

The Impact of the American Recovery and Reinvestment Act (ARRA) on Minority & Women Owned Businesses in Florida

by Melanie Hines, Esq.

Contractors and governmental entities awarding contracts will need to assess their procurement and employment practices for conformity with federal law.

Berger Singerman's Government & Regulatory Team encourages minority and women business owners to explore all available avenues of economic relief available.



Under ARRA, the State of Florida will receive \$13.4 billion in federal stimulus funds over the next three years. Governor Crist has submitted the required certification that Florida will request and use the funds to create jobs and grow the economy. The funds will be distributed at a rapid pace across almost every industry in the economy, from transportation and infrastructure to energy, housing, public safety, nutrition, education, science and technology, and the arts and humanities. Florida has established a Federal Stimulus Working Group to ensure the State meets the statutory deadlines for receipt of the funds. For example, by June 30th, Florida has to obligate 50% of its 2009 funds for highway construction or it will lose the money. Each federal and State agency has individual deadlines and

qualifications for releasing the funds, so entrepreneurs must be aggressive in learning when and where their individual access points will open up and be fully ready to take advantage of the opportunities presented. Minority & women owned businesses in Florida have additional resources available from the Office of Tourism, Trade and Economic Development which, in accordance with Florida's state level economic stimulus plan, is awarding \$8.5 million in low interest loans and contracts to qualifying businesses in certain fields, with upcoming deadlines. ■

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How Can Small, Minority & Women Owned Businesses Benefit by Becoming Certified Disadvantaged Business Enterprises?

by Sheryl A. Dickey



The certification process with federal, state and local governments is an asset for many firms. The federal, state and local governments advocate for the growth and sustainability of small businesses through targeted certification,

goal setting, compliance, and business services programs.

At the federal and state level, the designations for Federal and State Transportation, Aviation and Highway projects (FTA, FAA, FHWA) are referred to as Disadvantaged Business Enterprises (DBEs) and Airport Concessions Disadvantaged Business Enterprises (ACDBEs). At the local level many counties are using Community Disadvantaged Business Enterprises (CDBEs) or similar local designations.

At each level of government the procurement process specifies the need to use the certified firms as subcontractors or sub-consultants at recommended percentages of the contract. The notion is to provide opportunities for these firms to participate in the federal, state, and county/city procurement process. Traditionally, these firms do not have access to the prime consultants or contractors who obtain the majority of funds from the government procurement processes.

The first step to pursuing such opportunities, though, is to obtain necessary certification from the appropriate agencies. ■

Sheryl A. Dickey is President/CEO of Dickey Consulting Services and assists minority & women owned businesses in all facets of the certification process, and with identifying and maximizing subsequent opportunities.



Venture Structuring and Financing

by Robert Barron, Esq.



Minority & Women Owned Businesses (“MWOBs”) are presented with significant opportunities in this current recessionary period as the federal government dispenses stimulus funds to assist states, local governments and selected

businesses in order to maintain current employment and assist in expanding our economy. In order to take advantage of these enhanced opportunities, MWOBs will need to expand and increase their current private capital base using a variety of private sources in order to provide a viable business platform to access federal stimulus funds.

While there are a variety of sources of capital for MWOBs, ranging from personal credit cards, home equity loans, friends and family loans, traditional bank loans and venture capital lenders and investors in order to participate at a higher business level, the MWOB will need to enhance its existing capital structure, and perhaps use more sophisticated legal structures – such as, mezzanine loans, participating equity loans, direct equity investments, preferred stock, warrants and options, or other financing techniques.

For instance, in order to expand its capabilities and seek larger projects, the MWOB may consider forming a new legal entity which is owned in part by the MWOB and in part by a prime contractor. Both the MWOB and the prime contractor would contribute

the required capital, personnel and expertise to complete the project. This “joint venture” could obtain financing from equity investors and from lenders in order to provide the necessary working capital and bonding capacity to perform the job.

In any transaction, the MWOB will want to offer an investment or loan opportunity which is a “win-win” deal – providing financial and tax benefits to both the MWOB and the investor or lender. Each type of credit structure presents unique challenges and dangers which need to be understood and successfully navigated in order to achieve financial success. However, the MWOB does not need to face these challenges alone.

To safely navigate these challenging waters and achieve success, the MWOB should assemble a team of experienced legal, tax and accounting professionals who can assist the MWOB in structuring, negotiating, documenting and closing the private capital transaction needed to be a real participant in the public capital stimulus arena. With an increased capital infusion, the MWOB will be prepared to compete in the marketplace for these new federal opportunities. ■

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A Bridge to Somewhere: A Shared Prosperity In Compliance with Laws Applicable to Recipients of Federal Funding Under the New Stimulus Legislation

by Frank Scruggs, Esq.



As the federal government prepares to disburse funding under the ARRA, it is reminding states, local governments, and contractors of their need to comply with laws and regulations prohibiting discrimination and requiring affirmative steps to include the disadvantaged and historically underrepresented.

Competition at the state and local levels for government contracts funded by the ARRA will be exceptionally keen. Competition for government contracts routinely involves bid protests and challenges to governmental selection processes. There has been extensive litigation involving procurement processes that involve measures to enhance participation of the disadvantaged, particularly where the selection processes are race-conscious or gender-conscious. Governmental entities administering such programs can expect to be closely scrutinized for determination of whether their programs operate in conformity with federal law.

Companies competing for contracts funded by the ARRA can expect their employment practices to be closely scrutinized not only by states and localities

awarding the contracts, but also by federal agencies. The US Department of Transportation (“DOT”), for instance, recently published its reminder under the title, “Notice of Civil Rights Obligations Applicable to the Distribution of Funds Under the American Recovery and Reinvestment Act of 2009.” DOT’s notice referred to Executive Orders that apply to the distribution of funds under the Recovery Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements.

Similarly, the US Department of Education, which is channeling more than twice as much stimulus money to Florida for Education as DOT is for transportation, scrutinizes recipients of federal education funding for compliance with federal civil rights laws. The scrutiny is not new. What is new is the unprecedented scale of expenditures combined with firm insistence upon using massive federal intervention into the economy to build a bridge to a broadly inclusive, shared prosperity. ■

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