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STIMULUS BILL FOR PORTS

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The American Recovery and Reinvestment Act ("ARRA") is an unprecedented effort by the Federal government to jumpstart the U.S. economy by investing in new infrastructure. The ARRA presents an opportunity for Ports as the Federal government has set aside billions of dollars for projects that rebuild and expand America's transportation and homeland security infrastructure.

How to Take Advantage of Stimulus Opportunities

The ARRA is being distributed through a myriad of federal, state, and local agencies. These agencies are moving rapidly to implement the ARRA and new information becomes available each day. It is critical that applicants understand who the decision-makers are on the specific funding being sought and engage interested stake-holders from the outset. In addition to federal agencies, members of Congress and state and local representatives are following the disbursement of stimulus funds and can be a valuable source of information and support.

Key Issues are Job Creation and Spurring Economic Growth

The ARRA's focus is on job creation and spurring the American economy. First, Federal and state agencies will favor projects that will provide immediate job results. Second, Section 1605 of the ARRA requires that all iron, steel, and "manufactured goods" used in stimulus projects for construction, maintenance, or repair of "a public building or public work" be "produced in the United States." Port Authorities are uniquely positioned to help spur job growth and the economy by using available funds to build new infrastructure. The key to any successful application will be convincing the decision-makers that your application will have an immediate impact on both the job market and on U.S. suppliers of materials.

Importance of Best Practices and On-Going Compliance

Given the size of the ARRA, the Federal government has moved swiftly to implement rules and regulations governing transparency and accountability

in the use of stimulus funds. Sections 1201 and 1512 of the ARRA require grant recipients to provide regular “Recipient Reports” to the granting agency. For successful applicants, implementing best practices and an on-going compliance and reporting program is vital to avoiding legal and political complications.

For those projects involving government contracts, the Federal government has issued five interim rules that create affirmative (and potentially burdensome) reporting obligations on the part of contractors. These rules require certain contracting actions to be published online and allow government officials to interview contractor and subcontractor employees during audits. Perhaps most significantly, one of the new rules prohibits government contractors from retaliating against employees that report on the alleged misuse of Recovery Act funds and creates a new source of liability, including a civil cause of action, for government contractors that retaliate against such employees.

How Venable Can Help

Venable’s team of former members of Congress, congressional staff, Cabinet members and key agency professionals know how to produce results and stand ready to help you navigate the federal grant process and federal procurement rules and regulations. Our long-standing experience with the appropriations process—including relationships with members of the Appropriations Committees, key congressional staff, and agency decision-makers—enables our team to identify applicable funding sources and garner support for funding requests.

For successful applicants, Venable has a strong history of helping owners and operators of marine vessels, ports and off-shore facilities navigate the federal regulatory landscape. Our regulatory attorneys stand ready to help clients implement internal best practices, reporting and compliance programs while managing costs and potential liabilities.

For those Ports that are interested in pursuing ARRA funding, the following list provides basic information on available opportunities.

Federal Highway Administration

- Passenger and freight rail transportation and port infrastructure projects;
- \$27.5 billion through supplemental formula grants (FHWA);
- \$1.5 billion for discretionary grants program (OST);
 - \$60 million for construction of ferry boats/terminal facilities;

U.S. Customs and Border Protection

- \$720 million for construction at land ports of entry (\$420 million for CBP-owned land ports and \$300 million for GSA-owned land ports);
- \$100 million for Non-Intrusive Inspection (NII) technology;
- \$100 million for border technology on the southwest border;
- \$60 million for tactical communications equipment and radios.

Federal Emergency Management Agency

- \$150 million for port security grants.

U.S. Army Corps of Engineers

- Construction \$2 billion
- Operation and Maintenance \$2.075 billion
- Nationwide Regulatory Program \$25 million

Environmental Protection Agency

- \$156 million competitive grant process for regional, state, local, tribal or port agency with jurisdiction over transportation or air quality;
 - Ex. Nonroad engine, stationary engine or vehicle used for handling of cargo (including at a port or airport)
- *Applications due in late April; review and award will occur in May.*

National Oceanic and Atmospheric Administration

- \$600 million for construction/repair of facilities, ships, equipment.

Maritime Administration

- \$100 million for the Small Shipyards Grant Program.
 - \$75 million is reserved for shipyards with 600 employees or less and up to \$25 million may be awarded to yards with up to 1200 employees.
- *Applications must be filed by April 20, 2009 and awards must be made by the Maritime Administration by August 17, 2009.*

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