

**STAFF RECOMMENDATION CONCERNING
CIDFAC’S PROCEDURES FOR
ALLOCATING TAX-EXEMPT CAP TO
INDUSTRIAL DEVELOPMENT BOND
PROJECTS**

Staff Recommendations

February 27, 2008

STAFF SUMMARY – CIDFAC

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ISSUE

At its February 27, 2008 meeting, the California Debt Limit Allocation Committee (CDLAC) will hear its staff’s proposal that the Committee award Small-Issue Industrial Development Bond Allocation to CIDFAC for the purpose of administering the Industrial Development Bond (IDB) Program. If CDLAC approves the request, then CIDFAC will approve both the issuance of IDBs by local issuers and the allocation of IDBs to local issuers and the California Infrastructure and Economic Development Bank (the “I-Bank”). This “one-stop shop” process would start at CIDFAC’s April 23, 2008 meeting.¹ Neither CDLAC nor CIDFAC staff has received any indication that the IDB community opposes this proposal.²

In anticipation of receiving the award of IDB allocation, CIDFAC must adopt a process by which it will approve allocation for individual projects. Staff recommends the Commission adopt a process whereby IDB allocation rounds will be competitive based upon the public benefits point scheme in CDLAC’s procedures.

Staff bases its recommendation on three factors: (1) out of a total allocation of \$120 million to the IDB pool, it is anticipated that CDLAC and CIDFAC will have awarded \$31,440,000 by the time of CIDFAC’s April meeting, which signals that there will be a strong demand for IDB financing in 2008; (2) CIDFAC’s informal survey of issuers and practitioners shows a possible demand of over \$200 million; and (3) there are established procedures and precedent for competitive allocation rounds.

BACKGROUND

On January 23, 2008, CDLAC approved an allocation of tax-exempt cap of \$100 million to the “core” IDB pool, and \$20 million to the Small Business Program (SBP) IDB pool. By the end of March 2008, CDLAC is expected to allocate a total of **\$29,100,000 out of the core pool, and**

¹ Note that, beginning with the establishment of CIDFAC’s Small Business Program (SBP) in 2001, CDLAC has awarded allocation out of the overall IDB pool to CIDFAC, which in turn has awarded the allocation to individual projects qualified under the SBP. For SBP projects, CIDFAC both approves the issuance of IDB bonds by local issuers as well as grants tax-exempt allocation to local issuers and the I-Bank.

² The proposal is beneficial to issuers, practitioners, and CIDFAC because it eliminates the need to gain approval of two separate boards (namely, CIDFAC and CDLAC) at two separate meetings and because CIDFAC meets on monthly basis, thereby making allocation awards possible on a monthly rather than a bimonthly basis.

CIDFAC is expected to allocate \$2,340,000 out of the SBP pool. This leaves a total IDB tax-exempt cap of \$88,560,000 available for allocation beginning in April 2008.

In November and December 2007, CIDFAC staff polled the state’s active IDB issuers and industry practitioners to determine the likely pipeline of IDB transactions for 2008. Of the possible \$250 million in projects requesting IDB financing, we determined that demand would more likely be closer to \$200 million. Demand for 2007 reached approximately \$100 million, but the issuers and practitioners we talked to all expect that this year’s demand will exceed 2007 levels by a substantial amount. Given that the total IDB allocation for 2008 is \$120 million, and that \$31,440,000 of this allocation will be awarded before CIDFAC’s first proposed allocation meeting in April, and given that expectations are that demand for IDB allocation for the remainder of 2008 will far exceed the amount of allocation available, staff believes that post-March 2008 allocation rounds should be declared competitive and should be conducted as competitive rounds based upon existing CDLAC procedures.

CDLAC’s procedures provide for competitive, or “allocation” rounds when a particular pool of allocation is oversubscribed. Section 4, Allocation of the State Ceiling, reads in part:

“As soon as practicable after the beginning of each calendar year, and before any Applications are considered, the Committee will determine and announce the establishment of either an open Application process or an Allocation round process, or both. The Committee will determine which process is best for each program pool based on the estimated competition and characteristics of each pool. If the Committee estimates that a program pool will be non-competitive or evenly subscribed, then the Committee shall establish an open Application process. If the Committee estimates that a program pool will be competitive, then the Committee shall establish an Allocation round process. The Committee may provide for a combination of the open Application process and the Allocation round process for a pool as necessary to best meet the needs of a specific program or pool. For example, the Committee may establish an open Application process from January through August and an Allocation round process from September through December...

