



Southern Tier Central Annual Local Government Training



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Financing Your Future- Tools for Developing Project Resources

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April 6, 2023

Session Goals

- Understand the value of planning when working to fund capital projects
- Learn best practices for preparing for grant applications and other project funding solutions and understand the legal obligations once you are successful
- Gain insight into the implications of borrowing for project development
- Understand the role that public-private partnerships might play in advancing projects

But first...some gratitude...

- Public service is a tough gig; local government leadership is among the toughest area of service
- Residents and other community stakeholders look to you to make the right decisions to shape your community
- Your definition of right, theirs, and everyone else's don't necessarily line up
- We are so thankful for your service, and for your commitment to taking your role seriously
- It's not always/ever easy, but thanks to folks like you, our communities are looking better than ever, and have bright futures ahead

Disclaimer

This presentation is for informational purposes and is not intended as legal advice.

Money makes the world go 'round...

- Local governments have far more needs than resources to address them
- A diversified funding strategy is critical when working on complex projects (or straightforward ones!)
- Grants, debt financing, and public-private partnerships are all great opportunities to move projects forward
- As with most elements of your work, preparation is the key to success. Communities with a strong planning foundation are more likely to successfully address project needs
- Aligning your vision, values, and project needs with the right funding source will ensure a smoother development process



**Before You Get Started –
Creating a Project Planning
Foundation**

The Case for Planning

- Getting all of your ducks in a row usually means that the projects you are trying to fund have been thoroughly vetted for feasibility and impact
- Additionally, early planning efforts help local governments prioritize projects – ensuring that limited resources are applied to the highest priority projects
- Many planning efforts enable local governments to engage experts ahead of project development – bringing outside expertise to the table at the right time
- State and federal dollars are stretched too – funding agencies want to ensure that funding is being applied to projects as part of a strategy

Comprehensive Plans

- A total look at community operations, capital needs, and local priorities
- Rare opportunity to pull back from the day-to-day, and think about where the community wants to be fifteen to twenty years from today
- A good chance to bring the public in, both to understand the challenges and opportunities at hand, and to weigh in on prioritization
- Demonstrates to funding agencies and partners that you have a strategy – that you have looked at data, engaged the public, and have a unified community vision

Capital Improvement Plans

- Best practices in local government budgeting call for capital improvement plans to be developed in approximately five year windows
- Leverage your comprehensive plan, depreciating assets, and other projected operational needs to identify projects to be addressed in this window
- Consider all likely funding sources, and the cost of obtaining those (interest on debt, transaction costs, grant management costs, etc.)
- In out years, consider the impacts of inflation on project costs

Multi-Year Budgeting

- Budgeting in cycles of two or more operating years assists leaders in identifying the impacts of changing course (or maintaining the status quo)
- Adding staff, changing benefit allocations, reducing tax rates, or adjusting other revenue models have longstanding impacts. Multi-year budgets help assess revenue and expense trends
- Multi-year budget models can take many forms, ranging from single elements (staffing, revenue, capital, etc.) to full budget forecasts
- Initial year is binding, and out years are used to model impacts on revenues and expenses

Other Planning Tools

- Small area plans
 - Corridor Plans
 - Downtown Master Plans
 - Neighborhood Plans
- Functional area plans
 - Parking Master Plans
 - Parks Master Plans
 - Water/Sewer System Plans
- Organizational strategic plans
 - Departmental assessments
 - Full organization plans

The image features a stack of silver coins on the left side, with several more coins scattered in the foreground. A white line graph with an upward-pointing arrow is overlaid on the scene, set against a background of soft, out-of-focus light. The overall color palette is dominated by blues and greens, with a warm glow on the right side.

**Not – So – Free Money:
The World of Grants**

Grants: Worth the Grunt?

