

EASTERN SHIPBUILDING GROUP

P.O. BOX 960
2200 NELSON ST.
PANAMA CITY, FL 32402
PHONE (850) 763-1900
FAX (850) 763-7904
EMAIL info@easternshipbuilding.com

December 6, 2018

Via email

Florida Triumph Gulf Coast, Inc.
PO Box 12007
Tallahassee, Florida 32317

Attention: Dr. Rick Harper; Cori Henderson; Susan Skelton; Scott Remington

Subject: Triumph Application #55 Eastern Shipbuilding Group, Inc.

Dear Ladies and Gentlemen:

As a follow up to numerous meetings and discussions with you regarding our application which is on the agenda for the December 7 Triumph Board meeting, we are writing as requested to explain why we believe the board has full authority under the Gulf Coast Economic Corridor Act, (the "Act") to make the award.

We are aware of the legal memoranda dated April 27, 2018 and June 12, 2018 but do not believe those memoranda directly relate to our application as supplemented. Rather it is our view that our current application meets the requirements of the Act and may be awarded.

I. THE TRIUMPH BOARD IS AUTHORIZED TO GRANT AWARDS TO PRIVATE ENTITIES

As explained below, awards to private entities are *plainly contemplated* by the Act. This is expressed in the Act's "Legislative Intent" (§ 288.8011), the definition of "awardee" under the Act (§ 288.8012), the statutory criteria for "awards" (§ 288.017(1)), and the Act's application procedure (§ 288.017(2)). Each of these four items are addressed below.

1. Legislative Intent:

Section 288.8011 contains an express declaration of the Florida Legislature's intent in enacting the Gulf Coast Economic Corridor Act. That provision revealingly states as follows:

The Legislature recognizes that fully supporting areas affected by the Deepwater Horizon disaster to ensure goals for economic recovery and diversification are achieved is in the best interest of the citizens of the state. The Legislature intends to provide a long-term source of funding for efforts of economic recovery and enhancement in the Gulf Coast region. The Legislature finds that it is important to help **businesses, individuals, and local governments** in the Gulf Coast region recover.

Fla. Stat. § 288.011 (emphasis added). The Legislature’s inclusion of the words “businesses” and “individuals,” *in addition to* “local governments,” plainly indicates that the Act’s provisions are intended to benefit private entities and not just local governments. Triumph should be familiar with this broad and explicit declaration of legislative intent since it made explicit reference to this statutory provision in the meeting packet accompanying its August 18, 2015 Board of Directors Meeting. The first full paragraph on page 8 of that document states as follows:

The **Legislative Intent** of the Gulf Coast Economic Corridor Act (hereinafter, the “Act”) is to help **businesses, individuals and local governments** in the Disproportionately Affected Counties recover from the 2010 Deepwater Horizon Oil Spill (hereinafter, the “Oil Spill”) by providing long term support and funding for efforts in economic recovery, diversification and enhancement in the Gulf Coast Region.

(emphasis added)

2. **Definition of “Awardee”**

The legislature’s intent that the Act “*help businesses*” (and not just local governments) is further evinced by Section 288.8012, which broadly defines an “*awardee*” as follows:

“Awardee” means a **person, organization, or local government** granted an award of funds as authorized in s. 288.8017 for a project or program.

(Emphasis supplied)

By including the words “person” and “organization” (along with “local government”) in the definition of “Awardee,” the Legislature clearly contemplated awards being made not only to government entities but also to private organizations, persons and entities. To limit awards under the Act to “local governments” would render the words “person” and “organization” completely meaningless, in violation of basic rules of statutory construction. *See Borden v. E.-European Ins. Co.*, 921 So. 2d 587, 595 (Fla. 2006) (“It is . . . a basic rule of statutory construction that “the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless.”) (citing *State v. Goode*, 830 So.2d 817, 824 (Fla. 2002)); *Am. Home Assur. Co. v. Plaza Materials Corp.*, 908 So. 2d 360, 367–68 (Fla. 2005) (“As a fundamental rule of statutory interpretation, courts should avoid readings that would render part of a statute meaningless.”). Further, such an absurd construction would subvert the plainly expressed legislative intent of the Act, which is to “*help businesses*.”

