

COUNCIL ON DEVELOPMENT FINANCE

**June 15, 2009
PUBLIC HEARING 353**

THOSE PRESENT:

Mr. Andy Lubin, Chairperson
Honorable Nancy Cook
Mr. Tom Gilligan
Mr. Jim Hutchison
Honorable Greg Lavelle
Mr. Donald Lynch
Mr. Fred Sears

Mr. Alan Levin
Mr. Gary Smith
Mr. Stephen Bach
Mrs. Lee Porter
Mrs. Barbara DeHaven
Mr. Jeff Stone
Mrs. Heather Kenton
Ms. Patti Cannon
Mrs. Karen Smith
Mr. Tom McCarthy
Elio Battista, Jr., Esquire
Annmarie Johnson, Esquire

ALSO PRESENT: Representing: **AlphaSense, Inc.** – Dr. Pengcheng Lv.; **Baltimore Aircoil** – Mr. Gregory Lowman; **Delaware College of Art and Design** – Mr. Bill Abernethy; **Isogen, LLC** – Mr. Bill Abernethy and Mr. William Major

LOCATION: State Tatnall Building, Room 105, 150 William Penn Street, Dover, Delaware 19901

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, June 15, 2009.

OLD BUSINESS:

Representative Lavelle made a motion that the minutes of the April 27, 2009 Council on Development Finance meeting be approved as presented. Mr. Sears seconded the motion which was then adopted by unanimous vote.

NEW BUSINESS:

AlphaSense, Inc. (“AlphaSense” or the “Applicant”): The applicant is requesting a matching grant from the Delaware Strategic Fund under the Delaware Technical

Innovation Program in the amount of \$50,000. AlphaSense is working to develop a cavity enhanced terahertz absorption spectrometer. Their Phase II research will be focusing on the optimization of the system to improve the spectrometer performance in terms of sensitivity and selectivity, and the implementation of a compact, portable, relatively inexpensive and field testable spectrometer product. AlphaSense's facility is located at 28 Hillstream Road in Newark, Delaware (the "Project").

Mrs. DeHaven presented this request to the Council. She stated it was exciting, leading edge technology and the SBIR bridge grant was perfect for this company. She stated AlphaSense, Inc. was founded in 2007 in Newark. There are two employees. AlphaSense hopes to grow to ten to twenty employees. The company specializes in laser spectroscopy, non-destructive evaluation (NDE) sensors and novel materials for sensor applications.

Mrs. DeHaven stated that the Army Research Office has extended an invitation for AlphaSense to submit an SBIR Phase II proposal based on the successful completion of its Phase I project. She stated this process can be used in foreign applications and chemical processes. She stated that AlphaSense goes before the Army very soon regarding the Phase II portion and this would support another two hires. This request is for transitional funding needed to continue the research and commercialization aspects.

Mr. Gilligan asked what kind of equipment was needed. Dr. Lv stated they need to buy a testing chamber which can be used for a lot of chemical testing and non toxic stimulants. Mr. Gilligan asked how much time was needed for the research. Dr. Lv stated that Phase I is approving the concept. Then for the Phase II, they will need the chamber to do the real thing.

Mr. Lubin asked if there were other real commercial uses. Dr. Lv stated that regarding the Army, there will be a need to determine precisely what the chemical contaminant is. He stated that AlphaSense's spectrometer can be used for that purpose.

Mr. Sears asked if AlphaSense would be developing the product itself or would there be an outside manufacturer. Dr. Lv stated they would keep that option open. He stated as of now AlphaSense does not have the resources. He stated another strategy is to get this product to the market through a large manufacturer but that all depends on how the business grows and how much they know the market.

Mrs. DeHaven stated that AlphaSense has a couple of technologies. It wants to be a commercial business. She stated they currently have this project and another one coming that is with the Navy.

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

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, Mr. Sears 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 June 15, 2010. Mr. Gilligan seconded the motion, which was then adopted by unanimous vote.

Baltimore Aircoil (“BAC” or the “Applicant”): The Applicant is requesting a grant from the Delaware Strategic Fund in the amount of \$166,000. The proceeds will be used in the expansion of BAC at its Milford, Delaware plant. BAC manufactures cooling towers, evaporative condensers, industrial fluid coolers, ice thermal storage systems and heat exchangers (the “Project”).

