

RESOLUTION NO. 10-05

A RESOLUTION APPROVING
WRITTEN BOND COMPLIANCE PROCEDURES

WHEREAS, the South Sangamon Water Commission (the "Commission") issues bonds and other debt from time to time requiring compliance with the Internal Revenue Code of 1986 and the Treasury Regulations promulgated thereunder (the "Code"); and

WHEREAS, it is advisable and in the best interests of the Commission to adopt written procedures establishing and implementing procedures to comply with provisions of the Code for the (1) assignment of compliance responsibilities, (2) establishment and maintenance of books and records, (3) compliance in the investment of bond proceeds, (4) review and allocation of the expenditure of bond proceeds, and (5) periodic monitoring of use of financed property; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE SOUTH SANGAMON WATER COMMISSION, SANGAMON COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1. The written bond compliance procedures attached hereto are approved and adopted, and the officers of the Commission are authorized and directed to implement the procedures.

SECTION 2. This Resolution is effective immediately upon its passage.

PASSED by the Board on October 5, 2010.


Chairman

AYES: McCord, Hall, Pfeffer

NAYS: none

ABSENT: 0

RECORDED IN the Records of the Commission on October 5, 2010.

ATTEST:


Clerk

Bond Compliance Procedures

The South Sangamon Water Commission (the "Commission") adopts these written procedures establishing and implementing bond procedures to comply with provisions of the Internal Revenue Code of 1986 as amended (the "Code") and Treasury Regulations promulgated thereunder for the purpose of creating reasonable procedures for the (1) assignment of compliance responsibilities, (2) establishment and maintenance of books and records, (3) compliance in the investment of gross proceeds, (4) review and allocation of the expenditure of bond proceeds, and (5) periodic monitoring of use of financed property.

I Assignment of Compliance Responsibilities.

- (a) The Chairman and Treasurer are responsible for implementation and performance of these procedures.
- (b) The Chairman and Treasurer may implement and perform the procedures through his or her designee.
- (c) Any actions required by these procedures to occur annually shall be performed at the end of the Commission's fiscal year in conjunction with the performance of the Commission's annual audit. The Chairman and Treasurer shall obtain assistance from the Commission's accountants and bond counsel as needed.
- (d) The Chairman and Treasurer shall create and maintain a calendar for the taking of any future action required of the Commission for a bond issue.

II Establishment and Maintenance of Books and Records.

- (a) Records required to be maintained by these procedures will be kept by the Commission so long as the original bonds (and any bonds refunding the original bonds) are outstanding plus three years after the April 15 following the calendar year of final redemption date of the bonds (and any bonds refunding the original bonds).
- (b) All records shall be maintained at the offices of the Commission.
- (c) The following records will be maintained by the Commission:
 - 1. The investment records described in Section III.
 - 2. The expenditure records described in Section IV.
 - 3. The use of facilities records described in Section V.
 - 4. The arbitrage rebate documents described in Section VI.
 - 5. The bond transcript, including records relating to any modifications of the bonds or the bond documents of the bond issue and interest rate mode conversions.
 - 6. Records relating to extensions or replacements of guarantees of bonds of the issue, such as letters of credit, and records showing the dates and amounts of any payments for guarantees.
 - 7. Records relating to interest rate swaps or other derivatives relating to the bonds entered into after the date of issuance, if any, and records showing the dates and amounts of any payments and receipts with respect to each derivative contract.

8. Appraisals, demand surveys, or feasibility studies.
9. Documents related to government grants associated with construction, renovation or purchase of bond-financed facilities.
10. Publications, brochures and newspaper articles for or related to a bond financing.
11. Trustee statements for the bond financing.
12. Correspondence (letters, emails & faxes) for bond financings.
13. Reports of any IRS examinations of the Commission or of a bond financing.

III Investment of Bond Proceeds.

