

## MANAGEMENT SUPPORT SERVICES

### Governmental Bonds – Post Issuance Compliance Procedure

#### **Scope**

This Post Issuance Compliance Procedure addresses the Central Kitsap School District's compliance with federal tax, federal securities and state law requirements and contractual obligations applicable to the District's tax-advantaged governmental bond issues. This procedure applies generally to all of the District's tax-exempt governmental bonds, and other bonds subject to comparable requirements. As used in this procedure, references to "bonds" include bonds, lines of credit, bond anticipation notes, and equipment and other financing leases.

#### **Purpose**

This procedure is intended to improve the District's ability to:

- Prevent problems in managing bond requirements from occurring;
- Timely identify potential problems; and
- Correct identified problems through appropriate remedial steps.

#### **Schedule of Review**

The policy is to be reviewed at least annually and upon each issuance of new bonds, including refunding bonds. In connection with this periodic review, the District will consider whether the procedure should be amended or supplemented:

- To address any particular requirements associated with the new bond issue; or
- To reflect general changes in legal requirements since the prior bond issue.

#### **Primary Responsibility**

The Executive Director of Business and Operations (the "Responsible Officer") will undertake post-issuance compliance relating to the District's bonds. The Responsible Officer is familiar with the provisions of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations (the "Regulations") governing the tax-exempt status of the bonds and with

the federal securities law requirements governing the bonds, including SEC Rule 15c2-12. The Responsible Officer may delegate tasks to other officers or staff of the District or to outside attorneys or other experts.

### **Requirements at Bond Closing**

The District must meet numerous federal tax, federal securities, and state law requirements in connection with a bond issue. In some circumstances (e.g., revenue bonds) rate and other covenant requirements must also be satisfied. These requirements are addressed in the bond transcript completed at bond closing, and confirmed in certain respects by the legal opinions included in the bond transcript. For each bond issuance, the Responsible Officer will create a written schedule for due diligence reviews, with the appropriate officials set forth below, based upon the expectations set forth in the transcribed documents.

### **Requirements after Bond Closing**

Federal tax and securities law, state law, and contractual obligations require on-going monitoring after the issuance of the bonds.

#### **A) Records to be Maintained**

The following documents are maintained in connection with each bond issue. The goal is to retain adequate records to substantiate compliance with federal tax, securities law, state law and other contractual requirements applicable to the District's bonds. Generally records should be maintained for the term of the bonds (plus the term of any refunding bonds) plus three years. Unless otherwise specified, the following records are to be maintained in the office of the Director of Business Services.

- 1) Complete bond transcript (provided by bond counsel) in CD or hard copy.
- 2) Records of investment of bond proceeds in a format showing the date and amount of each investment, its interest rate and/or yield, the date any earnings are received and the amount earned, and the date each investment matures and if sold prior to maturity, the sale date and sale price.
- 3) Records of expenditure of bond proceeds in a format showing the amount, timing and the type of expenditure.
- 4) Records of invoices or requisitions, together with supporting documentation showing payee, payment amount and type of expenditure, particularly for projects involving multiple sources of funds.

- 5) Records necessary to document the allocation of bond proceeds and other sources of funds to particular projects or portions of projects.
- 6) Records documenting the final allocation of bond proceeds to projects, including any reallocations of bond proceeds, in a format showing the timing and substance of the reallocation, if applicable.
- 7) Records demonstrating compliance with arbitrage and rebate requirements, including arbitrage calculations, documentation of spending exceptions to rebate, rebate reports and IRS filings and payments.
- 8) Copies of contracts relating to the use of the bond-financed facility including leases, concession agreements, management agreements and other agreements that give usage rights or legal entitlements with respect to the facility to nongovernmental persons (e.g., advertising displays, cell tower leases, and naming rights agreements).
- 9) Copies of contracts relating to ongoing compliance with respect to the bonds, such as Calculation Agency Agreements or filings.
- 10) Copies of any filings/correspondence with the IRS, the SEC, or other regulatory body.

B) Investment of Bond Proceeds

In general, bond proceeds and certain other funds can only be invested at a rate that exceeds the yield on the bonds under limited circumstances. Furthermore, amounts earned by investing above the bond yield must be rebated to the IRS, unless the District qualifies as a small issuer or a spending exception is met. The arbitrage and rebate requirements for each bond issue are detailed in the federal tax certificate. The Responsible Officer will monitor the investment and expenditure of the funds and accounts listed below. The Responsible Officer will determine whether the bond issue meets the requirement for one of the expenditure exceptions to arbitrage rebate. The Responsible Officer will determine whether a rebate calculation is necessary and, if so, will perform the calculation or engage a rebate consultant. The Responsible Officer will arrange for the payment of any required rebate to the IRS together with the appropriate IRS form on the dates described below.

