



INFRASTRUCTURE PRACTICE

# ALERT

## **\$8 BILLION FOR HIGH-SPEED AND INTERCITY RAIL JULY 10, 2009 DEADLINE: LET THE COMPETITION BEGIN**

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The American Recovery and Reinvestment Act of 2009 (“ARRA”) provides \$8 billion for the development of High-Speed Rail<sup>1</sup> and Intercity Passenger Rail<sup>2</sup> projects. Eligible High-Speed Rail projects may include a California line connecting Fresno to Los Angeles, a California/Nevada line connecting Los Angeles to Las Vegas and a Pennsylvania line connecting Philadelphia to Pittsburgh. On June 17, 2009, the Department of Transportation issued guidelines (the “Guidelines”) detailing the application requirements and procedures for obtaining funding for High-Speed Rail and Intercity Passenger Rail projects under ARRA. Preapplications for all eligible projects must be submitted to the Federal Railroad Administration (the “FRA”) on or before July 10, 2009 to allow the FRA to confirm project eligibility and to provide appropriate feedback to applicants. Applications for all eligible Track 1, Track 3 and Track 4 Projects (described below) are due on or before August 24, 2009 and applications for all Track 2 Projects are due on or before October 2, 2009. The evaluation and selection criteria in the Guidelines are intended to prioritize projects that deliver transportation, economic recovery and other public benefits, including energy independence, environmental quality, and livable communities; ensure project success through effective project management, financial planning and stakeholder commitments; and emphasize a balanced approach to project types, locations, innovation, and timing.

The Guidelines provide four funding “Tracks” for which applications may be submitted in order to accommodate the variety of potential stages of project development:

- Track 1 Projects include the final design and construction of “ready-to-go” projects – projects with completed site-specific National Environmental Policy Act (“NEPA”) documentation (final Environmental Impact Statement, final Environmental Assessment or Categorical Exclusion documentation) along with preliminary engineering to prepare projects for final design/construction grants that may be available under future solicitations. Track 1 projects should be completed within two years of the funding award. The federal funding share can be up to 100 percent, although evaluation criteria favor projects that leverage federal funding with non-federal investments.
- Track 2 Projects are aimed at developing new High-Speed Rail corridors and Intercity Passenger Rail services or substantial upgrades to existing corridor services. Track 2 grants are intended to fund development of a set of interrelated projects that constitute the entirety or a distinct phase (or geographic section) of a long-range service development.

<sup>1</sup> **High Speed Rail** is defined as Intercity Passenger Rail service that “is reasonably expected to reach speeds of at least 110 mph” (49 U.S.C. 26106(b)(4)).

<sup>2</sup> **Intercity Passenger Rail** is defined as “rail passenger transportation except commuter rail passenger transportation” (49 U.S.C. 24102(4)); it subsumes both High-Speed Rail and conventional intercity passenger services. Commuter rail is defined as “shorthaul rail passenger transportation in metropolitan and suburban areas usually having reduced fare, multiple ride, and commuter tickets and morning and evening peak period operations” (49 U.S.C. 24102(3)).

Under this Track, not all projects need to be ready-to-go. The federal government provides a commitment to fund the entire program and obligates funds for final design/construction projects. To be eligible for awards under Track 2, applicants must submit a completed: (a) corridor-wide “service” NEPA study; and (b) High-Speed Rail/ Intercity Passenger Rail program, or an equivalent approach that provides a business and investment justification with sufficient project cost and benefit estimates. Federal funding share can be up to 100 percent, although evaluation criteria favor projects that leverage federal funding with non-federal investments.

- Track 3 Projects are aimed at promoting future High-Speed Rail/ Intercity Passenger Rail projects and service development programs by advancing planning activities for applicants at an earlier stage of the development process. Under Track 3, the FRA will enter into cooperative agreements for preparation of service development programs, state rail plans and service-level environmental documents. This Track provides states an opportunity to complete the prerequisite work needed to submit applications under Tracks 1 and 2, so that applicants may be ready for potential future solicitations. Planning activities funded under this Track require a 50 percent non-federal match.
- Track 4 provides an alternative for projects that would otherwise fit under Track 1, but for state applicants offering at least a 50 percent non-federal share of financing. This Track offers applicants simplified grant agreement terms, and up to five years to complete projects, as opposed to two years under Track 1.

Applicants providing at least a 50-percent project match are strongly encouraged to submit project applications under Track 4 (those submitting project application(s) under Track 4 may also request concurrent consideration of such application(s) under Track 1).

The application process for all four Tracks begins with a preapplication. The preapplication is a simple form intended to give the FRA an early assessment of the projects and to provide pre-applicants with any feedback necessary to complete their applications. **Preapplications are due no later than July 10, 2009.** Applications for funding for Track 1 Projects, Track 3 Projects and Track 4 Projects are due no later than August 24, 2009. Applications for funding for Track 2 Projects are due no later than October 2, 2009.

**Eligible applicants** for ARRA grants include states (for all four Tracks), groups of states (for Track 1 and Track 2 Projects), interstate compacts (for Track 1 and Track 2 Projects), public agencies established by one or more states and having responsibility for providing intercity passenger rail service (for Track 1 and Track 2 Projects), public agencies established by one or more states and giving responsibility for providing high-speed rail and intercity passenger rail service (for Track 3 Projects), and Amtrak (for Track 1 and Track 2 Projects). Eligible applicants in all Tracks will be individually reviewed and assessed against evaluation criteria including transportation benefits, job preservation and creation, public benefits, project management, sustainability of benefits and timeliness of project completion.

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