- (a) Investment of bond proceeds procedures are intended to ensure that the investment of gross proceeds meets the arbitrage requirements of §148 of the Code and the federal guarantee requirements of §149(b) of the Code.
- (b) Records of all investments of bond proceeds and any other "gross proceeds" of the bonds to be maintained include the following:
 1. purchase price (including the amount of accrued interest stated separately).
 2. nominal rate of interest.
 3. par or face amount.
 4. purchase date.
 5. maturity date.
 6. amount or original discount or premium (if any).
 7. general type of investment.
 8. frequency of periodic payments (and actual dates and amounts of receipts).
 9. period of compounding.
 10. date of disposition.
 11. amount realized on disposition (including the amount of accrued interest stated separately).
 12. in the case of guaranteed investment contracts and yield restricted defeasance escrow investments, transaction costs (e.g., commissions) incurred in acquiring, carrying, or disposing of the investments.
 13. if an investment is not traded on an established securities market, such as a guaranteed investment contract, or in a yield restricted escrow, market price data sufficient to establish that the purchase price (or disposition price) was not greater than (or less than) the arm's-length fair market value on the date of acquisition (or disposition) or, if earlier, on the date of a binding contract to acquire (or dispose of) the investment.
- (c) All investments shall be purchased and sold at fair market value in bona fide, arm's-length transactions.

- (d) All investments that are guaranteed investment contracts or investments for a yield restricted defeasance escrow must be purchased and sold pursuant to the “three-bid” safe harbor set forth in Treasury Regulation §1.148-5(d)(6)(iii).
- (e) Bond proceeds may not intentionally be held uninvested and shall not actually be held uninvested for a period of longer than 3 days.
- (f) Bond counsel shall be consulted on issuance of the bonds and as needed thereafter to specifically identify bond accounts that are subject to yield restriction. Yield restriction for bond accounts shall be met either by means of investment or yield reduction payments.
- (g) Procedures to ensure that any funds or accounts that are treated as containing gross proceeds of the issue, but which are not directly funded with proceeds of the issue (for example, any “sinking funds” or “pledged funds” that are treated as “replacement proceeds”), are specifically identified for review for compliance with investment restrictions.

IV Expenditure of Bond Proceeds

- (a) Expenditure of bond proceeds procedures are intended to ensure that bond proceeds are used for qualifying expenditures.
- (b) Detailed records of all expenditures of proceeds of a bond issue shall be maintained, including at least the following information:
 1. invoices and checks
 2. the amount of each expenditure.
 3. information sufficient to identify the separate project or purpose of each expenditure.
 4. identification of the specific unrelated party (for example, the vendor or contractor) receiving the payment.
 5. the date of the expenditure on which the expenditure was made.
 6. the reasonably expected weighted average maturity of each separate project or purpose.
 7. the placed in service date of each separate project or purpose that is a capital expenditure.
 8. records relating to equity contributions to projects financed with proceeds.
 9. Requisitions to the bond trustee, if any.
 10. Records showing actual payments of debt service on the issue.
- (c) A bond proceeds expenditure certificate and other post issuance tax allocations and elections shall be prepared and executed within 18 months after the financed project is placed in service, as further set forth in Treasury Regulation §1.148-6(d). Allocations to expenditures may be made using any reasonable, consistently applied accounting method as permitted under Treasury Regulation §§1.141-6 and 1.145-2.

- (d) The Treasurer shall annually review expenditures to confirm:
1. That each amount treated as an expenditure is a cash outlay to an unrelated party to the issuer.
 2. That no working capital expenditures have occurred except as permitted under applicable restrictions of the Code and regulations (for example, is permitted under the “proceeds-spent-last” rule for working capital expenditures in Treasury Regulation §1.148-6(d) or the limitation on financing working capital expenditures with available project proceeds for Build America Bonds).
 3. That all amounts treated as an expenditure did not involve a noncustomary prepayment (that is, a prepayment that would give rise to investment property because it is noncustomary).
 4. That the final determination of how bond proceeds are spent is consistent with the qualified use requirements that apply to the bond issue, including any applicable restrictions on financing issuance costs.
 5. That the final determination of how bond proceeds are spent is consistent with any restrictions on the minimum weighted average maturity of the capital expenditure property financed with proceeds of the bonds set forth in the Code or applicable federal income tax regulations.
 6. That the method for allocating proceeds to expenditures, if different than a specific tracing method, is stated.
- (e) The Treasurer shall consult with bond counsel upon issuance of the bonds to determine, and the Treasurer shall thereafter annually review and confirm:
1. Dates for timely expenditure of bond proceeds.
 2. For Build America Bonds:
 - (i) The correct calculation of Available Project Proceeds.
 - (ii) That 100% of Available Project Proceeds less amounts in a reasonably required reserve fund are expended only for capital expenditures.
 - (iii) That costs of issuance financed by the issue do not exceed 2% of the proceeds of sale.
- (f) The Treasurer shall, on a continual basis, ensure that bond proceeds are expended in compliance with the requirements of the related bond documents.
- (g) The Treasurer shall annually review and take any necessary actions to see that bond proceeds are timely spent and to see that the Commission make a final allocation of how bond proceeds are spent within 18 months after a financed project is placed in service.

