Memorandum

EXHIBIT A

PREVIOUS STATE ASSISTANCE OFFERED OR PROVIDED		
TYPE	AMOUNT	STATUS
ESD: NA	\$	
BASIS FOR RECOMMENDATION		
<p>This company provides distribution of finished goods to retailers located throughout the U.S. and primarily in the Midwest. Borderworx is planning on moving the majority of its Canadian presence into the U.S. and is considering multiple border locations throughout the northern U.S. and southern Ontario. If the company relocates to any of these alternative locations, WNY will lose 10 jobs and Niagara County will lose the opportunity for a company to operate Niagara County's FTZ and create an additional 75 jobs. A Fund Benefits award would keep this company in NYS and gain a FTZ operator in Niagara County.</p>		
DISBURSEMENT TERMS		
<p>Subject to final determination by the New York Power Authority, staff anticipates that Fund Benefits would be used to reimburse the applicant for a portion of costs related to the construction of the Distribution Center, and disbursed in arrears in two installments:</p> <ol style="list-style-type: none"> 1. 90% of the award (\$256,500) upon completion of the project, including documentation of the following: <ul style="list-style-type: none"> ▪ employment of at least 10 Full-time Permanent Employees at the Project Location; ▪ total project expenditures of approximately \$2,960,980; and ▪ receipt of a Certificate of Occupancy or other documentation verifying project completion and operation. 2. 10% of the award grant (\$28,500) upon documentation of employment of at least 11 Full-time Permanent Employees at the Project Location. 		



Western NY Power Proceeds Allocation Board

Exhibit "B"
July 8, 2015

Applications Deferred for Further Analysis

Line	Business	Classification
1	Center for Employment Opportunities "CEO"	Deferred for further analysis
2	Buffalo and Erie County Development Corporation (Bethlehem Steel)	Deferred for further analysis



Western NY Power Proceeds Allocation Board

Exhibit "C"

Criteria adapted from the Western NY Power Proceeds Allocation Board's
"Procedures for the Review of Applications for Fund Benefits"

1. The extent to which an award of Fund Benefits would be consistent with the strategies and priorities of the Regional Economic Development Council ("REDC") having responsibility for the region in which an Eligible Project is located.¹ The Western New York Regional Economic Development Council which is responsible for Eligible Projects in Erie and Niagara Counties Strategies & Priorities are:
 - Promote "Smart Growth" by investing in areas that infrastructure already exists and achieves certain goals, such as: preserving historic buildings; reviving downtowns; reviving main streets; investing in existing neighborhoods; and investing in former industrial sites. A project consistent with Smart Growth will also focus on: enhancing walkability; enhancing multiple modes of transportation; connecting disadvantaged communities to employment clusters; spurring mixed-use private investment in existing communities and preserving/enhancing natural lands and or resources.
 - Promote workforce development by increasing diversity in the labor force, developing and cultivating that includes workers with advancement potential, underemployed, unemployed and special population; align education and skills training to job market for current and future industry needs.

¹ As provided for in EDL § 189-c(4), criteria 2-15 are adapted from the criteria for eligibility for Expansion Power, Replacement Power and Preservation Power under Public Authorities Law § 1005. The specific criteria identified in PAL § 1005(13)(b)(4)-(5) are relevant to power allocations under these programs but do not have any logical application to allocations of Fund Benefits. Therefore, the Board does not expect to use these criteria to evaluate applications for Fund Benefits. Additionally, in accordance with PAL § 1005(13), criteria 13-15 listed herein will only be used in the case of Eligible Projects which are proposed by Applicants as, and determined by the Board to be, "revitalization" projects.

- Foster entrepreneurship and new business formation and growth. Designing a plan that brings new technologies and/or products to the marketplace, increases new startups in strategic industries and facilitates the commercialization of products that can lead to job growth in the Region.
- Increase the industry profile of agriculture in WNY by: creating better access to markets; creating new products; creating new more efficient processes; creating strong regional brands; creating programs that promote careers in agriculture.
- Utilize Western New York’s proximity to Canadian and U.S. population centers to advance economic development in WNY. Bi-national projects will: utilize cross-border planning to create transportation and logistical infrastructure; improve operational relationships; promote the attractiveness of WNY as a hub for global trade.
- Position the WNY region as a global energy hub through new sources of clean energy, energy efficiency and energy efficient transportation.
- Support growth of advanced manufacturing by making research more available to manufacturers to help them innovate.
- Spur growth in the health and life sciences industry through improved commercialization, recruit high profile research talent and reducing the cost burden of healthcare while improving health outcomes.
- Expand the scope of higher education by increasing accessibility to Higher Education for communities that currently have limited access to educational opportunities; better aligning education with the industry needs and creating support structures for start-ups which will assist start-ups with commercialization, business planning, workforce preparation, facilities, etc.
- Grow visitors and visitor spending by raising the profile of WNY as a national and international destination; connect multiple tourist destinations in WNY; improve the profile of the WNY Gateway to the United States.

For more information on the Western New York Regional Economic Development Council please go to <http://regionalcouncils.ny.gov/content/western-new-york>.

2. The extent to which an award of Fund Benefits would be consistent with the strategies and priorities of the Regional Economic Development Council (“REDC”) having responsibility for the region in which an Eligible Project is located.² The Finger Lakes Regional Economic Development Council which is responsible for Eligible Projects in

² As provided for in EDL § 189-c(4), criteria 2-15 are adapted from the criteria for eligibility for Expansion Power, Replacement Power and Preservation Power under Public Authorities Law § 1005. The specific criteria identified in PAL § 1005(13)(b)(4)-(5) are relevant to power allocations under these programs but do not have any logical application to allocations of Fund Benefits. Therefore, the Board does not expect to use these criteria to evaluate applications for Fund Benefits. Additionally, in accordance with PAL § 1005(13), criteria 13-15 listed herein will only be used in the case of Eligible Projects which are proposed by Applicants as, and determined by the Board to be, “revitalization” projects.

Orleans and Genesee Counties Strategies & Priorities can be found at:
<http://regionalcouncils.ny.gov/content/finger-lakes>.

3. The number of jobs that would be created as a result of an award of Fund Benefits.
 4. The applicant's long term commitment to the region as evidenced the current and/or planned capital investment in applicant's facilities in the region.
 5. The ratio of the number of jobs to be created to the amount of Fund Benefits requested.
 6. The types of jobs that would be created, as measured by wage and benefit levels, security and stability of employment.
 7. The amount of capital investment, including the type and cost of buildings, equipment and facilities, proposed to be constructed, enlarged or installed.
 8. The extent to which an award of Fund Benefits would affect the overall productivity or competitiveness of the applicant and its existing employment.
 9. The extent to which an award of Fund Benefits may result in a competitive disadvantage for other business in the State.
 10. The growth potential of the applicant's facilities and the contribution of economic strength to the area in which the applicant's facilities are or would be located.
 11. The extent of the applicant's willingness to satisfy affirmative action goals.
 12. The extent to which an award of Fund Benefits is consistent with state, regional and local economic development strategies and priorities and supported by local units of government in the area in which the business is located.
 13. The impact of an award of Fund Benefits on the operation of any other facilities of the applicant, and on other businesses within the region.
 14. That the business is likely to close, partially close or relocate resulting in the loss of a substantial number of jobs.
 15. That the applicant is an important employer in the community and efforts to revitalize the business are in long-term interests of both employers and the community.
 16. That a reasonable prospect exists that the proposed award of Fund Benefits will enable the applicant to remain competitive and become profitable and preserve jobs for a substantial period of time.
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