

Dakota County, Minnesota

PROCEDURES FOR
APPLICATION AND ALLOCATION OF
RECOVERY ZONE FACILITY BONDING AUTHORITY

January 2010

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I. Introduction

The American Recovery and Reinvestment Act of 2009 ("ARRA") authorizes the issuance of Recovery Zone Facility Bonds, a type of bond intended to provide economic incentive to projects in distressed areas by granting tax incentives. The stated purpose of Recovery Zone Facility Bonds is to promote job creation and economic recovery in areas particularly affected by employment declines. Dakota County has received \$20,949,000 of Recovery Zone Facility Bond volume cap allocation from the federal government and has requested that the Dakota County Community Development Agency assist in the process of educating potential users of this allocation, providing a process by which potential issuers may apply for allocation, and encouraging the effective use of this tool within Dakota County. Recovery Zone Facility Bond volume cap allocation permits an equivalent amount of bonds to be issued as tax exempt bonds, when interest on such bonds would otherwise be taxable.

The following summary timeline will be followed in seeking applicants and granting bonding authority:

2010

January __	Distribution of application materials
January 20	Informational session conducted at Agency offices
January 29	Applications due to the Agency
February 9	Applications and summary of requests provided to the County Board
March 31	Notification of initial bond allocation to issuers approved by Dakota County – authority expires in 90 days unless bonds are issued or an extension is requested and approved
June 1	Request for extension must be submitted to Agency to retain unissued RZFB authority from March 31 allocation
June 30	Deadline for issuance of bonds unless extension is granted
Ongoing	Subsequent application rounds for any unallocated RZFB authority will be scheduled as needed. Interested parties are encouraged to contact the Agency to discuss their timing needs.
September 31	Unallocated authority may be returned to the State
December 31	Final day statutorily for RZFB issuance

This application and allocation process was developed to prescribe the policies and procedures to be used when allocating the County's bonding authority for the issuance of Recovery Zone Facility Bonds (RZFBs). The process will be monitored by the Agency. Actual approval of allocation of RZFB authority must be done by the County.

In agreeing to allocate its RZFB Authority, neither Dakota County, nor the Agency acting on its behalf, assume any liability with respect to the project feasibility, the quality or structuring of the offering, representations made to investors, the security or tax-exempt status of the obligations issued, the repayment of any financing; or the establishment or validity of the Recovery Zone designation.

Applications will only be accepted from local units of government in Dakota County that are authorized under Federal Tax law to issue bonds. Applicants are required to possess financial advisors and bond counsel knowledgeable regarding the developmental, legal, and financial aspects of RZFBs and the project to be financed.

II. Policy Statement

Allocation of RZFBs is undertaken pursuant to the American Recovery and Reinvestment Act of 2009 (ARRA) and the Internal Revenue Service (IRS) tax code.

Recovery Zone Facility Bonds are tax-exempt private activity bonds, similar to Industrial Revenue Bonds. Qualifying projects are defined as "Recovery Zone Property" and generally include any depreciable property that is to be constructed, reconstructed, renovated, or acquired by a private user within a recovery area as designated by the

issuer. Projects can be for any trade or business conducted within economic development areas, except a) residential rental and b) the operation of businesses such as a private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or off-sale liquor sales.

Dakota County has been allocated \$20,949,000 of RZFB bonding authority by the U.S. Department of the Treasury. Dakota County can re-allocate its bonding authority to local units of government within the County or to the State of Minnesota in accordance with ARRA and the IRS tax code.

Dakota County will allocate its bonding authority in accordance with these procedures. Dakota County will not issue RZFBs on its own behalf, on behalf of any other government jurisdiction in Dakota County, or on behalf of a private entity. By these procedures, Dakota County will consider allocating its bonding authority to other qualified governmental jurisdictions so they may issue RZFBs on behalf of designated project(s).

Per ARRA, a qualifying project must be located in a Recovery Zone having significant poverty, unemployment, rate of home foreclosures, or general distress; or within an area that is economically distressed by reason of the closure or realignment of a military installation; or within a designated Empowerment Zone or Renewal Community area. Recovery Zone Facility Bonds must be issued by December 31, 2010, according to Federal Tax Law. The County will review the indicated criteria under which a Recovery Zone is to be established, but assumes no responsibility for the eligibility of such Recovery Zone for purposes of RZFB issuance.

III. Definitions

"AGENCY" – the Dakota County Community Development Agency

"AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, OR ARRA" – Federal legislation enacted in 2009 that authorizes the issuance of Recovery Zone Facility Bonds and prescribes eligible uses, allocation limits, and deadline for issuance.

"APPLICANT" – the local unit of government that is applying to the County to be granted RZFB bonding authority. Applicants must be qualified to issue such obligations under Federal Tax Law.

