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Scott County

FI-4
5-11-10

May 4, 2010

To: Dee F. Bruemmer, County Administrator

From: Sarah Kautz, Budget Manager

Subject: "Build America Bonds" Compliance Policy and Procedures

In November 2009, Scott County issued "Build America Bonds" to finance the Emergency Equipment purchases for Scott Emergency Communications Center. "Build America Bonds" were created as a result of the American Reinvestment and Recovery Act of 2009 (ARRA). These bonds are special, as the county receives a rebate from the IRS equal to 35% of the interest payable on each interest payment date for the life of the bonds.

In February 2010, the IRS initiated a compliance project to evaluate the post-issuance and record retention policies, procedures and practices of issuers of "Build America Bonds." Each entity that issued these bonds will be receiving a letter from the IRS requiring them to complete IRS Form 14127 *Direct Pay Bonds Compliance Questionnaire* to ensure that we are in compliance with the rules associated with these special bonds. I have attached a sample copy of this form for your information. We expect to receive an official letter from the IRS within the next month.

Following discussion with our Bond Counsel, it is suggested that we adopt certain policies and procedures to show that we are in compliance with the IRS regulations related to "Build America Bonds." Attached to this memo is a draft policy that should be adopted by Scott County in advance of receiving the IRS compliance letter. To ensure Scott County compliance with this policy, it will be provided to all county departments which invest, spend, report, contract, or manage projects that are financed with these bonds.

Form **14127**
(January 2010)

Department of the Treasury — Internal Revenue Service

Direct Pay Bonds Compliance Check Questionnaire

OMB No. 1545-2071

We are asking for information regarding your Direct Pay Bonds, post-issuance bond compliance and record retention practices. Direct Pay Bonds referred to in this questionnaire are Build America Bonds described in section 54AA(g) of the Internal Revenue Code. Please complete the questionnaire and follow the instructions in the accompanying letter for returning it to us. Please note that section references in this questionnaire are to sections of the Internal Revenue Code unless otherwise indicated. For all accompanying documentation, please clearly label the question to which it relates.

Name of Governmental Entity: ______________________________

Employer Identification Number: ______________________________

1. Do you have written procedures to ensure that none of the maturities of your Direct Pay Bonds are issued with more than a de minimis amount of premium as required by section 54AA(d)(2)(C)? ☐ Yes ☐ No

   If Yes, date they were implemented? ____________ *(dd/mm/yyyy)*

   If Yes, describe in detail your procedures for ensuring compliance with such de minimis rule and how you implement such procedures, including dates of revisions, if any. In lieu of the above description, you may attach a copy of your written procedures. If you have no written procedures, explain what guidelines you have in place and from what source these guidelines are derived that ensure Direct Pay Bonds issued with premium fall within the de minimis rule. *(Attach sheet with description)*

2. Are records of secondary market trading activity for your Direct Pay Bonds available through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System *(see http://www.emma.msrb.org)*? ☐ Yes ☐ No ☐ Do not know

   If Yes, did you or a consultant to the issuer, other than the underwriter or initial purchaser of the Direct Pay Bonds, review the records of the secondary market trading activity for the Direct Pay Bonds after the sale date of the bonds but before the bonds were delivered on the date of issue? ☐ Yes ☐ No ☐ Do not know

   If Yes, that is, if such records were reviewed as described above, did any of your Direct Pay Bonds trade at a price greater than the issue price prior to the delivery of those Direct Pay Bonds on the date of issue? ☐ Yes ☐ No ☐ Do not know

3. Do you have written procedures to ensure that your Direct Pay Bonds remain in compliance with the following Federal tax requirements after the bonds are issued:

   a. Timely expenditure of bond proceeds? ☐ Yes ☐ No

      If Yes, date they were implemented? ________________ *(dd/mm/yyyy)*

   b. Correct calculation of Available Project Proceeds *(See section 54A(e)(4))*? ☐ Yes ☐ No

