A Guide To Industrial Development Revenue Bond Financing In Miami-Dade County

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CAPITAL FORMATION

The formation of capital to finance new and expanding industrial and business facilities is one of the most important aspects of a corporate facility planner's function.

Industrial Development Revenue Bonds can provide access to long term financing for capital projects at favorable interest rates that in some instances may make the difference between the feasibility or the impracticability of the proposed project.

The following narrative provides a working description of Industrial Development Revenue Bonds as they pertain specifically to Miami-Dade County, Florida and is not intended as a precise interpretation of Federal or State laws. Where applicable, the appropriate sections of the United States Internal Revenue Code and Florida Statutes are given for reference.

INDUSTRIAL DEVELOPMENT REVENUE BONDS

By definition, Industrial Development Revenue Bonds (qualified small issue bonds or IDBs) are securities issued by a local government agency for the purpose of acquiring or constructing capital facilities for use by private business and industry. Customarily, the facilities are then leased or sold by the agency to qualifying industries for the lease or installment purchase payments necessary to retire the bonds. The debt service on the bonds is paid solely from the revenues or payments received from the company, and there is no undertaking on the part of the local agency, county or any other governmental unit to make such payments other than from the lease or installment payments received.

In its simplest form, IDB financing may be compared to ordinary note and mortgage financing, i.e., a private lender (bond purchaser) agrees to lend funds (buy bonds) to a private company. The facilities (capital project) which the lender funds are typically mortgaged to secure the repayment of the loans (bonds). In many cases, the repayment schedule (debt service) provides a level debt amortization as found in typical mortgage loans.

In the case of IDBs, the local issuing agency (Industrial Development Authority) serves as a conduit. The loan is made to the Authority; the Authority relends the bonds (bond proceeds) to the private company to pay the cost of the capital project. For IRS purposes, the action of passing the loan through the Authority results in the loan being treated as a special obligation of a local governmental agency.

ADVANTAGES

A) Interest Cost Savings

IDBs are considered special obligations of a governmental unit, and providing the project meets qualifying conditions as described later, the interest on the IDBs is not subject to federal income tax (Section 144 (a), U.S. Internal Revenue Code). The bond purchaser, therefore, will not require the same interest rate in order to receive the same net rate of return (after tax) as if the financing were accomplished on a conventional taxable basis. The resultant interest savings is passed on to the borrower as a differential between the interest rate which the borrower could obtain through IDB financing and conventional financing. This interest differential may range from 2% to 4%. As an example, consider the following hypothetical case:

XYZ Company, Inc., Plant Expansion*

Amount Borrowed		$20,000,000
Term		20yrs. (monthly installments)
Annual Payments	@ 8.5% (conventional)	$211,342
	@ 5.0% (IDBs)	$160,485
Annual Savings		$50,857
Total interest expense	@ 8.5% (conventional)	$2,226,839
	@ 5.0% (IDBs	$1,209,703
Total interest savings		**$1,017,136**

**Subject to current market conditions.*

Revisions to the Federal Tax Code have brought about major changes in the traditional financial markets that have purchased IDBs. The above simplified model assumes a fixed rate of interest and a level debt amortization schedule, although in many cases the bonds may be placed with short term tax-exempt money funds on a floating rate basis (lower floater) with various remarketing provisions giving the borrower a long-term loan.

B) 100 % Financing

Generally, all capital costs associated with qualified projects may be financed, including: acquisition of land and existing buildings, construction of new facilities and purchase of capital equipment. The ability of a company to obtain 100% financing for capital costs will depend upon factors such as company financial strength, nature of project to be financed and others.

C) Accounting

Most commonly, the company using the facility (or majority stockholder if privately held) is treated as the owner for federal income tax purposes. Except as limited by federal law, the accounting treatment of project financed with IDB allows the company to receive all applicable tax credits, depreciation expense, interest expense and capitalization of project costs.

The tax-exempt status of IDBs and the accounting treatment of projects financed is periodically reviewed by the U.S. Congress and the Florida Legislature. Prior to proceeding, the applicant should inquire as to the status of legislation affecting IDBs.