Mr. Stone presented this request to the Council. He stated BAC has been in Delaware for thirty-five years, consistently growing. He stated it is a privately held company. Mr. Stone stated that BAC received approval of a \$437,500 Delaware Strategic Fund grant in July 2003. The funds were used to assist BAC in its relocation of its operations in Jessup, Maryland to the Milford facility. The total disbursed under that grant was \$250,000 for the creation of one hundred positions. In September 2002, BAC was awarded a \$160,000 Delaware Strategic Fund to help offset the costs of providing public sewer service to the plant.

Mr. Stone stated that this February, BAC announced it was going to close its Paxton, Illinois operations and relocate it to Milford, Delaware and Madera, California. He stated BAC will hire an additional forty-three people initially and approximately forty next year. There is the possibility it could add more if the economy turns around. BAC expects a capital investment of \$1,300,000 in this expansion.

Mr. Stone stated that BAC is a significant employer, a good manufacturer and this is a real opportunity for Delaware. He stated this grant request of \$166,000 to help offset BAC’s capital expenditures for this move is \$2,000 per job which is less than it was the last time.

Mr. Bach discussed the financial analysis of BAC. He stated the liquidity and ratios are at par or better. He stated BAC has no debt and has good profit margins.

Mr. Lowman stated that BAC has been in Milford thirty-five years and has invested a lot of money in the Milford operation. He stated the Milford facility is the largest North America facility. He stated Milford is a great place to do business; they have good employees and want to continue their business in Delaware. He stated this grant will help BAC achieve its goals of growth and help offset some of the costs that will be incurred in bringing this plant to the State. He stated BAC will be adding one hundred extra parking places, and will be rerouting the traffic flow. He stated that currently BAC ships out about one hundred models each month. He stated that will increase by fifty.

Mr. Lowman stated that BAC hopes to complete both projects by the fall. He stated BAC has good pay rates and benefits and it will be hiring local contractors. These will be full time, permanent.

There will be a three year claw back in the Grant Agreement.

Mr. Sears asked if BAC had any problems finding skilled employees. Mr. Lowman stated that for every ten brought in, they keep three to four. He stated there is plenty of help out there right now; it's just trying to match the right employee to the right position and the right pay rate. He stated that one employee from Paxton transferred here. He stated the offer was made to others but only one decided to move here.

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 the maintaining or providing of 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 grant proceeds, will be available or expended on the date on which The Delaware Economic Development Authority disburses the requested grant funds; (iv) the Grant will effectuate the purposes of Chapter 50, Subchapter IV of Title 29 of the *Del. C.*, 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, Mr. Sears made a motion that the Council recommend to Mr. Alan Levin, Chairperson, The Delaware Economic Development Authority, approval of a grant in the amount not to exceed One Hundred Sixty-Six Thousand Dollars (\$166,000) to be disbursed from the Delaware Strategic Fund, for the Project, contingent upon the approval remaining in effect through and including June 15, 2010. Representative Lavelle seconded the motion, which was then unanimously approved.

Delaware College of Art and Design (“DCAD” or the “Applicant”): On September 25, 1996, the Authority committed to financial assistance for the Wilmington Economic Development Corporation (“WEDCO”) in the amount of \$750,000 through the Delaware Strategic Fund in the form of a grant. The proceeds were used to renovate a building located at 605-A Market Street Mall, owned by WEDCO in which a two-year professional college of art and design was established. The company is requesting an amendment to that Agreement.

Mr. Smith stated that the Agreement with WEDCO contained the following claw back provision: “Should the College purchase the property; the corporation (“WEDCO”) will pay 27% of the sales price to the Authority, immediately following the closing of the sale.” On April 14, 1997, \$750,000 in funds was disbursed to WEDCO. On June 6, 1997, WEDCO requested the claw back provision in the letter be removed so that WEDCO could sell the property to DCAD. The request was denied. On October 4, 2004, WEDCO requested a clarification concerning its audit which requires that it book the grant as a loan because of the claw back provision under D) 1, 2 and 3. Staff has told WEDCO that the agreement is considered a grant, not a loan by The Delaware Economic Development Authority. On March 17, 2009, DCAD requested the claw back provisions be removed so that it could purchase the property.