      If Yes, date they were implemented? ________________ *(dd/mm/yyyy)*

   c. Use of 100% of Available Project Proceeds less amount in a reasonably required reserve fund only for capital expenditures *(See section 54AA(g)(2)(A))*? ☐ Yes ☐ No

      If Yes, date they were implemented? ________________ *(dd/mm/yyyy)*

   d. Arbitrage yield restriction and rebate? ☐ Yes ☐ No

      If Yes, date they were implemented? ________________ *(dd/mm/yyyy)*

   e. Costs of issuance financed by the issue do not exceed 2% of the proceeds of sale *(See section 54A(e)(4)(A)(ii))*? ☐ Yes ☐ No

      If Yes, date they were implemented? ________________ *(dd/mm/yyyy)*

   f. Proper determination of the amount of interest payable on each interest payment date? ☐ Yes ☐ No

      If Yes, date they were implemented? ________________ *(dd/mm/yyyy)*

   g. Proper amount of refundable credit reported on Form 8038-CP? ☐ Yes ☐ No

      If Yes, date they were implemented? ________________ *(dd/mm/yyyy)*

   h. Timely filing of Form 8038-CP? ☐ Yes ☐ No

      If Yes, date they were implemented? ________________ *(dd/mm/yyyy)*

   i. Payment of refundable credit will be made to the proper person? ☐ Yes ☐ No

      If Yes, date they were implemented? ________________ *(dd/mm/yyyy)*

If Yes, describe in detail your procedures for each of the above items *(a-i)* and how you implement such procedures, including dates of revisions, if any. In lieu of the above descriptions, you may attach a copy of your written procedures. If you have no written procedures, explain what guidelines you have in place and from what source these guidelines are derived that ensure bond financings are in compliance with Federal tax requirements. *(Attach sheet with description)*

4. Do you have written procedures to ensure timely identification of violations of Federal tax requirements after your Direct Pay Bonds are issued and the timely correction of any identified violation(s) through remedial actions described in the Treasury Regulations or through the Tax Exempt Bonds Voluntary Closing Agreement Program described under Notice 2008-31? ☐ Yes ☐ No

   If Yes, date they were implemented? ____________________ *(dd/mm/yyyy)*

   If Yes, describe in detail your procedures for timely identification and correction of any such violations and how you implement such procedures, including dates of revisions, if any. In lieu of the above description, you may attach a copy of your written procedures. If you have no written procedures, explain what guidelines you have in place and from what source these guidelines are derived that ensure timely identification and correction of any violations of Federal tax requirements. *(Attach sheet with description)*

5. Do you maintain records necessary to support the status of the bonds as qualified to receive the tax advantaged treatment described in section 54AA(g)? ☐ Yes ☐ No

   If yes, for how long?

   ☐ Less than life of bonds

   ☐ Life of bonds

   ☐ Life of bonds plus 3 years

6. How do you maintain your bond records?

   ☐ On Paper

   ☐ Electronic media *(e.g.,CD, disks, tapes)*

   ☐ *Combination of paper and electronic*

Under penalties of perjury, I declare that I have examined this completed questionnaire, including accompanying documents and statements, and to the best of my knowledge and belief, the completed questionnaire contains all the relevant facts relating to the answers to the questionnaire, and such facts are true, correct, and complete.

Signature: ______________________________ Date: ______________

Printed Name: ______________________________

Title: ______________________________

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need it to ensure that you are complying with these laws.

The IRS may not conduct or sponsor, and an organization is not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103 and 6104.

RESOLUTION NO. _____

Resolution adopting a compliance policy governing the issuance of Build America Bonds

WHEREAS, the Board of Supervisors (the "Board") of Scott County, Iowa (the "County") has previously issued its $10,445,000 General Obligation Emergency Services Communication Bonds, Taxable Series 2009A (Build America Bonds – Direct Payment) (the "Bonds") and irrevocably designated the Bonds as Build America Bonds ("BABs") as defined in Section 54AA(d) of the Internal Revenue Code of 1986; and

WHEREAS, the County deems it necessary and desirable to formally memorialize certain policies and practices of the County previously adopted or followed by the County in connection with the issuance of the Bonds and to establish policies and practices for any future BABs issued by the County, and the compliance policy is attached hereto as Exhibit A (the "Compliance Policy");

NOW, THEREFORE, It Is Resolved, by the Board of Supervisors of Scott County, Iowa, as follows:

Section 1. The Compliance Policy is hereby adopted as set forth in Exhibit A. The Compliance Policy shall be dated as of the date hereof.

