Unlocking Incentives: Planning for After the Final Offer

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The formal completion and announcement of a competitive site selection project is a monumental milestone for any enterprise. Following multiple rounds of incentives negotiations with local and state economic development agencies and selection of a site for a high-profile investment, all projects dream of the shovel ceremony, shaking hands with the Governor, and construction equipment moving dirt.

But hold the confetti—for now. **Fully unlocking incentives is a rigorous, complex, and time-intensive process.** To capitalize on the negotiated deal, companies should adhere to prescribed timelines for expenditures and hiring, compile thorough documentation, and submit necessary administrative forms to meet compliance and reporting requirements. The "true value" of a deal can only be validated once the facility achieves a steady operational state: when construction is completed, machinery and equipment is installed, every dollar of promised capital is expended, each employee is hired, trained, retained, and compensated, and all documentation and reporting requirements are satisfied.

CEOs and their executive teams should keep the following principles in mind when seeking to fully unlock the value of negotiated incentives:

1. ***Validate Letter of Intent (LOI) Numbers: Evaluate offer values before entering into final agreements and contract negotiations. Ensure you understand each program's general qualifiers and how awarded incentives can offset total costs.***
   Taking award amounts at face value may result in an overvaluation of actual incentives. For example, state income tax credits are commonly overvalued. These credits are only as valuable as a company's state income tax liability, or the percentage of unused credits that are cash refundable or sellable to other entities. Many companies do not generate a sufficient state income tax base to realize the full value of these programs, especially when considering the net operating losses from large capital outlays made during construction and the global nature of product sales. Another commonly overvalued program is local property tax exemptions. Incorporating complicated machinery and equipment depreciation schedules into a tax abatement calculation can lead to overvaluation.

   Approval and funding transfer processes also require validation. Bespoke programs can bring additional value to the forefront, though the viability of such programs should be confirmed during active negotiations and ideally prior to a finalist site being selected to maintain leverage. While impactful, new programs can take significant time to draft and receive legislative approval.

Economic Development Incentives are initially agreed to by the company and location in a non-binding **Letter of Intent (LOI)**. The LOI generally outlines rough deal terms, timing, and may only span a few pages. **Upon a final site selection, a company typically enters into a Memorandum of Understanding (MOU)** with the selected location—a contract which can span hundreds of pages, documenting all deal terms and compliance, requiring thorough legal and tax review

2. ***Acknowledge Mutual Interests and Motivations: Continue to articulate your desire for a win-win scenario to the finalist location before and during contract negotiations.***
Demonstrating your long-term commitment to a location and its success—beyond just your own bottom-line—helps build goodwill with economic development stakeholders. Effective economic development agencies will emulate a similar rhetoric and commitment to the company's success, setting the stage for more productive discussions as contracting activities progress. The ideal incentives outcome benefits both the company and the selected location. We explore how to receive incentives for corporate projects while enabling positive outcomes for all parties here.

As companies seek to optimize financial outcomes in incentives negotiations, CEOs and their executive teams should consider how the headline number may be perceived by community and state stakeholders once announced. Is the desired or requested deal amount commensurate to the project size and anticipated impact? What benchmarks may be cited as comparable projects? Aside from bringing new jobs and capital into the community, what other benefits will the investment deliver? In recent years, for example, Community Benefits Agreements have increased in frequency and are now often expected for mega-projects, particularly if any unique state or local legislation is on the docket to secure the investment. These agreements outline how a company aims to invest in local initiatives and community programs, such as small business development, education, housing, and recreation.

3. ***Strategize on Contract Negotiations: Develop a clear strategy for negotiating mutually beneficial incentive terms and final agreements.***
Retaining a strategic advisor beyond the conclusion of site selection and incentives negotiations enables you to focus efforts on implementation activities like facility design, vendor procurement, and talent strategy while leveraging the advisor's expertise in structuring comparable economic development deals. Questions to consider at the start of strategy development and agreement discussions may include:

- **Mutually Beneficial Terms:** Which terms are most critical to the company? What appears to be most important to the economic development entities? How can the company help the agency satisfy its desires without sacrificing corporate objectives? Which terms may be most difficult to negotiate or influence?

- **Performance Measures and Milestones:** How realistic are proposed qualifying job and investment commitments? Are these figures achievable based on the provided ramp-up schedules? Are the milestone terms structured in a way the minimize default risk while still optimizing value?