Allocation Round Process

- 1. Establish the number and the tentative respective dates of the Allocation Rounds to be held during the year for the purpose of the Committee’s Allocation of the State Ceiling Pools created pursuant to these Procedures.**
- 2. Determine and announce the portion of the State Ceiling that will be available in each of the Allocation Rounds for each of the State Ceiling Pools that is created by the Committee pursuant to subsection II of this Section 4.**
- 3. Determine and announce the deadlines for Applicants to submit Applications for consideration during each of the Allocation Rounds...”**

CDLAC’s procedures also establish means by which to evaluate all applicants and to evaluate applicants for each particular allocation pool. Section 16, Evaluation Criteria Applicable to All Applications, reads in part:

“...Wherever these Procedures require that an Applicant demonstrate a certain condition or characteristic or satisfy certain minimum requirements, each condition, characteristic or minimum requirement must be demonstrated by the Applicant, at the time of Application, by clear and convincing evidence...It is the responsibility of each Applicant and each Project Sponsor to provide the Committee with complete and accurate information at the time the Application is filed to enable

the fair and correct application of the Committee’s criteria to the Application. If the Applicant/ or Project Sponsor (or their attorneys, agents, employees, or other representatives) provides information that is incomplete, erroneous, inaccurate, misleading or false regarding a fact material to the decision-making process, the Application may be rejected. If the incomplete, erroneous, inaccurate, misleading or false information is discovered after an Allocation is made, the Allocation may be rescinded, if bonds have not been sold...If bonds have been sold...the Committee may take action as it deems appropriate...Wherever these Procedures contemplate the awarding of points to an Application, the Applicant must demonstrate by clear and convincing evidence that the related criterion has been satisfied. Upon a determination that a particular criterion has not been satisfied, the related points shall not be awarded.”

As specified in CIDFAC staff reports, CIDFAC evaluates IDB Projects using the IDB 85-point scheme contained in CDLAC’s procedures. Section 20, Allocation System for Small-Issue Industrial Development Bond Projects, reads in part:

“Upon a determination that an Application has met the minimum requirements...the following criteria will be used to evaluate, rank and award Allocations from the Small-Issue Industrial Development Bond Pool...Community Economic Need (25 points maximum)...Job Creation and Job Retention (25 points maximum)...Welfare To Work Plan (5 points maximum)...Payment of Employee and Dependent Medical, Dental, Vision and Child-Care Costs (5 points maximum)...Average Hourly Wage (5 points maximum)...Land Use/Energy Efficiency (15 points maximum)...Leverage (5 points maximum)...If, after awarding points...two or more Applications are awarded the same number of points, the Executive Director will divide the Allocation amount requested by each such Application by the number of jobs created by the related project, and will rank the Applications based on the lowest amount of requested Allocation per job created.”

Using CDLAC’s allocation procedures as a guide, staff developed the following allocation process for the award of IDB allocation to individual projects and recommends that CIDFAC adopt this process.

RECOMMENDATION

Under the assumption that CDLAC will approve the proposal that CIDFAC allocate IDB tax-exempt cap beginning in April 2008, staff recommends that CIDFAC declare 2008 IDB allocation rounds as competitive beginning with the April 2008 round. For the upcoming competitive rounds, staff recommends that CIDFAC combine the remainder of the total “core” IDB pool and the SBP pool into one IDB pool as there no longer will be the distinction in the approval process for two types of projects.³ Further, staff recommends that each competitive round allocate a maximum of \$20 million out of the IDB cap until the cap is depleted. By doing so, CIDFAC will award allocation to the most competitive projects as they become ready for financing rather than award allocation on a first-come, first-served basis without weighing the relative public benefits provided by each project.

³ Currently under the SBP, the IDB projects receive both CIDFAC approval and allocation at one CIDFAC meeting. These projects are not required to take the second step of requesting allocation from CDLAC. On the other hand, “core” IDB projects are required to obtain CIDFAC’s approval and then are required to seek approval of allocation from CDLAC. In anticipation that CDLAC will adopt the proposal to delegate IDB allocation to CIDFAC, this distinction in the approval process will no longer exist.

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Further, staff recommends that the CIDFAC board reserve the option to increase the cap available at an allocation round by up to \$2 million, provided that such amount is available in the IDB pool, in the case the board determines that highly competitive projects in a particular round should be awarded such additional amount. It is staff's expectation that the availability of an additional \$2 million per round will allow the board to provide full allocation to highly competitive projects under circumstances where the entire allocation request exceeds \$20 million by up to \$2 million. For example, if CIDFAC were to receive three applications for three projects that met all minimum requirements and that received substantial points in the areas of job creation, community need, and medical benefits, and the allocation request for the three projects totaled \$20,500,000, then the Board would have the option of awarding the entire allocation requested, provided that this amount was available in the IDB pool. Staff believes that the \$2 million amount is large enough to provide flexibility in these circumstances but not so large as to impair subsequent allocation rounds.

Finally, staff also recommends that CIDFAC adopt the following:

(1) CIDFAC shall accept the existing form of CDLAC small-issue IDB application for CIDFAC approval and for IDB allocation for all proposed projects. Applicants shall continue to provide completed applications at least 30-days in advance of the CIDFAC meeting at which they would like their proposed projects considered.

(2) CIDFAC shall continue to use the CDLAC's allocation criteria and point scheme to evaluate and rank IDB projects. For each competitive round, CIDFAC staff will recommend approval of and the award of allocation up to \$20 million to proposed projects that (1) meet the existing minimum requirements of CDLAC and CIDFAC and (2) receive the greatest number of points under CDLAC's existing point scheme for that particular round. Applications for projects that are not recommended for approval in a particular round may be resubmitted in subsequent rounds.