QUALIFICATIONS*

Federal law restricts the use of IDBs to financing the costs of manufacturing facilities, including processing, assembly, printing, food processing and others in which raw material is converted or combined with other raw material to produce a finished or semi-finished product, certain pollution control hazardous waste and solid waste disposal facilities, facilities used in the normal course of business of 501(c)(3) corporations, including special education use areas that are built, installed, or established to serve primarily the educational purposes of operating any nonprofit private school established under chapter 617 or chapter 623 of the Florida Statutes or that is owned or operated by an organization described in s.501(c)(3)of the United States Internal Revenue Code and certain airport and seaport facilities. Costs which may be financed with the proceeds of IDBs include:

a) Project capital costs, including land not exceeding 25% of the net proceeds of the bond issue, the construction of new facilities and expansion of existing facilities, acquisition of existing buildings provided that at least 15% of the cost basis of the building is spent in refurbishing the building, the purchase of new capital production equipment, the interest accrued during construction and the architectural and engineering fees.

b) Bond issuance expenses (attorney's fees, underwriters' commissions, recording fees, etc.) to the extent that the aggregate of such expenses donot exceed 2% of the bond net proceeds.

c) Credit enhancement fees paid at the time of closing to the extent they directly result in a dollar-for-dollar reduction in bond interest expense.

Florida Statutes, Chapter 159, Parts II and III, further describe project component costs and findings and tests which affect the eligibility of projects.

Size of Financing

Several sections of the United States Internal Revenue Code, deal with the size of Industrial Development Revenue Bond issues.

$10 Million Issues (Section 144 (a)(4))

This section provides the option to increase the limit of the IDB financing from $1 million up to $10 million for manufacturing projects, however; other capital expenditure restrictions are imposed. In general, these restrictions require that capital expenditures made by the company (user) and all affiliated entities located within the same government jurisdiction (city, county) in which the proposed is located during the three years immediately prior to the date of the issuance of the bonds and three years after the issuance must be aggregated in arriving at the $20 million limitation. If during this six-year period, the aggregate of capital expenditures of the user and affiliated entities within the same governmental jurisdiction, including the amount raised with industrial development revenue bonds, exceeds $20 million (as of January 2007), the federal tax-exempt status of the interest on the IDBs is lost from the date the limit is exceeded. Federal law also prohibits any owner or user of a project financed with IDBs and affiliated persons or companies from having more than $40 million in IDBs outstanding at any given time.

There is no maximum issuance size for airport, seaport, hazardous waste, solid waste, pollution control, or 501(c)(3) projects.

Minimum Issue Size

While the maximum issue size is limited by federal regulation, the minimum issue size is a function of market conditions. Generally, the break-even point, above which savings will be realized and below which conventional forms of financing may prove to be less expensive overall, is considered to be at least $2.0 million. This is primarily a result of the fact that the issuance costs (see "Issuance Costs") associated with this type of financing do not decrease proportionately as the size of the financing decreases.

Sources of Financing

The market for tax-exempt IDBs is essentially confined to taxpayers who stand to gain a tax advantage by making investments which will earn interest income not subject to federal income tax. To gain the maximum interest rate advantage, the borrower must usually structure an IDB financing for sale into the national public bond market. In practical terms this will require that the borrower be an investment grade rated corporation or obtain a third-party guarantee of debt sufficient to gain such a rating. If a borrower is not a nationally known corporation with its own credit rating, the borrower will usually need to seek a Letter of Credit guarantee from a rated financial institution or financial guarantee insurance through an organization which carries triple-A claims-paying ability ratings from Moody's Investors Service, Inc., Standard & Poor's Ratings Group, and Fitch Investors Service, Inc. Bonds issued with such guarantees are usually structured as fixed rate insured bonds or with variable interest rates. The advantages and costs attendant to each structure should be explored by the borrower and compared with the interest savings gained over the life of the bond issue.

Issuance Costs

Issuance costs will vary depending on the structure and complexity of the bond issue, but most will typically include bond counsel and local and lender's counsel's fees, underwriting discount or lender's commitment fees, issuing agency financing fee, bond and official statement printing costs (if required), trustee's fees, title insurance, credit enhancement fees and other miscellaneous expenses.

The total of bond issuance costs may range from 4% to 10% of the bond issue size. A more definitive estimate of issuance costs can be made as the parameters of the issue become known. The aggregate of issuance costs not to exceed 2% of the total bond issue may be financed from bond proceeds. The balance over 2% must be financed by the borrower from other conventional sources.