The proposed transaction that DCAD has offered WEDCO is to purchase the property for \$1.00. Based on the \$1.00 transaction, DEDO has to either modify the Grant Agreement or collect \$0.27. DEDO is recommending that it modify the Grant Agreement to eliminate all of Section (D).

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, The Delaware Economic Development Authority, approval of DEDO’s request to modify the Grant Agreement between DEDO and WEDCO by deleting all of Section (D). Mr. Gilligan seconded the motion, which was then unanimously approved.

Isogen, LLC (“Isogen” or the “Applicant”): On June 30, 2008, the Authority committed to financial assistance for Isogen, LLC, in the amount of \$1,500,000 through the Delaware Strategic Fund in the form of a loan. The proceeds were used for working capital associated with the relocation of an aseptic processing manufacturing facility from the State of New Jersey to the State of Delaware. The company is requesting an amendment to that Agreement.

Mr. Bach presented this request to the Council. He stated that Isogen is requesting that DEDO amend its lien position. He stated that Isogen had considered various states and ultimately chose Delaware with a favorable lease from DuPont. Isogen received a loan from DEDO and was approved for a grant to be disbursed when Isogen met certain

criteria. Currently Isogen is looking at various forms of financing. It has been working with the SBA and with WEDCO. Isogen is requesting a restructured term loan with WTC. They have requested that DEDO switch to a fourth lien position. WEDCO will take a second lien position on machinery. DEDO would become the fourth-position lien holder on the assets of Isogen, LLC in order to allow for further financing to acquire critical assets and make the necessary leasehold improvements.

Isogen currently has twenty-eight employees and will add seventeen by the end of the year.

Mr. Smith stated that Director Levin is very supportive of this project, sees it as a positive expansion and supports the subordination request. Mr. Gilligan asked what was DEDO's current position. Mr. Smith stated that DEDO was in a second position behind Wilmington Trust because there wasn't an SBA or a WEDCO involvement. Mr. Lubin asked if Wilmington Trust was subordinating to WEDCO on accounts receivable.

Mr. Gilligan asked about the loan/grant situation. Mr. Smith stated that it was disbursed as a loan. However, if Isogen met certain milestones in 2011 such as doing a certain amount in sales and having an employment number of twenty-five; it would convert to a grant. He stated that in September, Isogen will start making interest and principal payments on the loan. Mr. Battista stated that the only legal documents are the Note and the Intercreditor Agreement. He stated if Isogen meets those two criteria, DEDO will issue a whole new set of documents. Mr. Smith stated this is a "Convertible" note. He stated that from DEDO's standpoint, we were hoping Isogen would do its second expansion which they had anticipated doing and that it would entail a lot of additional employees. Senator Cook asked if that project was still plausible. Mr. Smith stated yes. Mr. Bach stated DEDO is looking strictly at manufacturing revenues.

Mr. Sears asked if the 504 loan had already been approved. Mr. Abernethy stated it had been confirmed approved. Mr. Smith stated because of his position with DEDO, he had abstained from the vote on the 504 project.

Mr. Lubin stated that the assembly and manufacturing is what is triggering the sales. He believes the likelihood of Isogen meeting its goals are thin. Mr. Lubin stated this is contingent upon getting pharmaceutical orders. Mr. Major said that right now the company has \$35,000,000 in pipeline business and \$13 million in highly probable sales. Mr. Lubin asked about the time frame. Mr. Abernethy stated this should happen over the next twelve months. They will have all of 2010 and 2011 to ramp up to that amount. Senator Cook asked if Isogen would start paying interest and principal in September. Mr. Smith stated that yes, the grant will pay off what is outstanding – there will not be any reimbursement for funds paid back.

Mr. Sears feels we have to acknowledge that we are giving a lot of support to this company because our fourth position isn't worth very much. Mr. Lubin stated that basically this is a start up business.

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

After consideration, Representative Lavelle made a motion that the Council recommend to Mr. Alan Levin, Chairperson, The Delaware Economic Development Authority, approval of Isogen, LLC's request that DEDO become the fourth-position lien holder on the assets of Isogen, LLC. Mr. Gilligan seconded the motion, which was then unanimously approved.