- Federal and state grants can be valuable as part of an overall funding strategy
- Grants alone will likely not address capital funding needs
- In addition to sound planning foundations, grants require a long lead time, sustained cash flows, and a clear understanding of application dynamics
- Once awarded, strong accounting procedures, strict procurement requirements, and other compliance measures including prevailing wage and MWBE are likely to be required
- Careful evaluation of your funding approach is critical to a project's financial success

Before the Application

- Leverage prior planning to prioritize projects and create project scopes
- Formalize the prioritization with your governing board, and catalogue these discussions via meeting minutes
- Re-engage the public to ensure that public expectations are still aligned with Board priorities
- Engage with state and federal elected officials and agency staff to provide them with project information and gauge their support for priority projects
- Collect materials that will typically be used in agency applications, so that they are handy when you begin work on the applications themselves

Finding the Right Funding Source

- Grant funding cycles are relatively predictable – they are typically announced and funded around the same time each year
- Additionally, funding guidance changes very little, if at all, from year to year
- Leverage guidance from prior years to determine which sources best meet your funding needs
- Consider issues like timing of funding award, required match, regulatory requirements associated with funds, and allowable uses
- Get creative about WHO the applicant is (Village, Town, County, private partner)

Winning is the Beginning

- Rules vary among funding sources, so NEVER spend funds you intend as grant funded sources without checking with the agency first
- Read your funding agreement VERY carefully to ensure that you understand the rules, regulations, and processes surrounding your funding source
- Neary every grant is a reimbursable grant. Ensure that you have the funds necessary to advance the cash needed to start your project, and to wait for reimbursement
- Understand all reporting requirements and stay in close touch with your funding agency representatives to ensure compliance and future competitiveness



The Wild World of Public Debt Financing

Why Issue Municipal Debt?

- Debt levers equity---in the case of a muni or district, the equity is the tax base
- Allows for projects that are larger than just using the tax base
- It also allows for projects to proceed now by pulling money from the future and bringing it to the present --the alternative would be to invest money at a similar interest rate and wait to do the project
- Low interest cost due to tax-exempt rate

Types of Debt Obligations in NY

- Most Common
 - Bond Anticipation Notes
 - Serial Bonds
 - Tax Anticipation Notes
 - Revenue Anticipation Note
- All debt obligations issued by NY munis and districts must be general obligation bonds---they must be backed by the full faith and credit (and taxing power) of the muni/district

The Players

- **Issuer**- the municipal corporation, district corporation, etc... issuing the debt obligations
- **Bond Counsel**- the attorney or firm giving an opinion as the validity of the debt and tax aspects; drafts bond documents
- **Financial (Municipal) Advisor** – structures transaction and drafts sales documents with input from bond counsel
- **Underwriters** –purchase the obligations from the issuer for resale to the general public
- **Rating Agencies**- examine the issuer's financial state and rate the issuer's credit worthiness

Planning for a Debt Issue

- Hire a competent municipal advisor and bond counsel
- Determine the project(s) and structure of the issue
- Determine or complete any preconditions to adoption of a bond resolution---e.g. SEQR compliance
- Bond counsel drafts a bond resolution in compliance with the Local Finance Law

Advances for Planning Costs and the GML 99-d Trap

- Preliminary costs (e.g., architectural, engineering) for planning capital improvements can be included in a bond resolution
- However, the overall cost of the capital improvement, however, may not be determinable without incurring the preliminary costs, leaving the muni unable to draft a bond resolution
- Meanwhile, the local finance law provides that munis may not reimburse themselves for expenditures unless a bond resolution is in place
- The simple answer would be to pass a stand-alone bond resolution for the planning costs
- Section 99-d of the General Municipal Law holds a trap---it says that if a muni passes a stand alone resolution for planning costs, the authorization for the capital improvement itself cannot occur until one year later
- Forces munis to plan ahead and pass bond resolutions that are estimated very high if reimbursements for planning costs are intended

Debt Caps and Exclusions

- The New York State Constitution sets limits for local government borrowing
- Generally, indebtedness is capped at a percentage of real property valuation
 - Cap is based on the most recent five year average valuation, or current valuation for some school districts
 - For most cities, towns, and villages, debt cannot exceed 7% of this figure; for small city school districts, it is 5%; for central and union free school districts, 10%
- Certain debt can be excluded from the cap, including:
 - Water / Sewer projects
 - Other self-liquidating projects