Echoing the plain language of the statutory definition of “awardee,” Triumph has itself acknowledged that “persons” and “organizations” may apply for an award under the Act. On its website, Triumph has included the following among its “*Frequently Asked Questions*”:

Who may apply for an award from Triumph Gulf Coast, Inc.?

An “Awardee” under the law may include a person, organization, or local government.

(<https://www.myfloridatriumph.com/about/frequently-asked-questions/>)

3. Statutory Criteria for Awards:

The obvious conclusion that private corporations and entities are entitled to receive awards under the Act is further bolstered by Section 288.8017(1), which sets forth the criteria by which Triumph shall award project or program funds. That section states in pertinent part:

Awards.—

(1) Triumph Gulf Coast, Inc., **shall** make awards from available funds to projects or programs that meet the priorities for economic recovery, diversification, and enhancement of the disproportionately affected counties. Awards **may** be provided for:

(a) Ad valorem tax rate reduction within disproportionately affected counties;

(b) Local match requirements of s. 288.0655 for projects in the disproportionately affected counties;

(c) Public infrastructure projects for construction, expansion, or maintenance which are shown to enhance economic recovery, diversification, and enhancement of the disproportionately affected counties;

(d) Grants to local governments in the disproportionately affected counties to establish and maintain equipment and trained personnel for local action plans of response to respond to disasters, such as plans created for the Coastal Impacts Assistance Program;

(e) Grants to support programs that prepare students for future occupations and careers at K-20 institutions that have campuses in the disproportionately affected counties. Eligible programs include those that increase students’ technology skills and knowledge; encourage industry certifications; provide rigorous, alternative pathways for students to meet high school graduation requirements; strengthen career readiness initiatives; fund high-demand programs of emphasis at the bachelor’s and master’s level designated by the Board of Governors; and, similar to or the same as talent retention programs created by the Chancellor of the State University System and the Commission of Education, encourage students with interest or aptitude for science, technology, engineering, mathematics, and medical disciplines to pursue postsecondary education at a state university or a Florida College System institution within the disproportionately affected counties;

New Construction • Marine Repair • Industrial

(f) Grants to support programs that provide participants in the disproportionately affected counties with transferable, sustainable workforce skills that are not confined to a single employer; and

(g) Grants to the tourism entity created under s. 288.1226 for the purpose of advertising and promoting tourism and Fresh From Florida, and grants to promote workforce and infrastructure, on behalf of all of the disproportionately affected counties.

(Emphasis added)

The Legislature's use of the word "shall" in the above provision **mandates** awards to be made for "economic recovery, diversification, and enhancement." The use of the word "may" is **permissive** and authorizes awards for the items listed in (a) through (g). When read together, it is clear that the list (a) through (g) is neither an exclusive nor an exhaustive list of all possible grants that are authorized under the Act. If the Florida Legislature had intended that awards be confined to the list above, they could easily have said so in plain and unambiguous terms. For example, the Legislature could have expressed such an intent by stating that "Awards **shall** be provided **solely** for..." the above list. But they did not do so. Accordingly, it would be erroneous to conclude that awards may not be made unless they fall within the list above.

4. Application Procedure:

The Act's application procedure also evinces a clear intent that private corporations are eligible for awards under the Act. To that end, Section 288.8017(2) states in pertinent part:

(2) Triumph Gulf Coast, Inc. shall establish an application procedure for awards and a scoring process for the selection of projects and programs that have the potential to generate increased economic activity in the disproportionately affected counties, *giving priority to programs that: . . .*

(a) Generate maximum estimated economic benefits, based on tools and models not generally employed by economic input-output analyses, including cost-benefit, return-on-investment, or dynamic scoring techniques to determine how the long-term economic growth potential of the disproportionately affected counties may be enhanced by the investment.

(b) Increase household income in the disproportionately affected counties above national average household income.

(c) Leverage or further enhance key regional assets, including educational institutions, research facilities, and military bases.

(d) Partner with local governments to provide funds, infrastructure, land, or other assistance for the project.

(e) Benefit the environment, in addition to the economy.

(f) Provide outcome measures.