Inducement and Timing

Most IDBs processed through the Miami-Dade County Industrial Development Authority will require approximately 90 to 150 days from the point of initial processing to closing when bond proceeds will be available. **Included in this time period is the controlling date which establishes the project's tax-exempt status. This date is termed the date of "official action" or "inducement". Official action by the Authority is required by federal regulation and is established by an agreement between the applicant and the Authority.**

Any expenditure on the project such as the cost of land acquisition, equipment purchase, etc. made within 60 days prior to the date of inducement may be financed with the proceeds of IDBs. However, the applicant may be reimbursed from bond proceeds for all costs incurred for eligible expenses after the date of official action. The procedures for processing a revenue bond application in Miami-Dade County are included in the following section:

MIAMI-DADE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

GUIDELINES AND PROCEDURES

FOR THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS

In order to facilitate the issuance of Industrial Development Revenue Bonds for the purpose of enhancing the economic well-being of the residents of Miami-Dade County, the Miami-Dade County Industrial Development Authority hereby adopts the following Guidelines and Procedures for the issuance of such bonds.

Guidelines

1. **Use of Bond Proceeds**
   The use of proceeds realized from the sale of Industrial Development Revenue Bonds shall be governed by the appropriate regulations and statutes of the State of Florida and the U.S. Internal Revenue Code. In general, costs permitted to be financed include:
   a) The cost of acquisition of property, including rights in land and other property, both real and personal, improved and unimproved; however, no more than 25% of bond net proceeds may be used to acquire land. If an existing building is acquired, an expenditure not less than 15% of the cost basis of the building must be made in refurbishment of the building.
   b) The cost of construction of new buildings.
   c) The cost of demolishing, removing, or relocating any buildings or structures on lands acquired.
   d) The cost of new machinery and equipment.
   e) The cost of issuance expenses (up to 2% of the net proceeds of the issue).
   f) The cost of engineering and architectural surveys, plans, and specifications.
   g) Interest expense during construction.

2. **Financial Structure**

   a) The legal structure of the proposed financing may take such forms as are permitted by the various federal and state statutes in effect at the time of the closing of the bond(s).
   b) Generally, the Industrial Development Authority may require that assets to be financed with the proceeds of Industrial Development Revenue Bonds be pledged as security for the repayment of the bonds.
   c) If the project to be financed is for a subsidiary of a larger parent company, the Authority may require that the parent company guarantee the bond(s).

d) The user of facilities financed by Industrial Development Revenue Bonds shall pay, as they become due, all applicable taxes, fees and other assessments levied upon the facilities financed with the proceeds of the bond(s) by all state, county, and local governmental agencies having jurisdiction over the facilities.

e) Any sale or other disposition of the project financed with IDBs issued by the Authority shall be subject to Industrial Development Authority approval.

3. Fees

a) Application Fees -- Applicants for bonds (tax-exempt and taxable) issued by theIndustrial Development Authority shall remit a non-refundable application fee in accordance with the following schedule:

i) **Ongoing operating businesses** with complete financial statements, and new venture projects for which a credit enhancement sufficient to render the bonds investment grade rated is obtained: **$1,500.00.**

ii) **Refundings** of current outstanding bond issues:

- Original issues of Miami-Dade County Industrial Development Authority: **$1,000.00**
- Original issues of other agencies: **$1,500.00.**

iii) **Bond Assumptions** of original issues of Miami-Dade County Industrial Development Authority: **$1,000.00**

b) Financing Fees* (Original Issues, Refundings and Assumptions) -- For all bonds issued by the Industrial Development Authority (tax-exempt and taxable) a financing fee shall be due upon the successful close of the financing in accordance with the following schedule:

i) **Original Bond Issues, Refundings and Bond Assumptions:** 0.50% (50 basis points) of the first $10 million and 0.25% (25 basis points) of the amount over $10 million of bonds.

ii) **Annual Maintenance Fee (Original Issues, Refundings and Assumptions):** 0.05% (5 basis points) to 0.10% (10 basis points).

For financings arranged through the Industrial Development Authority but not issued by the Authority, a financing fee in accordance with an estimate of expenses, legal exposure and benefits gained will be assessed.