"APPLICATION FEE" – the non-refundable fee that is payable to the County by each applicant and must accompany the submitted application form. The fee is equal to \$20 for every \$100,000 of entitlement requested rounded up to the nearest \$100,000, or \$500, whichever is greater.

"APPLICATION FORM" – the form established by the County that must be submitted by the applicant to the County to apply for bonding authority to issue Recovery Zone Facility Bonds.

"BOARD, OR COUNTY BOARD" – the Dakota County Board of Commissioners.

"BOND" – a qualified Recovery Zone Facility Bond issued in accordance with the American Recovery and Reinvestment Act of 2009 and Federal Tax Law.

"BOND COUNSEL" – the attorney or firm of attorneys, appointed by the local government issuer, who will render an approving legal opinion as to the bonds and as to the qualified tax-exempt status of the Bonds.

"COUNTY" – Dakota County, Minnesota

"EMPOWERMENT ZONE" – an economic development area authorized by the U.S. Department of Housing and Urban Development.

"FEDERAL TAX LAW" – includes those provisions of the Internal Revenue Code of 1986, as amended, and the American Recovery and Reinvestment Act of 2009, that define and limit the types of obligations that can be issued whose interest is excluded from gross income for purposes of Federal income taxation.

"INFORMATION WORKSHEET" – a form that identifies information to be used in determining the allocation of Recovery Zone Facility Bonds that must accompany the submitted application form.

"ISSUER" – the local unit of government serving as the issuer of the bonds that is qualified to issue obligations under Federal Tax Law.

"PROCEDURES" – requirements established by this document, "Procedures for Application and Allocation of Recovery Zone Facility Bonding Authority", as approved by the Dakota County Board.

"PROJECT" – an economic development project that is qualified under Federal Tax Law and the American Recovery and Reinvestment Act for which the applicant seeks authority to issue Recovery Zone Facility Bonds.

"RECOVERY ZONE" – an area so designated by an issuer as defined by the American Recovery and Reinvestment Act. This may include an Empowerment Zone or a Renewal Community area.

"RECOVERY ZONE FACILITY BONDS, OR RZFBs" – tax exempt private activity bonds as authorized under the American Recovery and Reinvestment Act of 2009 that may be used to finance Recovery Zone Property within a qualified Recovery Zone.

"RECOVERY ZONE PROPERTY" - any property to which accelerated cost recovery system would apply, (basically property that is depreciable), if it is constructed, reconstructed, renovated, or acquired by purchase by the taxpayer after the date on which the designation of the recovery zone took effect, the original use of which in the recovery zone commences with the taxpayer, and, substantially all of the use of which is in the recovery zone and is in the active conduct of a qualified business by the taxpayer in the recovery zone.

"RENEWAL COMMUNITY AREA" – an economic development area authorized by the U.S. Department of Housing and Urban Development.

"STATE OF MINNESOTA" – the Commissioner of Management and Budget, Department of Employment and Economic Development, or any other State agency or department that is authorized to receive bonding authority and issue Recovery Zone Facility Bonds.

"TAX-EXEMPT BONDS" – Bonds with interest that is exempt from federal taxation under Internal Revenue code (IRC), Section 103.

IV. Application Process

All applications and official correspondence regarding the Recovery Zone Facility Bond application and allocation process in Dakota County should be directed to:

Dakota County Community Development Agency
1228 Town Centre Drive
Eagan, MN 55123
Attn: Deborah Haugh, Recovery Zone Facility Bond Applications

Questions may be directed to Deborah Haugh, Dakota County Assistant Director of Housing Finance, at (651) 675-4478 or dhaugh@dakotacda.state.mn.us.

A. Deadline Dates and Times

All applications and other materials required to be filed or submitted pursuant to these procedures must be postmarked or received by the County no later than 4:30 p.m. on the deadline day or date.

Initial solicitation of applications – The first round of allocations will be awarded by the Board for applications received or postmarked by Friday, January 29, 2010. If there are two or more applications and there is insufficient authority to provide allocation for all applicants, the available bonding authority shall be awarded based on the information worksheets, with selected projects receiving allocation first based on their requested amount or such other method as the County deems appropriate.

Subsequent applications – Subsequent application rounds will be conducted following a similar process from time to time as needed.

No applications will be accepted after September 30, 2010. Any RZFB bonding authority not allocated by that time may be transferred by the Board to the State of Minnesota for re-allocation and used by the State for statewide projects, in accordance with applicable State program rules and requirements. If at any time the State requests unallocated County RZFB bonding authority for a specified project, the Board may at its discretion allocate any then unallocated authority to the State for such project.