(g) Partner with K-20 educational institutions or school districts located within the disproportionately affected counties as of January 1, 2017.

(h) Are recommended by the board of county commissioners of the county in which the project or program will be located.

New Construction • Marine Repair • Industrial

- (i) Partner with convention and visitor bureaus, tourist development councils, or chambers of commerce located within the disproportionately affected counties.

Fla. Stat. § 288.8017(2) (emphasis added)

It should be noted that even though subsections (d), (g), and (i) above use the phrase “**partner with**” public entities, the use of this phrase simply authorizes public private partnership arrangements and does not mandate them. Further the introductory language makes clear that such arrangements are simply to be given “priority” in the scoring process. In other words, the projects listed above, including public private partnerships, are to be given priority, but it is not necessary for a project to be a public private partnership in order to be approved.

In addition to the above, that the Legislature contemplated awards to private enterprises can also be found in Fla. Stat. § 288.8017(3-4), which states “awards may not be used to finance 100 percent of any project or program. Triumph Gulf Coast, Inc., **may require a one-to-one private-sector match** or higher for an award, if applicable and deemed prudent by the board of directors.” Clearly, if the Legislature intended that awards would be made solely to public projects, it would never comment on a possible match from the private sector.

II. EASTERN’S APPLICATION IS A PUBLIC INFRASTRUCTURE PROJECT THAT QUALIFIES FOR TRIUMPH FUNDING

Section 288.8017(1)(c), of the Act provides in part that “Triumph Gulf Coast, Inc., shall make awards from available funds to projects or programs that meet the priorities for economic recovery, diversification, and enhancement of the disproportionately affected counties. Awards may be provided for: ...**(c) Public infrastructure projects for construction, expansion, or maintenance which are shown to enhance economic recovery, diversification, and enhancement of the disproportionately affected counties...**”.

The Act does not define “public infrastructure projects” but makes clear that in order to qualify for Triumph funding, any such project must be “shown to enhance economic recovery, diversification, and enhancement.” So, in order to be eligible for a Triumph award under 288.8017(1)(c), of the Act the project must be both, a public infrastructure project, and a project that is shown to enhance economic recovery, diversification, and enhancement. The project in Eastern’s application meets both requirements.

1. Public Infrastructure:

Because the Act does not define the phrase “public infrastructure projects”, the Triumph Board must make its own factual determination as to whether the project in Eastern’s application qualifies. The project entails the dredging and improvement of public waterways and the conversion and improvement of Eastern’s Nelson street facility to public infrastructure by contributing it exclusively to the nation’s defense industrial base (an obvious public purpose) for a period of at least 20 years. Eastern submits that dredging and improving public waterways coupled with the improvement and dedication of shipbuilding facilities exclusively to the defense industrial

New Construction • Marine Repair • Industrial

base for a period of 20 years is a public infrastructure project within the meaning of the Act.

Federal law requires the Department of Defense to annually evaluate and issue a report to Congress on the status and capabilities of the nation's defense industrial base which is essentially a partnership of private industries and contractors, Government entities, non-profit research entities and public and private universities. "The mission of the manufacturing and industrial base policy is to monitor, preserve, and enhance the national security industrial base of the United States."¹

In its annual report to Congress for Fiscal Year 2017 (Released in March 2018) the Department of Defense noted that there are relatively few shipyards in the U.S. shipbuilding defense industrial base. The report stated that the "shipbuilding defense industrial base consists primarily of seven shipyards owned by four companies and their suppliers." None of those shipyards are in Florida and all of them compete for Government contracts, including the OPC contract. The Report indicated that while the shipbuilding sector remained stable during fiscal year 2017, the number of domestic shipyards has declined over the last two decades, the increase in Government ship construction demand will strain the current U.S. shipbuilding sector, and that, "one of the challenges for the Department of Defense is to maintain a healthy industrial base capable of supporting the fleet growth." This is accomplished in part by Government decisions to single or sole source ship construction projects to those limited number of shipyards comprising the defense industrial base in order to ensure that their financial health and long term capabilities remain intact as a matter of national security.