Section 2. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Passed and approved _____________, 2010.

____
Chairperson, Board of Supervisors

Attest:

____
County Auditor

STATE OF IOWA

SS:

SCOTT COUNTY

I, the undersigned, County Auditor of Scott County, do hereby certify that attached hereto is a true and correct copy of the proceedings of the Board of Supervisors of Scott County relating to the adoption of a compliance policy with regard to the issuance of Build America Bonds.

WITNESS MY HAND this ___ day of ____________________, 2010.

____

County Auditor

EXHIBIT A

COMPLIANCE POLICY

SCOTT COUNTY, IOWA
Direct Pay
"Build America Bonds"
Compliance Policy & Procedures
_______, 2010

I. Purpose

To ensure that bonds, the interest on which would otherwise be excludable from gross income under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), intended to be issued as Build America Bonds (Direct Payment) under Section 54AA of the Code (or "BABs") will be qualified, and will continue to be qualified, as such, with the result that Scott County, Iowa (the "Issuer") shall be entitled to the credit provided in Section 6431 of the Code (the "Federal Subsidy").

These written procedures are intended to formally memorialize certain policies and practices of the Issuer previously adopted or followed by the Issuer in connection with its prior issuance of BABs, and to govern future issuances of BABs.

The Issuer's policy for compliance is as follows:

II. Designation & Election

The bond resolution, indenture or other document pursuant to which the BABs are issued (the "Issuance Document") or a certificate of an authorized officer of the Issuer relating to the BABs shall (1) irrevocably designate the BABs as such and irrevocably elect to have Section 54AA(g) of the Code apply to the BABs and (2) in the event that the BABs are being also issued as Recovery Zone Economic Development Bonds, irrevocably designate the BABs as Recovery Zone Economic Development Bonds under Section 1400U-2(b) of the Code and allocate a portion of the Recovery Zone Economic Development Bonds Allocation to the BABs in an amount equal to the principal amount of the BABs. Such designations shall be made and filed with the Issuer not later than the date of issuance of the BABs.

III. *De Minimis* Premium and Yield Calculation

A. The official statement, offering document or terms of sale (the "Sale Document") for BABs shall clearly state that (i) the expected reoffering price of the BABs must be specified for each maturity, (ii) each such reoffering price cannot exceed the par amount of the maturity by more than 0.25% multiplied by the number of complete years to the earlier of the maturity date or the first optional redemption date for the maturity of the BABs, and (iii) in the initial offering, no BABs may be sold for a price in excess of such limit unless the Internal Revenue Service provides authoritative guidance to the contrary.

B. Prior to acceptance of a bid, proposal or agreement for the purchase of BABs, the underwriter or purchaser (the "Purchaser") or the Issuer's financial advisor (the "Financial Advisor") shall be responsible for computations to verify that the expected reoffering price or issue price, as certified by the Purchaser, does not exceed the par amount of the maturity by more than .25% multiplied by the number of complete years to the earlier of the maturity date or the first optional redemption date for the maturity of the BABs.

C. (1) If the BABs are being sold pursuant to a public offering to an entity that is purchasing the BABs for resale:

a. The Certificate of Purchaser or Certificate of the Financial Advisor shall include certifications that: (a) the BABs of each maturity were initially reoffered to the public at the prices shown therein or in the Sale Document and (b) as of the date of sale of the BABs, the purchaser reasonably expected that at least 10% of each maturity of the BABs would be sold to members of the public (other than bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at said public offering prices.

b. The Certificate of Purchaser or the Certificate of the Financial Advisor shall provide a certification that, as of the date of issue of the BABs, the purchaser has actually sold at least 10% of each maturity of the BABs to members of the public at the public offering prices expected as of the date of sale. If the Purchaser cannot provide this certification, the Financial Advisor, Issuer representative or bond counsel shall inquire as to the circumstances preventing the sales at such prices.

