Stimulating the Stimulus:

Capturing Federal Dollars for Your Infrastructure Projects

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Since 2000, more than $24 billion has been allocated to fund construction or renovation of more than 320 sports, arts, recreation and convention infrastructure facilities. While sports facilities have captured the most visibility and attention, the public-private partnership development process applies to other projects including convention centers, performing arts centers, libraries, recreational complexes, meeting halls, public golf facilities, tennis complexes, stadiums and arenas.

The American Recovery and Reinvestment Act (the Act) is a $787 billion stimulus plan that was signed into law by President Obama in February 2009. While much of the stimulus funding is targeted at governments and individuals, the Act also provides incentives and subsidies to encourage energy efficiency and conservation, and investment in renewable energy. In addition, the Act continues and expands existing federal programs that could be useful in funding the rehabilitation and renovation of facilities and infrastructure. Many of the federal stimulus programs are actually administered by the states, which have also implemented companion economic recovery programs of their own. Almost two years after the Act went into effect, much of the funding remains unallocated and even more unspent.

Projects involving the rehabilitation and renovation of infrastructure facilities are excellent candidates for stimulus funding because they are uniquely positioned to provide the best overall return on a stimulus investment. These facilities satisfy more of the criteria than traditional infrastructure programs, such as roads and bridges, because they leverage private investment; provide sustained, long-term job growth and economic benefits to their communities; can be implemented rapidly; and showcase sustainable, environmentally conscious and cost-effective technologies and architecture.

Two global service firms have jointly examined critical aspects of this infrastructure funding: its availability, criteria for efficient implementation and its deployment in all appropriate public-private partnerships. The law firm Squire, Sanders & Dempsey L.L.P. has expertise in the federal funding programs and incentives that provide significant financing for these improvements (or appropriate components of new facilities). HKS, Inc. is a leading global architectural firm with strong knowledge of the broader economic implications of construction financing, job creation and construction-related commodities consumption.

Both firms have had substantial experience in the governmental sector, as well as with sustainable design and development.

Implementation Guidelines for Infrastructure Public-Private Partnerships

Those responsible for distribution of recovery funds should use a guideline that allows them to prioritize applicants in a way that maximizes every dollar and is responsible, fair and transparent. Evaluators should use an easy and standardized filter to ensure that stimulus funds go to the projects that need them most. Squire Sanders and HKS suggest using the SCORE system to make these determinations, which is based on four main criteria:

1. Impact

This criteria is used to evaluate projects for their effectiveness in having a real and immediate impact on recovery. In addition to the economic recovery aspects of the Impact criteria, it also includes accommodations for areas of social improvement that carry long-term economic benefits.

2. Value

In the interest of its fiduciary responsibility to stakeholders, the Value criteria allows projects to be evaluated for their potential return on investment and their potential to act as a nucleus for other forms of private investment.

3. Time

While some areas of the country are seeing modest recovery, others are still in desperate need of the infusion that these funds provide. The Time criteria is used to evaluate projects based upon their "speed to market" for real and effective distribution of funds into local economies. Being "shovel ready" is an important consideration but should not be determinative when considering the larger picture of broader impact.

4. Sustainability

According to the US Energy Information Administration, the building sector is the single largest consumer of energy and natural resources in our nation – a fact that simply cannot be ignored. Sustainable building design can play a powerful role in conserving these resources while achieving energy independence, reducing greenhouse gas emissions and effectively improving long-term economic performance. This criteria rewards design proposals that convincingly demonstrate energy efficiency and environmentally responsible design.

These four criteria and a series of sub-criteria can be used to evaluate and score potential projects using a weighted point system with grading thresholds for "Recommended," "Potential" and "Not

Recommended." The process is simple, objective and transparent, and can be completed easily by appropriate governmental gatekeepers.

Specific Stimulus and Incentive-Based Funding Opportunities

Security and Technology Stimulus Funding

The Act provides $3.5 billion for the Department of Homeland Security (DHS). While the Act identifies general categories in which these funds must be spent, it does not earmark these funds for specific projects.

Both the Act and the Omnibus Appropriations Act of 2009 make significant appropriations related to technology and communications.

The DHS has primary discretion in the allocation of moneys it received under the Act. However, the House and Senate Appropriations Subcommittees on Homeland Security, as well as the legislative committees of jurisdiction – respectively, the House Committee on Homeland Security and the Senate Committee on Homeland Security and Governmental Affairs – will maintain active oversight of the use of these funds. Squire Sanders Public Advocacy, LLC has good relations with the members and staff of these committees and subcommittees, and with the DHS and other relevant departments and agencies administering these appropriations.

Federal Stimulus Grants

State and local governments will receive $3.1 billion in competitive grants from the US Department of Energy for energy efficiency and conservation projects. These grants will fund each state's own programs.

