A&E Quarterly Regulatory Round Up

Q2 2022

Is Your A&E Firm Ready to Capitalize on the Infrastructure Bill?

By: J. Scott Duda, CPA, Partner, Assurance Services, Professional Services Leader

President Biden signed the Infrastructure Investment and Jobs Act ("IIJA" or the "Infrastructure Bill") into law on November 15, 2021, as an investment in our nation's infrastructure and competitiveness. The Infrastructure Bill will upgrade America's highways and major roads, bridges, airports, ports, and water systems and expand and make improvements to the nation's broadband access, public transportation systems, and energy grid infrastructure; helping to ease inflationary pressures and strengthen supply chains. The Federal government is preparing to disburse more than $1.2 trillion in program funds throughout a five-to-ten-year period and States will apply for funding through a competitive process requiring proposals and plans for the projects' scope, anticipated improvements and benefits.

Strategically Plan to Receive IIJA Funding

Repairs and upgrades to our nation's infrastructure will be performed by private companies funded by federal agencies and/or state & local government contracts. A&E firms will be included among this group and will reap the benefit of a significant number of opportunities, including services on larger scale projects. To capitalize on IIJA funding, A&E firms will need to develop the tangible strategies and action plans needed to optimize their business and operations – examining their people, processes, and technology along with gaining an understanding of the complexities of working with the government and the additional compliance requirements required if they are unfamiliar with government contracting.

Firms will need to ensure they have the capacity and talent to perform under these new and expansive contracts, potentially partnering with other firms to accomplish tasks, and optimizing systems and reporting to ensure these opportunities are won and serviced in the most efficient and effective manner possible. Technology tools and controls will be critical to ensure the necessary record-keeping is taking place. The ability for A&E firms to adopt digital strategies and tools that will provide standardization in processes, collaboration and 360-degree visibility into projects, will help maximize productivity, improve efficiencies, increase profitability, and drive business success.

Evaluating the ability to qualify for tax incentives and grants can effectively be used to help fund the cost of operations, increasing your workforce, acquiring new talent or an acquisition for competitiveness and growth. There have been many tax incentives enacted over the years, including the 179D Energy tax deduction that focuses on encouraging businesses to incorporate energy efficiency into their design plans for public and commercial buildings. The 179D tax deduction has been in effect since January 1, 2006 and is now permanent in the tax law enacted as part of the Consolidated Appropriations Act of 2021. If your A&E firm has not looked into the 179D tax deduction, or previously did not qualify, you should evaluate design projects from 2021 through 2025 to determine eligibility. Likewise, less than 30% of eligible companies are aware that they qualify for the Research & Development ("R&D") tax credit, which can generate a dollar-for-dollar reduction in federal and state tax liabilities for current and future years, among other tax advantages.

A&E firms new to working on federally funded projects will need to educate themselves about working with the government to gain an understanding of the various contract types and compliance requirements to ensure bids comply to successfully win and perform on contracts, including the cost accounting, budgeting, pricing and document retention associated with government contracts. To ensure work is performed in a profitable manner, firms will also need to make sure personnel have the training and skills in government contract management to successfully work with contracting officers or other companies in a subcontractor role. Firms may also want to consider Joint Venture arrangements to gain the ability to expand their business and compete for contracts that may normally be out of reach.

Our Advisory and Consulting Services

Your journey to take advantage of IIJA funding will be unique. Cherry Bekaert is here to guide you at every step. Whether it is our **government contracting advisors** assisting in the identification or pursuit of opportunities, ensuring bids comply with necessary requirements and the funding and cash flow of the contract is understood to ensure accurate budgeting and forecasting, our **digital advisory** team optimizing operations and reporting so you will be able to design and deliver faster projects with greater efficiency, saving time and ultimately improving the bottom line, our **credits and incentives advisory** team identifying new or expanded ways to fund these operations, or our **transaction advisory** group assisting in the identification of partners with whom to joint venture on an opportunity, we stand ready to guide you forward.

Defer up to $330,000 Annually on a Tax-Deferred Basis: The Direct Recognition Variable Investment Plan (VIP)

By: Jeffrey A. Gump, Financial Advisor, Cherry Bekaert Wealth Management LLC

For successful business owners and C-suite executives in architectural and engineering (A&E) firms, paying taxes on hard earned income can be frustrating. Direct Recognition Variable Investment Plans (DR-VIP) are a type of qualified retirement plan that offers each highly compensated targeted employee a way to defer up to $330,000 of income from taxes when combined with other qualified retirement plans such as a 401(k) and profit-sharing plans. In general, qualified plans have inherent advantages such as:

1. money contributed into these plans grows tax deferred, and
2. the assets accumulated in these plans are safe from creditors.

