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

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CONTACT INFORMATION

Board Members

Anthony D. Okonmah, Chairman
Ian Martinez, Vice Chairman
Lance Aylsworth, Assistant Secretary
Guillermo Diaz-Rousselot, Assistant Secretary

Staff

James D. Wagner Jr. – Executive Director
Amanda Llovet – Chief Financial Officer
Cynthia Castillo – Assistant to Executive Director

Office Address

Miami-Dade County
Industrial Development Authority
Brickell City Tower
80 SW 8th Street, Suite 2801
Miami, Florida 33130
Tel: 305-579-0070
Email: info@mdcida.org
Website: www.mdcida.org

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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.

The following narrative provides a working description of Industrial Development Revenue Bonds to be issued by the Miami-Dade County Industrial Development Authority (the "Authority" or "MDCIDA") and is not intended as a precise interpretation of Federal or State laws. Where applicable, the appropriate sections of the Internal Revenue Code of 1986, as amended (the "Code") and Florida Statutes are given for reference.

INDUSTRIAL DEVELOPMENT REVENUE BONDS

By definition, Industrial Development Revenue Bonds (referred to herein as "IDBs" or an "IDB") 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 issuing 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/borrower (the "Borrower"), 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 (purchase 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, e.g., MDCIDA serves as a conduit. The loan is made to the MDCIDA and the MDCIDA relends the bond proceeds to the Borrower to pay the cost of the capital project. The Code establishes certain categories of qualified private activity bonds that may be issued on a tax-exempt basis if the requirements contained in the Code are satisfied. These include small-issue (manufacturing) IDBs, exempt facility bonds and 501(c)(3) bonds, among others. See, for example Code sections 142, 144(a) and 145.

ADVANTAGES

A) Interest Cost Savings

IDBs are considered special obligations of a governmental unit, and providing the project meets the qualifying conditions contained in the Code, the interest on the IDBs is not subject to federal income tax. This results in a lower cost of borrowing, since the bond purchaser 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.

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, but there are exceptions in order to qualify the bonds for tax-exempt status under the Code. Borrowers should consult carefully with Bond Counsel in this respect. Additionally, the ability of a Borrower to obtain 100% financing for capital costs will depend on various other factors, such as the company's financial strength and the nature of project to be financed.

C) Accounting

Most commonly, the Borrower using the facility (or majority stockholder if privately held) is treated as the owner for federal income tax purposes. Except as limited by federal tax law, the accounting treatment of projects financed with IDBs allow the Borrower 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 and the applicable laws are subject to change. Prior to proceeding, the applicant should inquire with its Bond Counsel 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 (see section 142(a) of the Code); certain pollution control, hazardous waste and solid waste disposal facilities, sewage facilities, airport facilities, seaport facilities and other “exempt facility” projects (see section 142 of the Code); and 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 section 501(c)(3) of the Code. 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, financial advisors fees, recording fees, etc.) to the extent that the aggregate of such expenses do not exceed 2% of the bond net proceeds.

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

Size of Financing

Minimum Issue Size

While the maximum issue size may be limited by federal tax law, 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" below) associated with this type of financing do not decrease proportionately as the size of the financing decreases.

Issuance Costs

Issuance costs will vary depending on the structure and complexity of the bond issue, but most will typically include bond counsel fee, local counsel fee, lender's counsel's fee, underwriting discount, and/or lender's commitment fees, issuing agency financing fees, financial advisor fee, bond and official statement printing costs (if required), trustee's fees, title insurance, credit enhancement fees and other miscellaneous expenses. The Borrower is responsible for all costs of issuance required to complete the transaction.

A more definitive estimate of issuance costs can be made as the parameters of the issue become known. Total issuance costs payable from the proceeds of a tax-exempt IDB cannot exceed 2% of the total bond issue. The balance over 2% must be financed by the Borrower from other conventional sources or from the proceeds of taxable IDBs issued concurrently with the tax-exempt financing.

Inducement and Timing

Most IDBs issued by the Authority will require approximately 90 to 150 days from the point of initial processing to the bond closing date 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 tax-exempt 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 IDBs for the purpose of enhancing the economic well-being of the residents of Miami-Dade County, MDCIDA has adopted the following Guidelines and Procedures for the issuance of such bonds.

Guidelines

1. <u>Use of Bond Proceeds</u>

The use of proceeds realized from the sale of IDBs shall be governed by the appropriate regulations and statutes of the State of Florida and the 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. <u>Financial Structure</u>

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 Authority may require that assets to be financed with the proceeds of IDBs 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 IDBs 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 a project financed with IDBs issued by the Authority shall be subject to Authority approval while the IDBs remain outstanding.