Federally Subsidized Financing

The federal government subsidizes the interest cost for the following bond programs in one of three ways: (1) federal income tax credit to the bondholder, (2) payment to the issuer equal to a portion of the interest cost or (3) exemption of interest from federal income tax. A state or local government issues the bonds. Debt service can be paid from a generally applicable revenue source, such as a hospitality tax or tax increment financing.

Tax Credit Qualified Energy Conservation Bonds – Can finance a project to retrofit private businesses including heating, cooling, lighting, water-saving, storm water-reducing or other efficiency measures.

- Bondholder receives tax credit equal to 70 percent of interest cost.
- $2.4 billion of non-expiring issuance authority is available.

Taxable Build America Bonds and Recovery Zone Economic Development Bonds – Can finance a facility owned by a state or local government for any government-use capital project including energy conservation retrofitting.

- Build America Bonds provide a payment equal to 35 percent of the interest cost.
- Recovery Zone Economic Development Bonds provide a payment equal to 45 percent of the interest cost; the facility must be in an economically distressed area.
- Bonds must be issued by December 31, 2010.
- There is no issuance authority limit on Build America Bonds.
- $10 billion of Recovery Zone Economic Development Bond issuance authority is available to state and local governments.

Tax Exempt Recovery Zone Facility Bonds – Can finance a facility owned by a for-profit entity for nearly any kind of project including energy conservation retrofitting.

- Bonds must be issued by December 31, 2010.
- $15 billion of issuance authority is available to state and local governments.

On May 27, the US House of Representatives passed H.R. 4213, containing provisions extending Recovery Zone Bonds through 2011 with additional allocations based on current unemployment (rather than net job loss over immediate prior years). The bill also extends Build America Bonds for two years but reduces the interest subsidy payment over those two years to 30 percent.

Tax Credits

Tax credits under the following programs can be taken directly by the facility owner or syndicated to bring in a third-party investor. Many states have synergistic tax credit programs that can be twinned with federal credits to increase the subsidy.

Energy Investment Credits – Tax credit or direct payment to a for-profit facility owner equal to 30 percent of the acquisition cost of electricity-generating solar and wind property and solar heating systems.

Renewable Electricity Production Credits – Tax credits or investor equity for a for-profit facility owner for the production of electricity from renewable resources including solar and wind property.

New Markets Tax Credits – Tax credits or investor equity for an equity investment in, or a loan to, a business located in a low-income community. Can be combined with certain other tax credit programs to boost return.

Historic Rehabilitation Tax Credits – Tax credits or investor equity for a for-profit facility owner equal to 20 percent of the qualified rehabilitation expenditures incurred in the rehabilitation of a historic facility.

Enhanced Cost Recovery of Energy Property

Energy Efficient Commercial Property – A current deduction is allowable for the cost of property that is part of the interior lighting, heating, cooling, ventilation or hot water systems or the building envelope that is certified as designed to reduce the total annual energy and power cost for the interior of the building by certain amounts. The property must be placed in service by December 31, 2013. The amount currently deductible is limited depending on the amount of certified energy reduction. A 50-percent reduction in the building's annual power and energy costs allows a deduction of the cost of the energy efficient commercial property of up to $1.80 per square foot, while a 16-and-2/3-percent reduction allows a deduction of costs of such property of up to $0.60 per square foot. If energy efficient commercial property is installed in a government-owned building, the person who designed the property may take this special deduction.

50-Percent Bonus Depreciation – 50 percent of the cost of certain tangible personal property can be deducted in the first year if placed in service in calendar year 2010.

Our Expertise

HKS, Inc.

To secure a more sustainable environment for future generations, HKS creates environmentally conscious architecture that benefits clients, communities and the planet. Today, the building sector is the single largest consumer of energy and natural resources in the United States. HKS understands that sustainable design can play a powerful role in conserving these resources while achieving energy independence, reducing greenhouse gas emissions and effectively improving clients' bottom line.

HKS, partnering with the AIA and Architecture 2030, is committed to the 2030 Challenge, which calls upon the global building community to design and build carbon-neutral buildings by the year 2030. Other innovative programs, such as those from the U.S. Green Building Council (USGBC) and the US Department of Energy, can increase the value of a project while minimizing its impact on the environment. HKS welcomes the opportunity to share its knowledge of sustainable design, the LEED Rating Systems, the 2030 Challenge and the ENERGY STAR program.

Integrated Design Process – HKS employs sustainable and environmentally responsive design processes that result in some of the world's most innovative designs. The integrated design process is critical to a sustainable design. It encourages the exchange of ideas between clients, contractors, designers, consultants and the community. These exchanges are rich opportunities to share ideas and solve complex problems in a collaborative manner. The documented outcomes of these meetings and subsequent environmental design workshops form the basis for the building design.