V Use of Bond Financed Property.

- (a) Use of bond financed property procedures are intended to ensure that use of bond financed property meets the applicable use-of-proceeds requirements.

- (b) Records shall be maintained establishing the use of all property financed with proceeds of the bond issue, including the following:
 - 1. Management and other service agreements.
 - 2. Research contracts.
 - 3. Naming rights contracts.
 - 4. Ownership documentation.
 - 5. Leases.
 - 6. Subleases.
 - 7. Leasehold improvement contracts.
 - 8. Joint venture arrangements.
 - 9. Limited liability corporation arrangements.
 - 10. Partnership arrangements.
- (c) Before an agreement described in the preceding paragraph is entered into or renewed, bond counsel shall review the agreement for compliance with the applicable qualified use requirements and private activity bond rules.
- (d) Records, certifications, and opinions relating to any “change of use” of bond-financed property, including remedial action certificates and opinions, shall be maintained.
- (e) The Chairman shall monitor and annually review building uses for compliance with the related bond documents, and measure the actual percentage amount of nonqualified use during the period the bonds.
- (f) The Chairman shall annually consult with bond counsel in the types of actions that can result in nonqualified use of bond financed property, in the availability of remedial actions and voluntary closing agreement requests to correct nonqualified use, and in the applicable legal standards for determining whether a contract for use of bond-financed property results in qualified use or nonqualified use.

VI Arbitrage Rebate

- (a) Records shall be maintained related to arbitrage rebate for the bonds, including the following:
 - 1. Arbitrage rebate computations, including rebate reports and evidence of rebate payments.
 - 2. Computation of yield reduction payments, if applicable.
 - 3. Any and all forms 8038-T that must accompany payments to the IRS.
 - 4. Any and all forms 8038-R submitted for refunds of prior arbitrage rebate payments.
- (b) The Treasurer shall consult with bond counsel upon issuance of any bonds to identify arbitrage yield restriction and rebate rules applicable to the bonds. Dates for rebate calculations and payment will be calendared by the Treasurer.

- (c) The Treasurer shall annually review investment earnings and expenditure spend-down rebate exemptions for each outstanding bond issue to identify spend-down compliance and possible rebate amounts.
- (d) For each bond issue requiring rebate, arbitrage rebate calculations will be performed by an external qualified expert.
- (e) Any arbitrage rebate liabilities will be recorded as a liability in the general ledger and if applicable, a deposit shall be made into an arbitrage rebate account to bring the balance of the account to the calculated liability.
- (f) Upon each five year arbitrage payment date for each bond issue, the required arbitrage rebate payment shall be made to the IRS, if applicable.
- (g) Rebate and yield restriction computations and payments shall be determined in a manner consistent with the final allocation of proceeds to expenditures.

VII General Requirements

- (a) For each bond issue, bond counsel shall be required to prepare and distribute, and the Commission shall maintain as records, a complete transcript of documents relating to the bonds, including but not limited to:
 1. Federal tax or information returns (8038 series).
 2. Transcripts, official statements and other offering documents.
 3. Minutes and resolutions authorizing the issuance of the bond.
 4. Certifications of the issue price of the bonds and that Build America Bonds are not issued with more than a de minimis amount of premium, including a review, if applicable, of the records of the secondary market trading activity for the bonds after the sale date of the bonds but before the bonds are delivered on the date of issue, such review to be performed by other than the underwriter or initial purchaser of the bonds.
 5. Formal elections approving the bond issue, if applicable.
 6. Formal elections of alternate accounting methodology, if applicable.
- (b) Filings for Build America Bonds shall be reviewed by bond counsel to confirm:
 1. Timely filing of Form 8038-CP.
 2. Proper determination of the amount of interest payable on each interest payment date.
 3. Proper amount of refundable credit is reported on Form 8038-CP.
 4. Payment of refundable credit will be made to the proper person.
- (c) Should the Chairman or Treasurer identify any non-compliance of a bond issue with the requirements of the Code or the Regulations, the Commission shall promptly consult with bond counsel for remedial action permitted under the Regulations, or the submission of a voluntary closing agreement request to the Internal Revenue Service, and shall devote sufficient resources to implementing remedial actions or making voluntary closing agreement requests, as may be required.