The Bond Resolution

- Munis and Districts may issue debt for “objects or purpose[s]” enumerated in the Local Finance law
- Objects or purposes can be “specific”, e.g., replacement of a roof on Town Hall; or a “class” e.g., the reconstruction of roads in and for Anytown, New York and all incidental improvements and expenses in connection therewith
- The reso will also state the period of probable usefulness (PPU) for the object or purpose, which is the maximum useful life
- The reso will state the plan of finance, e.g. \$x in grant money, \$x in serial bonds
- The reso will delegate authority to the financial officer of the muni or district
- The reso will provide for reimbursement of expenditures
- A referendum may be required depending on the entity

Sale of Debt

- Private Sale
 - Most notes may be sold at private sale regardless of the size of the issue
 - Bond issues under \$1 million may be sold at private sale
 - Bond issues may be sold to the federal government regardless of size
- Public Sale
 - Bond issues of \$1 million or more must be sold at public sale except for issues sold to feds
 - Public Sales are through competitive bids, at par without limit as to interest
 - The winner offers the lowest “net” or “true” interest cost to the issuer
 - Most sales conducted by Financial Advisor with assistance of Bond Counsel

Disclosure

- Disclosure is generally done through Preliminary Official Statement and Official Statement - like an offering prospectus
- Drafted by financial advisor with input of issuer and bond counsel
- Must be accurate
- Underwriters and public will make purchase based on what is in the OS
- Final Official Statement will be made after the sale when the terms of the debt are fixed (by the bid) and the rating is assigned
- Issuer also has a continuing obligation to disclose annual information and certain material events, e.g., default on another obligation

Closing

- The issue closes once all of the above is done
- Generally happens according to a fixed deadline
- In most cases the obligations are held and settled by a central depository; the muni does not pay out interest payment to each bond holder individually—it makes one payment to the depository which keeps the records of holders and settles the payments

Federal Tax Aspects

- Interest on State and Local obligations is, in most cases, excluded from gross income under the tax code and under state tax law
- Federal Government considers this a subsidy and wants to ensure it is not abused
- Two main areas of compliance:
 - The proceeds of the obligations may not, with certain exceptions, be expended for private business use or secured by private sources of repayment
 - “arbitrage” is not allowed
- Translated this means
 - proceeds of a public borrowing have to be used for public purposes; and
 - A muni can’t issue obligations and invest the proceeds to get a higher rate of return to make money from the difference between the investment return and the interest cost (the “spread”)
- Bond counsel provides opinion that interest will be excluded from gross income, which makes the obligations marketable



**You Were Successful!
Now What?**

Legal Frameworks

- State Environmental Quality Review Act (“SEQRA”)
- State Historic Preservation Office (“SHPO”)
- Minority and Women Business Enterprises (“MWBE”) Requirements
- Understand when these are triggered
 - Issuance of bonds
 - Enter a SAC

State Environmental Quality Review Act (SEQRA)

- ▶ State Environmental Quality Review Act (“SEQRA”)
 - Environmental Conservation Law Article 8
 - 6 NYCRR 617
- ▶ Any discretionary approval requires compliance with SEQRA
- ▶ Strict procedural compliance

SEQRA - Purpose

- SEQRA requires the consideration of environmental factors early in the planning stages of the actions that are directly undertaken, funded or approved by local, regional and state agencies

Environmental Assessment Form (“EAF”)

- ▶ The applicant/sponsor completed Part 1 of an Environmental Assessment Form
 - Summarizes the Project Information

- ▶ Submit with the application
 - Short EAF (SEAF)
 - Full EAF (FEAF)

What Type of Action is it?

- ▶ **Type I Actions** : List in 6 NYCRR 617.4
 - Presumption that the project is likely to have a significant adverse impact on the environment and may require an EIS
- ▶ **Type II Actions** : List in 6 NYCRR 617.5
 - Determined not to have a significant impact on the environment
- ▶ **Unlisted Actions** : Everything Else

Coordinated Review

▶ Coordinated Review

- Required for Type I actions
- Takes longer
- Minimizes risk of Article 78 or unanticipated Positive Declaration

▶ Uncoordinated Review

- Much quicker
- Sometimes necessary if SEQRA already completed by another agency

Segmentation

“the division of the environmental review of an action such that various activities or stages are addressed under this Part as though they were independent, unrelated activities needing individual determinations of significance.”