Procedures

1. **Application**

   Applications for the issuance of Industrial Development Revenue Bonds shall be made to the Industrial Development Authority on company letterhead, accompanied by the application fee prescribed in the brochure (Section 3) and shall include the following minimum information.

   a) Applicant* (entity which will own facility financed with IDBs)

Name:	Corporation, partnership, individual
Mailing Address:	Self explanatory
State of Incorporation:	If an individual, give legal residence
Representative:	Person authorized to speak on behalf of applicant, plus, address and telephone number (if differentfrom applicant)

   * *If applicant is a corporation or partnership, list all parties having a 10% or greater interest in the corporation or partnership.*

   b) Entity Using Project Financed with IDBs

Name:	Self-explanatory
Mailing Address:	Self-explanatory
State of Incorporation:	Self-explanatory
Representative:	Person authorized to speak on behalf of using
entity, plus	address and telephone number (if different from project user)

   c) Applicant's Attorney

Name:	If none, provide when selected
Mailing Address:	Self-explanatory
Telephone No.:	Self-explanatory

   d) Application Amount **$______________________**

e) Applicant's Background

Describe the applicant, if an individual, give place of usual residence, usual occupation, experience in that occupation, relationship to the entity which will use the project, etc.

f) Project User's Background (if other than applicant)

Give corporate structure (i.e., a division of_____________corporation, a sole proprietorship, a partnership, a 501(c)(3) corporation, etc.). Indicate the type of business engaged in; indicate the type of business the project will be used for if different from usual business. Indicate the experience in the business for which the project will be used. Provide other information necessary to give a clear picture of operations.

g) Project Description

Describe in detail the components of the project to be financed with IDBs.

Land Acquisition:	___#_ acres, include exact location if known at the time of application (approximate location otherwise), provide the cost if known or an estimate. If an existing facility, provide the size and the cost of the land included.
Building:	Provide the size in square feet and detail by functional use, i.e., manufacturing___#___square feet; office __#__ square feet; storage_______# square feet; total__________#______square feet Provide the projected cost of construction; include site preparation, architectural and engineering costs, etc. If an existing building, provide the estimated cost of necessary renovations by type, i.e., new roof, repair air conditioning, etc.
Equipment:	List by major type and cost
Other:	Itemize

h) Financial Sufficiency

Sources and Uses of Funds:	Provide detail on all the sources of funds for the project and all the uses of funds that will be applied to the project. Sources must equal uses.
<u>Source of Funds</u>	**<u>Use of Funds</u>**
IDB proceeds Equity (cash, fixed assets, etc.) Other (conventional loans, etc.)	Land Acquisition Building Construction Equipment Purchase Other costs (itemized)
Ongoing Operations:	Provide financial statements for previous completed three years of operations; including a balance sheet, income statement and notes to financial statements, plus interim statements for the current year.
Start-Up Ventures:	Provide feasibility report on the project to include at minimum, market analysis, cash flow projections, discussions of factors enhancing or detracting from attainment of projections, etc.
Guarantors:	Indicate what form of third-party guarantee will be provided, i.e., Letters of Credit, Bond Insurance, etc.
Sale of Bonds:	Indicate the method of marketing of the bonds, i.e.,private sale, public offering.
Personal Statements:	If the entity owning the facility is a privately held corporation, partnership or individual in which control of the entity is vested, personal statements of those individuals may be required.

i) Economic Impact

Indicate how the community will benefit by the completion of the project with Industrial Development Revenue Bonds, i.e., new jobs created, existing jobs preserved, business to remain viable in the community, new capital investment added to tax rolls, additional payroll in circulation, project to be located in economic target area, etc.

2. Application Review

Florida Statutes require that agencies issuing Industrial Development Revenue Bonds make a determination that projects financed are appropriate to the needs and circumstances of and will make a significant contribution to the economic growth of the community in which located. In addition, issuing agencies must also determine that the applicants for such projects are financially responsible and fully capable and willing to operate and maintain the project and to make payments as required to pay principal and interest on the bonds.