- **Eligible Expenses and Disbursements:** How are eligible expenses defined? Over what period may eligible expenses be reported? How does the company qualify for a disbursement? On what schedule will funds be disbursed and how (e.g., prior to expense, reimbursement)?

- **Clawbacks, Repayments, and Remedies:** Are clawback thresholds possible, giving the company some wiggle room in meeting the anticipated job and investment projections?

Ahead of formal discussions with the economic development agency, companies should develop a foundational understanding of program mechanics to identify potential opportunities for negotiating more favorable terms while balancing reasonable clawbacks and remedies. Start by reviewing sample agreements from past projects to identify areas where the agency has historically shown flexibility or maintained standard terms. The jurisdiction, for example, may be less flexible in modifying repayment or forfeiture events, such as project abandonment or mass relocation.

4. ***Evaluate Tax Planning Opportunities: Consider tax planning opportunities, such as cost segregation and tax accounting methods, to unlock further value for your organization.***
An often-overlooked step, tax planning has potential to further enhance the impact of awarded funds on your bottom-line. Particularly for more complex incentives awards, there are often opportunities for the recipient to work with the awarding entity to limit their tax exposure. This is especially pertinent if the incentive package includes infrastructure values, such as road improvements, site preparation activities, and land value; but this situation is a complicated process that should be carefully planned between the project and the selected location.

Cost Segregation tax planning activities can be particularly valuable for manufacturing projects by helping recover their capital investments more quickly. This process aims to move property that without analysis, would be classified as 39-year, real property, to shorter lived site improvements (15 year) and personal property (5 or 7 year) for Federal Income Tax purposes. Accelerating the depreciation on a portion of a long-lived capital asset can lead to a larger deduction on a taxpayer's Federal income tax return, which in turn mitigates tax liability. It is best to initiate this process early on in the construction process

5. ***Plan Accordingly: Establish a structured Project Management Office (PMO) to help keep activities on track and manage communications between company representatives, legal counsel and other external advisors, and economic development officials.***
The size and complexity of the deal will influence the required breadth of the PMO, including the cadence of internal reviews and external discussions.

   Incentive term sheet and contract negotiations are iterative and can extend multiple months. Timing can be further influenced by how quickly the company would like to proceed and required bureaucratic approvals at the state and local levels. In many U.S. states, for example, a state level funds-appropriation board or similar entity must approve incentive term sheets before contracts are finalized.

   If bespoke programs are proposed, additional activities and milestones will require integration into the project schedule, such as sufficient time for bill drafting, legal reviews and term negotiations, and meetings with legislative members. Senior company officials may also need to plan for time in-market for meetings with state and local decision makers to advocate for support of the proposed program. Dedicated time in-market may also be needed to secure local support; on a recent multi-billion-dollar manufacturing project in the U.S. Gulf Coast, for example, executives met with county level representatives on multiple occasions prior to approval of a seldomly used property tax abatement.

6. ***Prepare for Compliance and Reporting: Allocate sufficient resources to ensure the development of sufficient protocols and processes for incentives compliance and reporting***.
Failure to meticulously track expenditures and overlooking required administrative procedures or compliance deadlines may result in forfeiture or repayment events. In many examples, a project may leave a majority of negotiated incentives unclaimed each investment year; further emphasizing that companies should implement methodical compliance processes to fully capitalize on awarded funds. Plus, some incentive compliance periods can extend multiple decades.

   External tax and incentives advisors can help monitor overall project progress and expenditures along with incentive drawdowns or requested reimbursements. Detailed receipts, reports, and evidence may be requested from the company or vendors as part of compliance review activities undertaken by the state or funding agency, emphasizing the importance of a streamlined technology-enabled solution. A structured approach is even more valuable when a Joint Venture is in play; reporting and compliance advisors can help track spending and incentive allocations by entity to optimize financial frameworks for both parties while abiding by regulatory requirements and partnership agreements.

Achieving Long-Term Objectives with Incentives

Securing and optimizing incentives is a complex process that extends well beyond the final offer.
CEOs should allocate adequate resources to navigate the intricacies of incentives negotiations, planning, and long-term compliance. This approach can position companies to capitalize upon their final incentives offers by avoiding potential reporting pitfalls and uncovering optimization opportunities while delivering value to the selected location. Without effective post-offer planning, companies may risk leaving unrealized benefits on the table.