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Economic Stability & Solutions Team

Innovators in the New Global Economy

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Because of the rapidly changing conditions in the financial markets, we have established this special series of Client Alerts to advise you of the newest economic and legal developments and their wide-ranging business implications.

OPPORTUNITIES FOR SERVICE AND TECHNOLOGY PROVIDERS IN EMERGENCY ECONOMIC STABILIZATION ACT OF 2008

Immediate Opportunities

The U.S. Treasury Department is acting with unprecedented speed in implementing the provisions of the Emergency Economic Stabilization Act of 2008 ("EESA"), which was signed into law by President Bush on October 3, 2008. On October 6, 2008 – just one business day after the law was passed **--** the Treasury announced solicitations for financial institutions to provide (1) custodian, accounting, auction management and other infrastructure services; (2) securities asset management services; and (3) whole loan asset management services. Eligible service providers that are interested in competing to provide such services must submit responses by **no later than 5:00 p.m. on October 8, 2008**. Information about each category of services is available on the Treasury web site by clicking here. This first deadline is just the first phase in the process of awarding service contracts that will likely include multiple phases and negotiations with Treasury, as Treasury more specifically defines the services it requires.

General Opportunities

The primary purpose of EESA is to establish the Troubled Assets Relief Program (TARP) pursuant to which financial institutions may sell troubled assets. The TARP Program will lead to large purchases of services and technology solutions by Treasury, the Office of Financial Stability (to be created by the Treasury), Comptroller General, the Office of Management and Budget and the Congressional Budget Office, as well as by the service providers engaged to perform services on their behalf. Specific opportunities delineated or suggested by EESA include:

- Opportunities for technology providers to create solutions for government agencies and service providers to analyze and manage data and reports as required by TARP. Specific technologies could include: (a) software to track and manage reporting requirements of federal property managers relating to number and types of loan modifications and foreclosures; (b) software to be used by Comptroller General in auditing TARP accounts and transactions; and (c) software to track and manage reporting requirements of Office of Management and Budget and Congressional Budget Office relating to cost of troubled assets, guarantees of troubled assets, impact on deficit and debt and outstanding commitments to purchase troubled assets;
- Opportunities for service providers and technology providers to provide solutions to Treasury for implementation of the TARP insurance program to be created by the Treasury Secretary pursuant to Section 102 of EESA;
- Opportunities for contracts with the Special Inspector General for audits, studies, analyses and other services relating to the purchase, management and sale of assets under TARP;
- Opportunities for financial experts and consultants to advise the Director of the Congressional Budget Office.

Waiving Government Contracting Requirements

EESA allows the Treasury Secretary to waive specific provisions of the Federal Acquisition Regulation (FAR) "upon a determination that urgent and compelling circumstances make compliance with such provisions contrary to the public interest." This includes the ability to waive FAR provisions pertaining to minority contracting, provided that the Treasury Secretary develops and implements standards and procedures to ensure to the maximum extent possible the inclusion and utilization of minority-owned and women-owned businesses in the solicitation or contract. While Treasury is waiving FAR requirements for

EESA contracts, companies that respond to the Treasury solicitations will be required to address how they will carry out federal policies regarding involvement of small and disadvantaged businesses and how they will avoid conflicts of interest. Traditionally, when the government has urgent needs, it seeks to either speed the procurement process or broaden the pool of potential offerors. To do so, the provisions the government will most likely waive or limit deal with competition, intellectual property, and accounting provisions.

Financial Agency Agreements

In contracts with financial institutions for services related to TARP, Treasury will likely use the Financial Agency Agreement, which Treasury's Financial Management Service uses to retain financial institutions to conduct transactions on Treasury's behalf, for example when federally insured financial institutions offer Electronic Transfer Accounts (ETAs) to persons who receive federal payments in the form of benefits payments, wages, salaries, retirement payments and other payments. These agreements have never been subject to the FAR, and are more flexible than procurement contracts, but contain specific contract terms controlled by existing Treasury regulations.

Womble Carlyle Can Help

If your company would like more information about business opportunities related to EESA and the process for responding to Treasury's solicitations for services and assets, please contact Jennifer Collins at (919) 755-2194 or via email at jlcollins@wcsr.com, Jim Kearney at (703) 394-2214 or via email at jkearney@wcsr.com, Holly Svetz at (703) 394-2261 or via email at hsvetz@wcsr.com, or one of our other transactional attorneys or government contract attorneys.