6 NYCRR 617.2(ag)

- Need to explain why a segmented review is necessary and must demonstrate why such review is clearly no less protective of the environment

Determination of Significance

- Must thoroughly analyze the identified areas of environmental concern to determine if the action may have a significant adverse impact on the environment, and
- Set forth the determination of significance in a written form containing a reasoned elaboration and providing reference to any supporting documentation.
- Negative Declaration or Positive Declaration

State Historic Preservation Office (SHPO)



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NYS Parks, Recreation and Historic Preservation Law Section 14.09

- State Agency – public money
- Consult with OPRHP
- 30 days to comment
- Need a No Adverse Impact Letter

MWBE Requirements

- These will be part of the State Assistance Contract (SAC)
- Best Efforts Process
- Utilization Plan



**Partnerships –
How the Private Sector can
Help Move Projects Forward**

Sharing Risk and Reward

- The public sector can get creative in developing project solutions when not bound by typical contractor relationships, procurement, etc.
- Public-Private Partnerships can be strongest in operational settings, but also can play a role in capital project development
- Partnerships are different from a traditional vendor relationship, in that the contractor remains “in the picture” over a longer period of time
- Because of this, it is critical that you obtain the right partner for the right project in the right deal structure

Finding the Right Projects

- Not every project is going to be suited for a public-private partnership
- In New York State, the opportunity to use this project in capital programs is limited to a few examples:
 - Energy Performance Contracts – Vendors agree to a fixed installation cost and guarantee payment via anticipated energy savings
 - Similar project structures can be used for water meter replacement
- Other projects that involve long term operations needs can also be supported by public-private partnerships

Finding the Right Partner

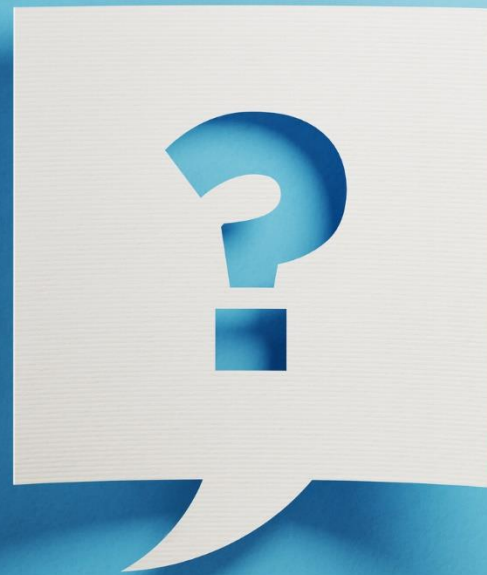
- Leverage your project scope to create a strong Request for Proposals, taking into account more than just cost/return
- Look for innovative approaches to addressing your project needs
- Distribute the RFP widely – leveraging tools like Contract Reporter and other bid distribution services
- Evaluate proposals to determine if the bidders share your values and understand your project needs
- **CHECK REFERENCES!** Ensure that the bidder has successfully completed similar projects in similar communities

Building the Right Deal

- Ensure that risk and reward are balanced
- Engage with legal counsel to determine that the deal meets public purpose requirements
- Develop performance measures that ensure that the project operates as intended beyond current leadership (on both sides of the deal)
- Create exit ramps that enable you to dissolve the partnership if/when situations change

In Summary

- Plan. Plan. Plan: Creating a strong foundation of planning increases the likelihood of attracting OPM
- Grants are a great way to fund projects – gather your project information now – ahead of project applications
- Ensure that you have the rest of your financial house in order before thinking about debt financing
- Consider public-private partnerships when risk (and REWARD) can be shared



Questions?

We're Here to Help!

Contact us anytime with questions, clarifications, or concerns:

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