The Agency will notify applicants whether the application materials are complete within five (5) business days of the receipt of the application. Any allocation, award, or transfer of RZFB bonding authority as specified in these procedures must be authorized by adoption of a Board resolution. Agency staff will coordinate with the County to schedule the application for a Board meeting and prepare required agenda materials.

B. Application Fee

Every applicant shall pay a nonrefundable application fee to Dakota County to offset the cost of program administration. The application fee is the greater of \$500, or \$20 for each \$100,000 of allocation authority requested with the request rounded to the nearest \$100,000.

C. Application Form

The applicant must be a local government that is qualified to issue obligations under Federal Tax Law and must prepare an application form according to these procedures. The completed application form must be accompanied by:

- (1) A nonrefundable application fee payable from the applicant to Dakota County;
- (2) A resolution adopted by the governing body of the applicant establishing a Recovery Zone, or a statement from the applicant that the project will be located in an Empowerment Zone or Renewal Community Area;
- (3) A map showing the location of the Recovery Zone, Empowerment Zone, or Renewal Community area;
- (4) A statement describing the criteria to be used for establishment of a Recovery Zone;

- (5) A statement from the applicant's bond counsel that the local government issuer is qualified to issue bonds and that the proposed issue of obligations qualifies under ARRA as a Recovery Zone Facility Bond; and
- (6) A project information worksheet.

D. Information Worksheet

A project information worksheet must be submitted with each application form. The following data must be provided on the information worksheet:

Threshold Requirements:

The applicant must demonstrate legal authority to issue the bonds and describe any process steps (public hearings, approvals, etc.) required prior to issuance.

The applicant must demonstrate site control at the time of application.

- (1) A description of the project including the type of business to be conducted, the location, size and anticipated cost of developing the project.
- (2) Number of direct new jobs in the County generated by the proposed project for the next two years
- (3) Number of direct existing jobs in the County due to the proposed project for the next two years
- (4) Average hourly wage paid to employees by the proposed project for the next two years, exclusive of benefits mandated by law.
- (5) Estimated total net increase in market value generated in the County by the project and the first year in which fully realized.
- (6) If an existing business, jobs currently provided by the business in the County and elsewhere in the State of Minnesota

V. **Legal Compliance**

A. Reservation of Rights

The County reserves the right to:

- Reject the application in whole or in part.
- Decide not to issue any bonding authority allocations to any applicant.
- Require corrections or amendments to any application materials and required documents.
- Impose any other requirements or conditions precedent to the issuance of its bonding authority.
- Consult with the applicant's advisor or bond counsel concerning the project or issuance of bonds. Any resulting fees for such consultation shall be paid by the applicant.
- Waive any requirements or procedures included herein if the Agency feels it is in the interest of the County to do so.

B. Bond Issuance

Issuance of bonds by the local issuer must be consistent with these procedures and the allocation awards granted by the Board.

Bonds issued by the applicant must be issued by December 31, 2010, in accordance with Federal Tax Law.

The County will not revoke an allocation to any applicant after it is awarded by the Board except as provided under (E) below.

Bonds may only be issued for the project contained in the application and as awarded by the Board. Bonding authority may not be transferred by the applicant to another project or issuer.

C. County and Agency Held Harmless

Neither the County nor the Agency is liable in any manner to any issuer, holder of obligations, or other person for carrying out the duties imposed on it by these procedures.

D. Notice of Available Authority

The Agency will send a written notice of these procedures to each municipality in Dakota County upon adoption of these procedures by the Board. The County and Agency will each post on their respective official web site, a copy of these procedures and a statement of the amount of bonding authority that is available for allocation until and including December 31, 2010.

E. Return of Allocation Authority

If the applicant has received an allocation and determines that it will not be able to issue bonds for the project, the applicant must notify the Agency in writing, in a timely fashion. Upon receipt of this written notification, the original allocation will be cancelled and become available for re-allocation by the County.

An applicant will receive a dated, written notice of approval of an award of allocation (the "Approval Notice"). If such an applicant has not issued its RZFBs within 60 days from the date of its Approval Notice, the applicant must notify the Agency in writing i) of its intent to issue within 90 days of the date of its Approval Notice or ii) requesting an extension to a specified date, stating the reason for the delay in issuance and providing evidence that it is reasonable to expect the issuance will occur by the new date. In its sole discretion, the County may grant an extension to the applicant and provide the conditions which must be met for the applicant to retain the allocation. Notice of such extension will be provided within 30 days of receipt of the applicant's request to extend. Unless such extension is received, the allocation of RZFB authority is forfeited 90 days from the date of the Approval Notice and returns to the County for reallocation.

F. Exclusive Method of Allocation

These procedures are the exclusive method of allocating RZFB bonding authority for the purpose of complying with the American Recovery and Reinvestment Act and Federal Tax Law.