However, VIP Plans offer many other advantages that traditional defined benefit or cash balance plans don't offer such as:

1. benefits can be valued daily
2. assets can be invested in accordance with owner objectives to optimize returns, with little or no risk of underfunding or overfunding of the plan, and
3. annual contributions to these plans are predictable, which allows owners to budget for them early in the year.

In addition, because VIP Plans can be valued daily, they can be administered alongside the firm's 401(k) and profit-sharing plan, to allow owners and other participants of these plans to conveniently view the value of all their retirement funds in one place. This makes these plans extremely transparent, current, and easy to understand. The only difference a participant will experience between the plans will be that they will not be able to change the investments in the VIP Plan; whereas they will be able to change investments in their 401(k) and profit-sharing plans.

The structure and design of VIP Plans is also very flexible and caters to the owner's or management team's objectives. VIP Plans allow these targeted high earners to maximize their contributions while keeping contributions to staff and others in the plan to a minimum. Typically, A&E firms are already providing either a match or some level of profit-sharing contribution to their employees. VIP Plans leverage the existing contributions being provided to achieve increased amounts for the owners and C-Suite executives, but usually additional profit-sharing contributions are necessary to maximize these targeted high earners objectives.

Direct Recognition Variable Investment Plans (DR-VIP) are very specialized and integrated plan designs that are created and administered by the actuaries at Cherry Bekaert Benefit Consulting. The Financial Advisors at Cherry Bekaert Wealth Management typically work hand-in-hand with the benefits consulting group to help clients with the investment planning for their VIP and 401(k) plans. Please reach out if you would like to learn more about VIP Plans.

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"Investment Advisory Services and insurance products are offered through Cherry Bekaert Wealth Management, LLC. Cherry Bekaert Wealth Management LLC and Cherry Bekaert LLP are affiliated companies. Cherry Bekaert Benefits Consulting and Cherry Bekaert Wealth Management LLC partner to service VIP but are not affiliated companies."

Paycheck Protection Program (PPP) Loan forgiveness

By: Brynn McNeil, CPA, Partner, Assurance Services, Professional Services & Government Contracting Industry Practices

Cherry Bekaert's Professional Services team continues to keep our eye on the Paycheck Protection Program (PPP) forgiveness impact on overhead rates for A&E firms. In 2021, the U.S. House Rules Committee attached the Brown-Katko Amendment to the National Defense Authorization Act (NDAA). The amendment was grouped with several bipartisan amendments and was passed in the House of Representatives. The amendment was co-sponsored by three Republicans and two Democrats, illustrating the bipartisan support for addressing the challenge facing firms that work with State and local DOT's. However, Senate leaders have not been as supportive.

Moving into 2022, various advocates are focusing their efforts on the Senate, as there is continued urgency to ensure the treatment is addressed prior to firms being negatively impacted by the adjusted rate. In particular, the spending bills associated with various agencies expected to be passed in early 2022 provide opportunities to attach amended PPP language. Senator Rand Paul, as the senior Republican on the Senate Small Business Committee, has been a primary holdout in support of the proposed changes to the treatment of PPP loans under the Federal Acquisition Regulation (FAR) credits clause.

There continues to be significant bipartisan support for a potential change and so continued communication with lawmakers in both the House and Senate is critical.

We will continue to monitor the situation and provide updates as warranted.

OSHA Pulls Vaccine Mandate After Supreme Court Setback but Looks to Propose as a Rule

By: J. Scott Duda, CPA, Partner, Assurance Services, Professional Services Leader

A U.S. Supreme Court majority found the U.S. Occupational Safety and Health Administration vaccination and testing Emergency Temporary Standard (ETS) was likely to be successfully challenged in court, killing the standard in January by a six-three vote.

A&E Firms and other business groups celebrated rescinding the mandate while looking at industry specific regulations. OSHA noted they planned to introduce the ETS as a proposed rule rather than a mandate in order to finalize a permanent COVID-19 Healthcare Standard. OSHA's rule making process takes at least 12-36 months and requires input from industry stakeholders.

A&E Firms were quick to hail OSHA for withdrawing the Biden administration's COVID-19 vaccination or testing emergency mandate for employers with 100 or more employees. While a potential vaccination-or-test rule that considers comment from stakeholders in the A&E industry as well as other industries could potentially gain traction, many would prefer industry specific guidance focused on healthcare and other workers more at risk rather than a potential rule that covers all employers with 100 or more employees.

We will continue to monitor and report as the situation warrants.

We Can Guide You Forward

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About Cherry Bekaert

Ranked among the U.S. largest accounting firms, Cherry Bekaert offers assurance, tax, risk, digital, transaction advisory, benefits consulting, and wealth management solutions. With clients in across the U.S. and internationally, we have industry knowledge in technology, healthcare and life sciences, industrial manufacturing, private equity, real estate and construction, professional services, hospitality and retail, government and not-for-profit. We exercise a deliberate curiosity to know our clients' industries and work collaboratively as one team to guide them forward.

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