In determining financial responsibility and the ability and willingness to make required payments of principal and interest, the Authority will consider financial sufficiency factors in the following areas related to the project and the applicant.

a) History of Financial Performance

Audited financial statements (balance sheet, income statement, changes in financial condition and notes thereto) are preferred for the most recently completed three years of operations. Statements should be submitted on the entity owning the project, third party guarantors and other parties from which revenues to repay the debt are dependent. An examination of the submitted statements must lead to the conclusion that the owner, guarantor and/or other users of the project will be able to generate revenues sufficient to operate and maintain the project and to make all required payments of principal and interest on the bonds. Unaudited financial statements should be supported by corporate income tax returns. An applicant company in business for less than three years should also submit pro-forma statements covering the three years following the commencement of operation of the project.

b) Collateral Value of the Project Financed

The collateral of the project financed should be sufficient to collateralize the debt. If not, then consideration may be given to additional collateral.

c) Additional Security/Guarantees

The application for Industrial Development Revenue Bonds will be received and reviewed by the Industrial Development Authority Executive Director, and he will prepare a report to be submitted to the Authority. After deliberation, the Authority may, if it decides that the project is sound and will benefit the residents of Miami-Dade County, adopt a resolution to authorize the Chairman and Secretary to sign a Memorandum of Agreement for a one-year period. **This action constitutes official action or inducement for IRS purposes.**

Before any extensions will be granted, the applicant must provide the Authority with copies of the latest financial statements and must explain in person the reason for the delay in completing the financing and the current status of the project.

Projects approved for financing will be scheduled for a public hearing in accordance with the provisions of the U.S. Internal Revenue Code. Following the public hearing, the project report, action of the Authority and a transcript of the public hearing will be forwarded to the Miami-Dade County Board of County Commissioners for its review and approval. Prior to the issuance of the bonds for manufacturing projects, confirmation of sufficient state volume cap allocation must be obtained by the Authority from the State Division of Bond Finance.

3. Bond Counsel and Preparation of Bond Documents

After review and approval by the County Commission, the applicant, in consultation with the Authority's Executive Director, County Attorney and bond purchaser may initiate appropriate steps leading to the final preparation of the bond documents by contacting bond counsel and providing the terms of the financing and a copy of the financial institution purchase or guarantee commitment. In addition to other expenses specified in the various documents pertinent to the issue, the applicant is responsible for all legal fees of bond counsel and of the County Attorney. Such fees must be paid at the closing of the bond issue unless other arrangements are made in advance.

4. Sale of Bonds

The action of the Authority in entering into a Memorandum of Agreement with the applicant for the issuance of Industrial Development Revenue Bonds and the approval of the County Commissioners following a public hearing should not be construed as indicating the marketability of the bonds, but rather, as an agreement by the Authority to issue its bonds only if a willing purchaser can be found and upon the execution of bond sale documents mutually agreeable to all parties thereto.

As the obligation for the repayment of Industrial Development Revenue Bonds rests solely with the applicant, and neither the Authority, the County, the State nor any political subdivision thereof is responsible for their repayment or any associated expense, it is the policy of the Authority that subject to the conditions contained herein or as may be adopted at a later date, the manner in which the bonds shall be sold, so long as complying with all applicable federal and state statutes shall be the prerogative of the applicant. The Authority reserves the right to review the credentials of any investor, financial institution or investment banker chosen, and to reject the same upon good cause shown.

In general, it is preferred, prospective bond issues not considered to be of investment-grade quality be sold only by private placement or by limited public offering in bond denominations of $100,000 each. Prospective issues of investment-grade quality may be sold by public offering or private placement in smaller bond denominations. Investment-grade quality shall be determined as meeting one of the following tests:

a) A rating of the issue equal to or better than Moody's Baa or Standard and Poor's BBB
b) A rating of recently issued debt instrument(s) of the company of similar term and security as that of the prospective bond issue equivalent to or better than the stated above.

For purposes of this paragraph, the term "limited public offering" shall be defined as an offering made only to a limited number of institutional investors.

5. Disposition of Proceeds of Bond Sale

Following the sale of the bonds, the proceeds will be deposited with the Trustee for the bond holders or in a trust account, to be disbursed for the acquisition and/or construction of the project according to a schedule provided in one or more of the bond documents. The Authority will be concerned with the disposition of the proceeds to the extent that they are used for items allowed by governing statutes for portions of the project as authorized in the Memorandum of Agreement and bond sale documents.

The Industrial Development Authority reserves the right to waive, upon good cause shown, any of the aforesaid Guidelines and Procedures except provisions requiring a public hearing and County Commission approval prior to the closing of Industrial Development Revenue Bonds.

INDUSTRIAL DEVELOPMENT BOND DIAGRAM