From a shipbuilder's perspective, the only way to become a part of the Government's preferred defense industrial base is to dedicate shipyard facilities exclusively to the Government's shipbuilding needs and invest capital into shipyard infrastructure that is uniquely tailored to the Government's shipbuilding needs. In essence, the shipyard commits its facilities and capital exclusively to the Government's ship construction needs in order to maintain the construction capability needed for national security. In exchange, the Government commits to make Government ship procurement decisions in a manner that preserves the stability and resiliency of the shipbuilding defense industrial base, also for the purpose of meeting national security needs. As a result of this exchange, a public-private partnership is formed.

2. Economic Recovery Diversification and Enhancement:

As evidenced by the University of West Florida Haas Center Report, there is no doubt the project strongly and significantly enhances economic recovery, diversification, and enhancement. Indeed the project truly is "transformational" within the meaning of established Triumph Board criteria.

Honorable Rick Larsen: HEARING BEFORE THE PANEL ON BUSINESS CHALLENGES WITHIN THE DEFENSE INDUSTRY OF THE COMMITTEE ON ARMED SERVICES HOUSE OF REPRESENTATIVES ONE HUNDRED TWELFTH CONGRESS FIRST SESSION¹

III. NUMEROUS GOVERNMENTAL ENTITIES HAVE PARTNERED WITH, ENDORSED AND SUPPORTED EASTERN'S PROJECT

A number of public entities recognize the public benefit of Eastern's project and have established public-private partnerships with Eastern to support the project, invest funds in the project, and otherwise partner with Eastern to complete the project.

In 2017 Eastern informed officials of the State of Florida about the extensive financial support that other states were providing to competitive shipyards located in those states in order to help those shipyards compete against Eastern to win Government shipbuilding projects, including the United States Coast Guard Offshore Patrol Cutter project. Under the leadership of Richard Corcoran, Speaker of the Florida House of Representatives, and Joe Negron, President of the Florida Senate, the 2017 Florida legislature appropriated, and on June 2, 2017 Governor Scott approved the expenditure of \$9.5 Million of public funds for construction of shipbuilding infrastructure on private property and related dredging in Bay County and \$6.0 Million toward a floating dry dock, related shipyard infrastructure on private property, and related dredging in Gulf County, both in direct support of the Offshore Patrol Cutter program.

In addition to support from the State Legislature, the Florida Department of Transportation and the County Commissions of each of Bay and Gulf Counties have entered into partnering agreements with Eastern in support of Eastern's OPC program. The above appropriated funds are being administered through a grant from the Florida Department of Transportation to the County Commissions of Bay and Gulf Counties. The Florida Department of Transportation and each County Commission entered into a Joint Participation Agreement. The Bay County Commission entered into a Sub-Recipient Agreement with Eastern and the Gulf County Commission entered into an Economic Development Agreement with Eastern to assist Eastern in executing these projects and administering the grants.

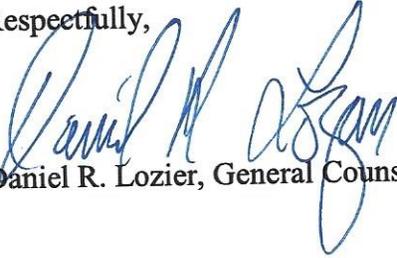
In 2016 Eastern applied for and was granted funding in the amount of \$529,868 by the United States Maritime Administration ("MARAD") which was used to help offset the cost of acquiring precision steel and aluminum cutting machinery to be used in constructing the OPC's.

In connection with the dredging portions of the project, Bay County has agreed to absorb \$450,000 of expense for disposal of dredged material. Eastern and Bay County are continuing discussions and Bay County may agree to absorb more cost depending on final dredge spoil test results, commercial value, and approval by the Bay County Commission.

IV. SUMMARY AND CONCLUSION

The Act authorizes grants to private parties to develop public infrastructure projects that are shown to enhance economic recovery, diversification, and enhancement of the disproportionately affected counties and which serve a public purpose. Eastern's project is such a project and has been recognized as such by the same legislature that established Triumph. The Triumph Board is fully authorized and on solid legal footing to grant the application.

Respectfully,



Daniel R. Lozier, General Counsel