- 1) Funds to Monitor
  - a) Bond or debt service funds/accounts.
  - b) Project or construction funds/accounts.
  - c) Debt service reserve funds/accounts.
  - d) Other accounts with bond proceeds or amounts pledged to pay bonds.

2) Arbitrage Reports; Rebate May Be Due

- a) During construction, monitor expenditures to confirm satisfaction of expected exceptions to rebate (such as six month exception, 18 month exception, 24 month exception).
- b) The first rebate payment is due five years after date of issue plus 60 days.
- c) Rebate is due every succeeding five years if there are unspent gross proceeds of the bonds.
- d) Final rebate payment is due 60 days after early redemption or retirement of the bonds.

3) Limitations on Type of Investments

Bond proceeds must be invested as permitted under state law. In addition, the bond resolution or any bond insurance agreement may further limit the permitted investments. To monitor compliance with these investment restrictions, the District has adopted an Investment Policy dated May 23 2001, which details these requirements (Policy 6120).

C) Use of Bond Proceeds During the Construction Period

Monitoring the expenditure of bond proceeds is necessary to assure that the required amount of bond proceeds are expended for capital expenditures and that not more than 10% of the bond proceeds are expended for projects that will be used for in a private trade or business (including by the federal government and nonprofit entities).

- 1) The Responsible Officer is responsible for reviewing the transcript for the bonds, and in particular the authorizing documents and the federal tax certificate, as well as invoices and other expenditure records to monitor that the bond proceeds are spent on authorized project costs.
- 2) If, at the completion of the project, there are unspent bond proceeds the Responsible Officer, conferring with bond counsel, will direct application of the proceeds for permitted uses under federal law, state law, and bond authorization documents.
- 3) If the project involves bond proceeds and other sources of funds and included both governmental and nongovernmental use of the financed facilities, the Responsible Officer will undertake a final reconciliation of bond proceeds expenditures and expenditures of other funds with project costs no later than 18 months after the later of the date of expenditure or the date that the project is placed in service (but in no event more than five years after the date of issue).

- 4) Any change in the scope of the project financed with bond proceeds should be reviewed and documented.

D) Refundings

- 1) For advance refunding escrows, confirm that any scheduled purchases of State and Local Government Series or open market securities are made as scheduled.
- 2) On the redemption date, confirm that the refunded bonds have been redeemed and cancelled.
- 3) Promptly following the redemption date, confirm that all proceeds of the bonds and all proceeds of the refunded bonds have been spent. Verify that excess proceeds, if any, of the bonds do not exceed an amount permitted by the Regulations.

E) Use of Bond-Financed Facilities

The District will monitor (and limit) private use of the bond-financed facility to maintain the federal tax treatment of governmental bonds. In general, no more than 10% of the bond-financed facility can be used in a private trade or business (including by the federal government and nonprofit entities). Private use can arise through any of the following arrangements, either directly or indirectly.

- 1) Types of Private Use
  - a) Selling all or a portion of the facility.
  - b) Leasing all or a portion of the facility.
  - c) Entering into a management contract for the facility (except for qualified management contracts under IRS Rev. Proc. 97-13).
  - d) Use of all or a portion of the facility for research purposes under a research contract (except for qualified research contracts under IRS Rev. Proc. 97-14).
  - e) Entering into contracts giving “special legal entitlement” to the facility (for example, selling advertising space or naming rights).
- 2) Procedures for monitoring private use; procedures reasonable expected to timely identify noncompliance.
  - a) All leases and other contracts involving bond-financed property will be sent prior to execution to the Responsible Officer for review.
  - b) The Responsible Officer will confer with personnel responsible for bond-financed projects at least annually to discuss any existing or planned use of bond-financed or refinanced facilities.
  - c) Private use for each bond-financed project will be calculated annually.

- 3) Procedures ensuring that the District will take steps to timely correct noncompliance.
  - a) Consult with bond counsel regarding any private use or proposed change in use with respect to bond-financed property.
  - b) If noncompliance will be remediated under existing remedial action provisions or tax-exempt bond closing agreement programs contained in the Regulations or other published guidance from the IRS, determine the deadline for taking action and proceed with diligence to take the required remedial actions.
  - c) If remedial actions are unavailable, determine whether to make a submission to the Tax Exempt Bonds Voluntary Closing Agreement Program (“VCAP”) under Internal Revenue Manual 7.2.3.