Significant efficiencies in operating costs and employee productivity can be achieved through this process. Simply adding or overlaying technical building systems in isolation will not achieve the optimized levels of efficiency that a well-executed integrated approach will offer.

HKS' achievements in the area of sustainability include:

- 300-plus LEED-accredited professionals on staff
- 40 million square feet of LEED-certified and LEED-registered projects
- $11 billion of LEED-certified and LEED-registered projects
- Ranked 5th in *ENR*'s Top 100 Green Design Firms
- Designers of the largest LEED project in the world

DesignGreen – HKS DesignGreen is the sustainable consulting studio within HKS that assists the firm's design staff in implementing sustainable design processes and strategies. This studio has catalogued sustainable strategies and "lessons learned" from HKS' vast project experience and uses this data on a daily basis to assist designers in identifying successful and appropriate sustainable design strategies for their projects. Daily communication and contact with the project design team makes HKS DesignGreen uniquely effective at delivering successful integrated design solutions for its clients.

Squire Sanders

Global law firm Squire, Sanders & Dempsey L.L.P. has been a nationally recognized bond counsel firm in the United States since the beginning of the 20th century, and is consistently ranked among the top five bond counsel firms in the country by an affiliate of Thomson Reuters. The firm is experienced in the financing of every category of public infrastructure and facilities, assisting governmental bodies and private entities across the United States and around the world in planning, financing and implementing infrastructure projects including airports, ports, railways, roadways and mass transit systems, and communications facilities. Squire Sanders lawyers also advise on project financing aspects of development projects including major and minor professional league sports stadiums, museums, downtown development projects, multiple redevelopments in various urban renewal projects, waterfront development and marina projects, port authority projects, housing projects, neighborhood development, manufacturing facilities, office buildings, industrial parks, warehousing facilities and mixed use entertainment/retail projects.

Squire Sanders works with major project sponsors, financial advisers, investment banks, commercial banks, export credit agencies and multilateral financial institutions. Its work in project finance encompasses multilateral and commercial bank debt as well as other sophisticated finance structures such as leveraged leasing and public-private partnerships (PPP).

Sustainability Team:

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Kirk Teske is leading HKS and its global clients in this era of exponential growth and demand for sustainable and energy-efficient design. He understands the important balance between environmental initiatives and financial limitations associated with today's projects. Mr. Teske directs the HKS DesignGreen studio and emphasizes the importance of the integrated design process and its ability to reduce operating costs and environmental impact. He also promotes the internal education of all HKS design staff on proven and effective sustainable design strategies.

Professional accomplishments and activities:

- Currently serves the profession in the following capacity – the USGBC North Texas Chapter Advisory Board, the Dallas AIA Commissioner on Professional Practice and the USGBC South Central Regional Council
- Founding chair of the USGBC's North Texas Chapter
- Former representative on the USGBC National Chapter Steering Committee
- Former chair of the Dallas AIA Committee on the Environment
- Speaks regularly at conferences regarding sustainable design – including a presentation at the First International U.S. Green Building Conference on "Corporate Architecture and the LEED Rating System"

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Gregory W. Stype counsels clients on public-private partnerships in support of commercial, residential and mixed-use development projects, and over the last three years has served as bond counsel or disclosure counsel on more than $7 billion of tax exempt and taxable financings. His experience forging and implementing public-private partnerships covers the full range of economic development incentive and tax increment financing programs and public and private sector client perspectives. During the past three years, Mr. Stype has served as legal counsel on more than 50 tax increment financings for more than $150 million of improvements for various public and private entities. Having served as general counsel and bond counsel to Ohio's first fully functioning community improvement district formed to provide tax exempt financing of a high school and other public improvements for a 5,000-plus-acre residential development with major commercial office components, he has since been engaged to create and counsel more than a dozen community improvement districts encompassing more than 10,000 acres of development and redevelopment projects.

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Seth Metcalf's practice focuses on federal tax issues in public finance, and he supports Squire Sanders' national bond counsel practice as a member of the public finance tax group. Mr. Metcalf has assisted with tax exempt financings issued by states, counties, cites and other governmental authorities for cash-flow, transportation, sewer and water, infrastructure, public sports facilities, airports, power plants, convention centers and other purposes. Seth also has experience with tax-favored bonds including Build America Bonds, Recovery Zone Economic Development Bonds and Qualified School Construction Bonds. Mr. Metcalf structures transactions for the syndication of federal and state tax credits, specifically low-income housing, historic rehabilitation and new markets tax credits.

The contents of this white paper are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations. Counsel should be consulted for legal planning and advice.