Information Assurance Corporation ("IAC" or the "Applicant"): The Applicant has requested \$500,000 from the Emerging Technologies Pre-Venture Fund. The applicant is an early stage company formed to engage in the business of information assurance products and services including electronic notary, digital safe deposit box, and non-repudiation software. The applicant proposes to use the debt/equity financing to assist with development efforts and working capital for its facility located in Wilmington, Delaware (the "Project").

Mr. Smith presented this request to the Council. He stated that DEDO is going to be the lead investor. He stated this is kind of new territory for DEDO. He stated DEDO hopes to have a term sheet by July. Mr. Smith stated that IAC is going live with the State of Delaware's Secretary of State's office on July 15th. He stated this should provide some pretty significant revenues for the State of Delaware.

Mr. Smith stated that DEDO looked at this project from a venture capital aspect. He stated it met certain required criteria. He believes the State should be able to receive some pretty significant returns. He stated the Pre Venture Fund Board (the "Board") has been very tentative with this Project but realizes that even though technology is extremely good, there is apprehension on management. He stated there is a lot of concern on management's capability of taking company further along and raising the necessary capital. He stated however, the company just recently raised \$500,000. Mr. Smith's concern is that the company may run out of money because of its burn rate. He stated that basically right now, everyone is volunteering their time, so they're going to go through money a lot quicker once they start having to pay the needed employees.

Mr. Smith stated that the Board asked the Attorney General's office about a conflict of interest since IAC has a contract with the State. Mr. Battista stated that IAC needed to disclose that when this company presented its request for financial assistance, it had to disclose that it had a contract with the State and that it had received funds from the State. Mr. Battista stated that the Board's concern is whether Pre Venture funds are used on what is still due to the State. Mr. Battista stated that there are really no strings but the question to be answered is if this company is getting State money to deliver what the

company said it was going to deliver to the State. He stated the way it is supposed to be is that they have the State of Delaware on board and then will use Pre Venture funds to go out to get other contracts. Senator Cook stated that the Bill regarding this was just passed this week.

Mr. Lubin stated he knows IAC has gone out to a lot of law firms to engage their business. He asked why the CDF write up said \$250,000 and the application said \$500,000. Mr. Smith stated that as DEDO gets more information, the Pre Venture Board can determine an exact number – so the amount would be up to \$500,000.

Mr. Lubin stated that since the Council has not seen a term sheet, based on the information submitted today, DEDO is asking the Council to give a blanket approval of \$500,000. He asked if that decision was deferred until July 15th, wouldn't DEDO know by then if the funds were being used as intended. Mr. Battista stated that if you were asking him, he would say yes; but the Board said that the money is needed immediately. Mr. Smith stated that DEDO has asked for updated financial statements and a laundry list so they can go forward with a term sheet.

Mr. Hutchison asked what kind of staff will be needed after July 15, 2009. Mr. Smith stated that IAC will need processors, phone staff and sales people to sell this product. He stated that until July 15, they can't sell because it is not up and running yet.

Mr. Sears asked if DEDO was recommending that the Council go forward with the Project. Mr. Smith stated that was correct, but if the subcommittee has any concerns DEDO will not go forward, but DEDO would like to have the option to move fast if needed. Mr. Battista stated the Board wants specific terms put in the term sheet.

Representative Lavelle asked why there was no company representative at the meeting today. Mr. Smith stated that the Board does a very exhaustive analysis. Representative Lavelle said his point was "Did they look them in the eye and say is our product here now?" Mr. Battista stated that was done. In response to Mr. Sears' question, Mr. Battista stated that the Applicant was present at the original presentation.

Mr. Levin stated that there is more to this than the Bill that was just passed. He stated the work that has been done with the Department of State, working as well with the Bank of America in efforts to move it along; he thinks they have done enough of their homework for the Project to move forward.

Mr. Gilligan asked if the Pre Venture Board was recommending \$250,000. Mr. Smith stated that \$500,000 was the amount that DEDO recommended but that ultimately the Board will recommend the amount. Senator Cook asked if the Council could recommend \$250,000. Mr. Smith stated that if the Council does recommend \$250,000, it would limit DEDO's ability to do what it feels is best after complete consideration.