F) Reissuance

A significant modification of the bond documents may result in bonds being deemed refunded or “reissued.” Such an event will require, among other things, the filing of new information returns with the federal government and the execution of a new arbitrage certificate. Bond counsel should be consulted in the event of modification of the bond documents.

G) Continuing Disclosure

The District is required to make annual filings with the Municipal Securities Rulemaking Board (“MSRB”) as described in the continuing disclosure undertaking for each bond issue (which may include tax-exempt or taxable bonds), and to file notice of certain material events.

- 1) Submissions will be made in electronic form through the MSRB’s web-based system known as Electronic Municipal Market Access (“EMMA”), currently available at <http://www.emma.msrb.org>. Submissions will be made in word-searchable PDF.
- 2) Annual filings
  - a) Financial information and operating data about the issuer included in the Official Statement for the bonds.
  - b) Change in fiscal year; other information described in the continuing disclosure undertaking.
  - c) Audited financial statements.
  - d) These reports must be filed no later than nine months after the end of the District’s fiscal year (currently August 31).
- 3) Material event notices
  - a) The District is required to provide or cause to be provided to the MSRB, in a timely manner, notice of certain events with respect to the

- bonds. Amendments to SEC Rule 15c2-12 (the “Rule”) in 2010 expanded the list of events requiring disclosure and added a 10-day compliance period for undertakings effective after December 1, 2010.
- b) Generally, if any of the following events occur, the District shall provide, or cause to be provided, to the MSRB, in a timely manner not in excess of ten business days after the occurrence of the event, notice of the occurrence of any of the following events with respect to the bonds:
- (i) Principal and interest payment delinquencies.
  - (ii) Non-payment related defaults, if material.
  - (iii) Unscheduled draws on debt service reserves reflecting financial difficulties.
  - (iv) Unscheduled draws on credit enhancements reflecting financial difficulties.
  - (v) Substitution of credit or liquidity providers, or their failure to perform.
  - (vi) Adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the bonds, or other material events affecting the tax status of the bonds.
  - (vii) Modifications to the rights of bondholders, if material.
  - (viii) Rating changes (both upgrades and downgrades).
  - (ix) Bankruptcy, insolvency, receivership or similar event of the City
  - (x) The consummation of a merger, consolidation, or acquisition involving the District or the sale of all or substantially all of the assets of the District, other than in the ordinary course of business, the entry into a definitive agreement relating to any such actions, other than pursuant to its terms, if material.
  - (xi) Appointment of a successor or additional trustee or the change of name of a trustee, if material.
- c) Procedure for ensuring that notice of the above events is provided to the responsible individual(s) identified above: Responsible Officer.
- d) Periodic check of information regarding bonds on EMMA. Prior to each new bond issue, the District will search EMMA for its continuing disclosure filings to confirm proper filings have been made.

### **Delegation of Responsibilities**

The following officers and employees of the District are identified as the responsible persons for reviewing compliance with the District’s post-issuance obligations. The District will institute a calendaring system to track compliance with tasks in a timely manner.

- A) Federal tax requirements, including arbitrage, use of proceeds, use of facilities and IRS filings:
- 1) Arbitrage, IRS Filings: Director of Business Services.
  - 2) Use of Proceeds: Director of Capital Projects.
  - 3) Use of Facilities: Director of Operations.
  - 4) In addition, the District may contract with an advisor to complete arbitrage and rebate review.
- B) Continuing disclosure requirements:
- 1) Annual filing: Director of Business Services.
  - 2) Material Event Notices: Director of Business Services.
  - 3) The District may contract with an advisor to file annual continuing disclosure reports and to assist with material event notices.
  - 4) Prior to filing each annual filing or material event notice, the Responsible Officer is to circulate the draft filing or notice to responsible department heads for subject matter covered.
- C) The Responsible Officer is responsible for reviewing the other requirements under this procedure.
- D) The responsible persons identified above may need to confer, from time to time, with the District's bond counsel and/or financial advisor, to confirm the applicability and scope of the requirements outlined in this procedure. For reference, the contact information for these advisors is provided below:

Pacifica Law Group LLP  
1191 Second Avenue, Suite 2000  
Seattle, WA 98101-3404  
(206) 245-1715

**Training of the Responsible Official/Employee**

The District provides opportunities for training to the responsible individuals, specifically including the following training opportunities:

- A) At or after bond closing, a conference call or meeting with bond counsel to review the requirements applicable to a new bond issue.
- B) Participation in in-house training sessions, CPE seminars, or seminars/webinars conducted by professional organizations (e.g., GFOA).

Approved: April 27, 2016

*Central Kitsap School District*