

Design-Build Institute of America  
Upstate Chapter  
Funding Assistance for Construction &  
Facilities

Business and Legal Strategies to Maximize  
Funding Opportunities

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# The American Recovery and Reinvestment Act of 2009

- ARRA is the federal stimulus bill signed by President Obama on February 17, 2009.
- AARA provides nearly \$800 billion dollars for tax cuts, infrastructure investments and direct budget aid to states and municipalities.
- New York is expected to receive \$24.6 billion in funding.

# The American Recovery and Reinvestment Act of 2009

- Largest portion of infrastructure funds to be received by NYS will continue to be distributed by formula through existing federal programs.
- Includes sewer and water projects, transportation projects and community development block grants.

# New York State Resources

- AARA provides to NYS funding for:
  - State Fiscal Relief;
  - Infrastructure and Energy Funding;
  - Health and Human Services Funding;
  - Education Funding; and
  - Public Safety Funding.
- An outline of the Direct Aid to NYS is listed in your packet and is online at [www.economicrecovery.ny.gov/DirectAid/aidnewyork.htm](http://www.economicrecovery.ny.gov/DirectAid/aidnewyork.htm).

# The American Recovery and Reinvestment Act of 2009

- AARA also provides funding (grants and loans) for “green” infrastructure to reduce our carbon footprint and our dependence on foreign oil;
- Green infrastructure FAQ’s can be found at [www.nysefc.org/home/index.asp?page=692](http://www.nysefc.org/home/index.asp?page=692)
- AARA also eliminates fees and reduces interest rates for federal Small Business Administration loans to stimulate lending and business growth.

# New York State Resources

- Excellent resource is the New York Economic Recovery website at [www.economicrecovery.ny.gov](http://www.economicrecovery.ny.gov).
- Download “New York American Recovery & Reinvestment Handbook.”
- Handbook outlines by subject matter the key NYS programs with detailed contact information and links to apply for funds.

# New York State Resources

- AARA incorporates very tight time frames for application and disbursement of funds.
- Time frames vary by project and are listed on the Program Information Sheets in the NY Recovery & Reinvestment Handbook.
- Municipalities with “shovel ready” projects for consideration and referral to the appropriate agency by NYS for funding must register the projects with the NYS Economic Recovery and Reinvestment Cabinet.

# New York State Resources

- Municipal “shovel ready” projects may be registered online for consideration for funding at <http://www.economicrecovery.ny.gov>.
- The web site also publishes a list of registered “shovel-ready” projects on the list for consideration.

# New York State Resources

- This shovel-ready List is updated regularly and is organized alphabetically by county and then by municipality within that county.
- Municipalities should monitor the List to make certain that its projects have been listed for consideration.

# New York State Resources

- AARA funding is in addition to the existing programs already administered by New York State:
  - IDA and Empire Zone funding;
  - Tax credits and PILOT Agreements;
  - Payment in Lieu of Tax Agreements,
  - Tax Credits for Brownfield Redevelopment;
  - The Linked Deposit Loan Program,
  - Small Business Technology Investment Fund Loans;

# New York State Resources

- Federal and State grants,
- [www.grants.gov](http://www.grants.gov);
- Economic development programs and loan funds administered by local IDA's and Economic Development Offices;
- [www.empire.state.ny.us](http://www.empire.state.ny.us);
- AARA provides significant opportunity for funding of infrastructure projects in NYS.

# Favorable Federal Tax Rules

- AARA also provides for various tax credits and incentives for business.
- An article outlining these benefits is in your packet:
  - Carry back of 2008 net operating losses for either 3, 4, or 5 years to claim refunds of federal income taxes paid in previous years;
  - Extension of the \$250,000 Section 179 first year depreciation write off by one year to cover tax years beginning in 2009. Without this change, maximum deduction for 2009 would have been \$133,000.

# Favorable Federal Tax Rules

- Extension of the \$800,000 phase-out threshold for the Section 179 allowance by one year to cover tax years beginning in 2009.
- Without this extension, the threshold at which Section 179 deductions phase out for 2009 would have been \$530,000;
- Extension of the beneficial 50% first year bonus depreciation to cover qualifying assets placed into service by 12/31/09.
- Covers new, qualified property, i.e., purchased software and certain leasehold improvements.

# Favorable Federal Tax Rules

- Bigger first year write-offs for automobiles and light duty trucks;
- Translates into an \$8,000 increase in the maximum write-off obtained in the first year;
- This assumes 100% business use of the vehicle.

# Favorable Federal Tax Rules

- Favorable AMT (alternative minimum tax) side effect;
- 50% bonus depreciation rules applies for both regular tax and AMT purposes;
- No AMT adjustments necessary for the remaining 50% of value of the depreciated asset left after subtracting the bonus depreciation write-off;
- Rules are *exactly the same* for regular tax and AMT calculations.

# Favorable Federal Tax Rules

- Liberalized gain exclusion for new issues of small business stock;
  - Under Section 1202 of the Tax Code, non-C corporation sellers of S-Corporation stock can exclude up to 75% of their gains from federal income taxation;
  - Subject to certain exclusions;
  - Only applies to sales of eligible shares that are issued between 2/18/09 and 12/31/2010.

# Favorable Federal Tax Rules

- Subsidized COBRA coverage for terminated workers;
  - Eligible individuals pay only 35% of the health plan premiums otherwise payable for up to 9 months of coverage under COBRA;
  - Provision effective for periods of COBRA coverage from 2/17/09 for workers eligible for coverage between 9/1/2008 and 12/31/2009 due to “involuntary termination” only.
  - Federal government subsidizes 65% of the COBRA premiums in the form of a payroll tax credit to the employer.