(2) If the BABS are being sold to an entity that is purchasing the BABs for its own account and investment the Certificate of Purchaser shall include certifications that the Purchaser is purchasing the BABs for its own account and investment with no intention of selling or transferring the BABs or any part thereof and the price at which the Purchaser is purchasing the BABs.

D. The Issuer's tax certificate (the "Tax Certificate") for BABs shall certify that the "issue price" of the BABs is the initial reoffering price of the BABs to the public or the purchase price of the BABs, in the case of a sale to an entity for its own account and investment, as shown in the Certificate of Purchaser or Certificate of Financial Advisor and that the issue price of the BABs does not include more than a *de minimis* amount of premium within the meaning of Section 54AA(d)(2)(C) of the Code.

E. Financial Advisor or Purchaser shall be advised that the yield on BABs is to be computed in accordance with Section 148 of the Code and reduced as required by Section 6431(c) of the Code to reflect the federal credit allowed to the Issuer.

IV. Expenditure/Use of Proceeds

A. Expenditure of BABs proceeds will be reviewed by the project administrator ("Issuer Representative").

B. The Issuer has established procedures for preparation and review of requisitions of BABs proceeds.

C. Requisitions must identify the financed property and the Issuer Representative shall track the character and average economic life of the BABs-financed property to ensure compliance with the Tax Certificate and Issuance Document.

D. None of the proceeds of the BABs will be used to reimburse the Issuer for costs of a capital project paid prior to the date of issuance of the BABs unless the Issuer shall have fully complied with the provisions of Section 1.150-2 of the Treasury Regulations and the American Resource and Recovery Act of 2009 with respect to such reimbursed amounts.

E. "Available Project Proceeds" for a BABs issue shall be calculated as (a) the excess of the proceeds from the sale of the issue, over the issuance costs financed by the issue (to the extent that such costs do not exceed 2 percent of such proceeds) and (b) the proceeds from any investment of the excess described in (a).

F. The amount of sale proceeds applied to finance issuance costs of the BABs shall not in any case exceed 2% of the sale proceeds of the BABs.

G. 100% of the Available Project Proceeds for a BABs issue, less an amount deposited into a reasonably required reserve fund (within the meaning of Section 150(a)(3) of the Code) for such issue, will be used for capital expenditures. No portion of any proceeds will be used for working capital.

H. Requisitions will be summarized in a "final allocation" of proceeds to uses not later than 18 months after the in-service date of the financed property (and in any event not later than 5 years and 60 days after the issuance of the BABs or not later than 60 days after earlier retirement of the issue) in a manner consistent with allocations made to determine compliance with arbitrage yield restriction and rebate requirements.

I. Expenditure of proceeds of the BABs will be measured against the Issuer's Tax Certificate expectation to spend or commit 5% of net sale proceeds within 6 months, to spend 85% of net sale proceeds within 3 years, and to proceed with due diligence to complete the capital project and fully spend the net sale and investment proceeds.

J. If there is any amount remaining in the project or construction fund established pursuant to the Issuance Document after completion of the Project that has not been applied to capital expenditures, the Issuer Representative shall consult with bond counsel.

V. Use of Financed Property

A. Use of BABs-financed property when completed and placed in service will be reviewed by Issuer Representative. Appropriate department/facility managers shall be advised in writing concerning restrictions on the use of the proceeds and the facilities financed thereby and instructed to consult with the Issuer Representative regarding any third-party contract concerning use of the facilities, including, without limitation, leases, use, management or service contracts, and research contracts.

B. Upon issuance of the BABs, there shall be no expectation that the BABs-financed property will be sold or otherwise disposed of by the Issuer while the BABs are outstanding.

