

Manufacturing - Automotive - Advisory

November 2008

\$25 Billion Automotive Incentive Program Accelerated Opportunities for Automotive Suppliers

In an unanticipated move that may signal a new sense of urgency to disperse funds to vehicle manufacturers and automotive suppliers, the Department of Energy (DOE) has issued its eligibility and application rules under the Advanced Technology Vehicles Manufacturing Incentive Program more than three weeks early – and the DOE will begin accepting applications for loans immediately.

Applications for the first tranche of secured loans will be accepted until December 31, 2008, with subsequent applications and funding tranches to be processed quarterly for as long as funds are available. In another indication that the DOE is accelerating the dispersal of funds, the DOE has indicated that it will consider “substantially complete” applications on a rolling basis. Although the program includes both grants and loans, only the loan portion has been funded to date.

Perhaps indicating a substantial opportunity for automotive suppliers, the DOE has not established substantial restrictions on the types of components, processes and research that would be most eligible for funds. Eligible projects, for which DOE will cover up to 80% of associated project costs, include:

- those with a reasonable relationship to reequipping, expanding or establishing a manufacturing facility to produce components for Advanced Technology Vehicles, i.e., vehicles with 25% improved fuel efficiency;
- engineering to incorporate such components into Advanced Technology Vehicles; and
- designing tooling and equipment, and developing manufacturing processes and material suppliers, for facilities that produce such components.
- Factors to be considered by the DOE in evaluating funding applications include: the technical merit of the component, potential contributions to improved fuel economy of light-duty vehicles, and promotion of the use of advanced fuel and technical program factors such as economic development and technological diversity. Importantly, components need not be designed exclusively for use in Advanced Technology Vehicles; they may also be used for conventional vehicles and aftermarket parts.

On the other hand, the DOE's application requirements are elaborate and lengthy. The basic requirements include:

- a description of the project and an explanation of how it qualifies under the law to receive funding;
- a demonstration of financial viability in consideration of several identified factors;
- a detailed estimate of the project's cost and a financial plan for it;
- an analysis of the projected market use of any component, including copies of agreements for their sale;
- a listing and valuation of project assets and other property that will be used as collateral for the loan;
- certification that prevailing construction wages will be paid to employees of the project; and
- comprehensive information necessary for the DOE to determine that funding will be in compliance with the National Environmental Policy Act.

Trade secrets and confidential commercial and financial information submitted by applicants may be excluded from public disclosure if submissions are made in accordance with guidelines within the program rules and the DOE's Freedom of Information regulations.

Automotive suppliers that may be eligible for funding will want to quickly prepare and submit their applications, and they may also wish to mobilize the support of federal elected officials in their business's jurisdictions. Additional information on this topic will be added from time to time at Butzel Long's Automotive Industry: Legal Matters Resource Center: <http://www.butzel.com/AutoIndustry.cfm>

Butzel Long will consider providing legal support for applications on a project-fee basis. For more information, please contact your regular Butzel Long attorney, or one of the following.

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SPECIAL EVENT ANNOUNCEMENT:

Butzel Long is sponsoring an OESA members-only breakfast briefing on this topic on Nov. 20, 2008, at the Somerset Inn, Troy, Mich. At this session, "The \$25 Billion Auto Loan Program: Impact on Suppliers," participants will learn about key aspects of the loan program. Please visit the following website for full details and registration information.
<http://oesa.org/events/eventdetail.php?eventId=660>

Speakers include:

William Kohler, senior attorney, co-chair, global automotive practice group, Butzel Long.
Ann Wilson, senior vice president, government affairs, MEMA.
Paul Haelterman, vice president, advisory services, CSM Worldwide, Inc.

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