Mr. Sears stated that he wants the Council to be informed of the final results. Mr. Smith stated he would send the CDF the information that goes to the subcommittee. Mr. Battista stated the subcommittee is developing a time line. He stated the concept is to move forward but DEDO doesn't know what the company is going to do.

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

After duly considering, the nature of the business and finding that the Project will (i) serve a public purpose by being a knowledge-based, fast-growing small business in a technology field such as biotechnology, (ii) that the Grant will effectuate the purposes of 76 *Del. Laws, c. 79*, §46(d) (July 1, 2007) and (iii) 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, Mr. Gilligan made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of an equity investment in the amount not to exceed Five Hundred Thousand Dollars (\$500,000) to be disbursed from the Emerging Technologies Pre Venture Fund, for the Project, contingent upon the approval remaining in effect through and including June 15, 2010. Mr. Hutchison seconded the motion, which was then unanimously approved.

International Marketing Systems ("IMS" or the "Applicant"): – On May 24, 2004, the Authority committed to financial assistance for IMS (which operates under the trade name of Chemblend), in an amount of \$200,000 through the Delaware Strategic Fund in the form of a loan. The loan proceeds were used for the construction of a building in the Porter Road Business Center in New Castle County, Delaware, which houses its chemical blending/packaging business located at 400 Carson Drive in Bear, Delaware. The company is requesting an amendment to the loan documents (the "Project").

Mr. Smith stated that the IMS loan is based on a twenty year term with a five year balloon at a three percent fixed interest rate. The balloon payment is due August 1, 2009 in an amount of \$176,775.57. IMS has notified DEDO that it will not be able to make this balloon payment. IMS was unable to get other financing. Therefore DEDO is recommending that this loan term be extended for another five years.

Mr. Sears expressed concern and suggested extending the term to three years. In response to Mr. Gilligan's question, Mr. Smith stated that the interest rate would stay the same at three percent. He also stated that the loan was current.

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, The Delaware Economic Development Authority, approval of

International Marketing Systems' request that the loan documents be modified to reflect an extension of three years to the term of the loan and that all other conditions of the loan remain the same. Mr. Gilligan seconded the motion, which was then unanimously approved.

New Staff: - Mr. Battista introduced Annmarie Johnson, Esquire to the Council. Ms. Johnson will be taking Mr. Battista's place when he leaves in October.

Scientific Products & Systems ("SP&S"): – Mr. Smith stated that SPS has filed for bankruptcy. There will be a meeting of creditors in July. He stated he and Mr. Smith will be attending. He will also be filing a Proof of Claim. However, he stated that he didn't know how to value the intellectual property. He stated if he values it high, the Trustee may say that they can liquidate and DEDO would have a loss. However, if he should value it low, there could still be a loss. He stated the Trustee is from Philadelphia. He stated that if the Trustee believes they are worth more than DEDO values them, then DEDO could be a credit bidder. Mr. Battista stated that the strategy is to see if you can leverage this to some other company using the patents. Mr. Sears asked if DEDO had capability to find a company that may use this intellectual property. Mr. Smith stated he is aware of one company which DEDO would contact. Mr. Battista also stated that the Department of Labor is after SP&S for back taxes. If these taxes are not paid, Mr. Bach is personally liable. SP&S also owes other tax money. DEDO will keep the Council informed.

Change in Fee Schedule: The proposed fee schedule was discussed. Mr. Bach stated that on many of the projects, DEDO is losing money. He stated that on the very small projects, it would be hard for the company to come up with high fees. Mr. Sears stated that he would rather have the fee in there and it could be waived at our discretion. Mr. Sears also suggested that there be a charge for modifications and amendments.

A revised fee schedule including a fee for modifications and amendments will come back to the Council for review and approval. Upon approval, the appropriate action will be taken to adopt the new schedule.

ADJOURNMENT

The meeting adjourned at 10:30 a.m.

Respectfully submitted,

Lee Porter, Secretary

LKP

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cc: Members of the Council on Development Finance
Director Alan Levin
Elio Battista, Jr., Esquire

The next CDF meeting is scheduled for July 27, 2009 at 9:00 A.M. in New Castle, Delaware.