3. Borrower's Financing Team

The Borrower's financial team provides legal and financial information and services to the Borrower. The Borrower should submit the names, contact information, and qualifications for all professionals it proposes to utilize for the transaction with its application. Borrowers may propose the hiring of their own finance professionals, subject to review and approval by the IDA.

The Borrower selects the firm that will serve as bond counsel for the transaction ("Bond Counsel"). The Bond Counsel firm selected must be "nationally recognized" as bond counsel, with the principal office of the lead attorney located in the State of Florida. Bond Counsel is responsible for providing legal opinions in connection with an issuance of bonds and advises the issuer and the underwriter, placement agent or lender, as applicable, on the legal aspects of the bond issue and may also serve in other capacities, subject to compliance with the applicable Florida Bar conflict of interest rules.

The underwriter, placement agent or lender, as applicable, may retain their own counsel ("Underwriter's Counsel") to review the transaction, prepare the necessary disclosure documents and conduct related due diligence, and negotiate the purchase of the bonds on their behalf.

If requested, the Authority can coordinate with the Borrower to assist in the identification and selection of qualified Bond Counsel.

4. Application Fees

a) Applicants for bonds (tax-exempt and taxable) issued by the 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 MDCIDA: **$1,000.00**
- Original issues of other agencies: **$1,500.00.**

iii) **Bond Assumptions** of original issues of MDCIDA: **$1,000.00**

b) Financing Fees (Original Issues, Refundings and Assumptions)

For all bonds issued by the MDCIDA (tax-exempt and taxable) a financing fee shall be due upon the successful close of the financing.

i) **Original Bond Issues, Refundings and Bond Assumptions:** 0.50% (50 basis points) of the first $10 million of the bonds, 0.25% (25 basis points) of the amount over $10 million to $40 million of the bonds and 0.15% (15 basis points) of the amount over $40 million of the bonds.

ii) **Annual Maintenance Fee (Original Issues, Refundings and Assumptions):** 0.05% (5 basis points) on the first $40 million and 0.03% (3 basis points) over $40 million.

Procedures

1. **Application**

Applications for the issuance of IDBs shall be made to the 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 different from 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 any business experience relating to the project. 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.

Source of Funds	**Use of Funds**
IDB proceeds	Land Acquisition
Equity (cash, fixed assets, etc.)	Building Construction Equipment Purchase
Other (conventional loans, etc.)	Other costs (itemized) Issuance Costs (up to 2% of tax-exempt proceeds)

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 any form of third-party guarantee that may 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 Financial Statements:	If the entity owning the facility is a privately held corporation, partnership or individual in which control of the entity is vested, personal financial statements of those individuals may be required.

i) Economic Impact

Indicate how the community will benefit by the completion of the project with IDBs, i.e., new jobs created (both permanent and temporary during construction), 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 IDBs 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 IDB financing will be received and reviewed by the Authority's 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. **This action constitutes the Official Action or Inducement for IRS tax-exempt financing purposes.**

3. TEFRA Hearing and Approval

Projects approved for financing will be scheduled for a public hearing in accordance with the provisions of section 147(f) of the 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.

4. Volume Cap Allocation

Prior to the issuance of qualified private activity bonds to finance certain projects, Section 146 of the Code requires that the bonds receive a volume cap allocation from the state. In Florida, the confirmation of state volume cap allocation for a project is issued by the State Division of Bond Finance. The procedure for obtaining volume cap allocation in Florida is set forth in Chapter 159, Part VI, Florida Statutes. If volume cap allocation is necessary for a project, the allocation can only be obtained after the bonds have received TEFRA approval.

5. Bond Counsel and Preparation of Bond Documents

At any time while the process described in these procedures are being undertaken, Bond Counsel will be responsible for the preparation of the bond financing documents and the underwriter's counsel will be responsible for preparing the disclosure document and bond purchase agreement.

6. Sale of Bonds

The action of the Authority in entering into a Memorandum of Agreement with the applicant for the issuance of IDBs 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 IDBs rests solely with the borrower, 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 borrower. 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.

If a prospective bond issue is not of investment-grade quality, the bonds must be sold only by private placement or by limited public offering in minimum authorized denominations of not less than $100,000 and the initial investor must deliver a standard investor letter at the time of issuance and delivery of the bonds. A direct or private placement of Notes or Bonds to a nationally recognized financial Institution, bank or qualified institutional buyers may be issued as a single bond or promissory note and not be subject to minimum denominations but shall be subject to restrictions on transfer and verification of status as a bank, qualified institutional buyers or sophisticated financial institution. 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.

7. <u>Disposition of Proceeds of Bond Sale</u>

Following the sale of the bonds, the proceeds will be deposited with a 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 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 IDBs.

INDUSTRIAL DEVELOPMENT BOND TIMING DIAGRAM