C. Agreements with business users for lease, use, management, or any other service with respect to, or non-governmental use of, BABs-financed property will be reviewed prior to execution for compliance with the Code. Such agreements will be approved by the Issuer Representative, who will be responsible for determining whether the proposed agreement (1) results in private business use of the facilities, and (2) if applicable, meets the compensation, term and other requirements under Revenue Procedures 97-13 and 2007-47; all upon advice of bond counsel as necessary.

D. No item of BABs-financed property will be sold or transferred by the Issuer without approval of the Issuer Representative upon advice of bond counsel or advance arrangement of a "remedial action" under the applicable Treasury Regulations.

VI. Investments

A. Investment of BABs proceeds in compliance with the arbitrage and rebate requirements of the Code and applicable Treasury Regulations will be supervised by the Issuer Representative.

B. Investment of the gross proceeds of BABs prior to expenditure thereof will be made only as permitted by the Issuance Document and Tax Certificate, and all investments will be purchased only at fair market value, as determined under applicable Treasury Regulations.

C. Guaranteed investment contracts ("GICs") will be purchased only according to applicable Treasury Regulations, including bid requirements and fee limitations.

D. Calculations of rebate liability will be performed by outside consultants and reviewed by the Issuer Representative. Such calculations shall be made, at a minimum, within each 5 year anniversary of the date of issue of the BABs.

E. Upon final expenditure of the gross proceeds of the BABs, and in any event promptly following the fifth anniversary of the date of issuance of the BABs or earlier retirement of the BABs, the Issuer Representative will consult a qualified professional to prepare a spending exception report or an arbitrage rebate computation (as applicable) for the BABs.

F. Rebate payments, as required based upon the advice of a qualified professional, will be made with Form 8038-T no later than 60 days after (a) each fifth anniversary of the date of issuance of the BABs and (b) the final retirement of the BABs issue.

VII. Requests for Credit

A. Requests for the refundable credit, including the calculation of the credit payable and timely filing of requests for payment pursuant to Form 8038-CP shall be the responsibility of the Issuer Representative, who shall verify eligibility for the credit.

B. For fixed rate BABs, interest payments calculated by the Purchaser shall be verified by the Issuer Representative or Financial Advisor.

C. For variable rate BABs, interest payments shall be as calculated pursuant to the Issuance Document and shall be verified by the Issuer Representative or Financial Advisor.

D. Payment of the credit shall be directed to the Issuer or to such other party as provided in the Issuance Document.

VIII. Record Management and Retention

A. Management and retention of records related to BABs issues will be supervised by the Issuer Representative.

B. Records for BABs will be retained for the life of the BABs plus any refunding bonds plus three years. Such records may be in the form of documents or electronic copies of documents, appropriately indexed to specific BABs issues and compliance functions.

C. Retainable records pertaining to BABs issuance shall include a transcript of documents executed in connection with the issuance of the BABs and any amendments; copies of requests for refundable credits; and copies of rebate calculations and records of payments, including Forms 8038-T.

D. Retainable records pertaining to expenditures of BABs proceeds include requisitions, trustee statements, if applicable, and final allocation of proceeds.

E. Retainable records pertaining to use of BABs-financed property include all third-party contracts concerning use of the facilities, including (without limitation) leases, use, management or service contracts, and research contracts.

F. Retainable records pertaining to investments include GIC documents under the Treasury Regulations, records of purchase and sale of other investments, and records of investment activity sufficient to permit calculation of arbitrage rebate or demonstration that no rebate is due.

IX. Overall Responsibility

A. Overall administration and coordination of this policy and the procedures set forth herein are the responsibility of the Issuer Representative.

B. Review of compliance with this policy and the procedures set forth herein shall be undertaken periodically, and in any event not less than annually.

C. The Issuer understands that failure to comply with these policies and procedures could result in the retroactive loss of the federal tax credit with respect to the BABs, and it would be advisable to consult with bond counsel in advance regarding deviations from the facts and expectations as set forth in the closing certifications relating to the BABs.

D. Any violations or potential violations of federal tax requirements shall promptly be reported to the Board of Supervisors and the Issuer will engage qualified consultants and bond counsel to further investigate potential violations or undertake appropriate remedial actions, which actions shall be approved by the governing body of the Issuer.