# Favorable Federal Tax Rules

- Income triggered by reacquiring the taxpayer's own debt at a discount can be deferred and then recognized over a five year period after the deferral period ends.
- Temporary tax exemption in 2009 and 2010 on Built-In Gains recognized by an S corporation under certain circumstances when it sells assets or converts them to cash resulting from conversion from a C corporation to an S corporation.

# Favorable Federal Tax Rules

- Extension of election to claim certain Research & Development and AMT credits instead of first year bonus 50% depreciation for assets purchased after 3/31/2008 and placed in service by 12/31/2009 or 12/31/2010, depending on the type of asset.

# Favorable Federal Tax Rules

- There are other incentives not covered here, including tax breaks for individuals and significant energy incentives.
- There will be a detailed presentation at lunchtime on the tax implications of the federal stimulus bill.

# AARA Changes to Small Business Administration Loans

- AARA has also changed the SBA Loan Guarantee Program to temporarily raise guarantees on 7(a) loans to up to 90 percent of the total amount financed through 2009 or until the funds allocated are exhausted;
- AARA also temporarily eliminates fees for borrowers on SBA 7(a) loans;

# AARA Changes to Small Business Administration Loans

- AARA also temporarily eliminates fees for both borrowers and lenders on 504 Certified Development Company loans through calendar year 2009 or until the funds are exhausted.
- Fee elimination on SBA loans is retroactive to 2/17/09.
- SBA is currently developing a mechanism for refunding fees paid on loans since that date.

# AARA Changes to Small Business Administration Loans

- AARA also pledges \$15 billion to purchase SBA loan securities now frozen on the secondary market to stimulate bank lending for small business borrowers.

## Practical Considerations when Applying for Financing or Grants

- Get your “business” house in order
  - Make sure your business is incorporated or organized as a limited liability company or a limited liability partnership;
  - Most banks and many loan and grant programs will not do business with or consider a grant or a loan to a sole proprietor;
  - Also beneficial to your business to have limited liability;

# Opportunities for Partnering

- AARA funding presents opportunities for partnering and joint ventures on significant projects;
- Depending on the program, opportunities exist to combine existing and new programs and grants to obtain maximum financial benefit;
- To maximize success, identify potential partners early and communicate with key decision makers.

# Practical Considerations when Applying for Financing or Grants

- If a private business entity or a not for profit, make sure your business entity is in “good standing;”
  - No state or federal tax returns or taxes outstanding;
  - All required entity filings are current;
  - Identify any prior liens on assets that may be pledged as collateral;
  - Financial statements up to date and accurate;

## Practical Considerations when Applying for Financing or Grants

- If a private business entity or a not for profit, make sure all business governance and organizational documents are up to date and current:
  - Minute Books and Bylaws;
  - Shareholders' Agreements, Operating Agreements;
  - Stock Ledgers and Certificates;
  - Annual Meetings Minutes Current;
  - Resolutions electing Officers and Directors reflect reality, comport with Bylaws and requirements of NYS law;

## Practical Considerations when Applying for Financing or Grants

- Make sure all business registrations and required certificates and certifications are current;
- If a not for profit, this includes not for profit and/or charitable status under both NYS and IRS rules;
- If claiming minority business enterprise status, make sure your organization actually meets the rules;

# Practical Considerations when Applying for Financing or Grants

- Review all existing financing agreements for financial covenants, security interests and any third party consent issues:
  - Lease Agreements for purchase of equipment
  - Bank Loan Agreements and Security Agreements;
  - UCC-1 Financing Statements;
  - Vendor credit arrangements;
  - Existing personal Guarantees of equity owners;

# Practical Considerations when Applying for Financing or Grants

- Obtain a “full search” for liens and encumbrances as to the business entity and equity owners:
  - Liens
  - Judgments;
  - Taxes;
  - Bankruptcies;

# Practical Considerations when Applying for Financing or Grants

- Make sure your management house is in order;
  - If a new venture or start up, have a business plan ready;
- Update the credit report for each equity owner;
- Consider the likelihood that a lender will require personal guarantees from the equity owners;
  - 20% equity owners are required to provide personal guarantees in many loan programs;

# Practical Considerations when Applying for Financing or Grants

- Utilize your professional advisors when considering financing or preparing a grant application;
  - Critical to success is the ability to articulate in the application a purpose that meets the parameters of the loan or grant; grant writing is an art;
  - Must understand and meet the all requirements, including the time lines;
  - Use checklists!

## Practical Considerations when Applying for Financing or Grants

- In capital improvement and infrastructure projects, make certain that the engineering and design drawings submitted with the application accurately reflect any existing infrastructure and what is proposed to be built;
- If a municipality seeking approval for a shovel-ready project, conduct public hearings and obtain all local, administrative approvals, including SEQR and board approvals to meet funding deadlines. Don't wait to take this step.

## Practical Considerations when Applying for Financing or Grants

- Opportunities exist for both public and private funding and for joint ventures with multiple participants particularly for infrastructure projects;
- Communicate early with your professional advisors (banker, accountant and attorney);
- Delineate roles and responsibilities;

# Practical Considerations when Applying for Financing or Grants

- Leverage relationships to identify opportunities and business partners:
  - commercial real estate brokers;
  - contractors, architects, engineers and other construction professionals;
  - attorneys, accountants and bankers skilled in development projects;
  - local economic development officials.

## Practical Considerations when Applying for Financing or Grants

- Contact your professional advisors *early* and get your local economic development office involved.
- AARA presents unique opportunities particularly for municipalities and the construction industry;
- Having the right people on the bus from inception will help assure successful projects.

# Practical Considerations when Applying for Financing or Grants

## Contact Information

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