STATE OF HAWAII

DEPARTMENT OF BUDGET AND FINANCE

LOAN APPLICATION AND REVIEW PROCEDURES

For

FINANCING OF ENERGY PROJECTS FOR UTILITIES SERVING THE GENERAL PUBLIC

through the

ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS

FOREWORD

This manual contains the Loan Application and Review Procedures adopted by the Department of Budget and Finance of the State of Hawaii for implementation of Part VI, Chapter 39A, Hawaii Revised Statutes.

It should be noted that the policies and procedures described herein not required by statute may be subject to revision by the Department from time to time.

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GENERAL INFORMATION RELATING TO FINANCING OF ENERGY PROJECTS FOR UTILITIES SERVING THE GENERAL PUBLIC

Statute

Part VI of Chapter 39A, Hawaii Revised Statutes, was enacted by the State legislature in 1981 in order to assist utilities serving the general public in the financing of energy projects for the local furnishing of electric energy or gas through the issuance of tax-exempt revenue bonds issued in the name of the Department of Budget and Finance. The legislature, in enacting the statute, determined that the interest on borrowings necessary to provide such energy projects is a significant factor in the cost of providing electric energy or gas to the general public and that the interest cost, and consequently the cost of providing such energy projects, would be less if tax-exempt bonds could be issued for financing such energy projects.

The statute requires that, prior to the issuance of bonds to finance eligible energy projects, the Department of Budget and Finance make a determination that the utility is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken, or that the obligations of the corporation under the agreement with the Department of Budget and Finance to provide the financing be guaranteed by a responsible party.

In addition, the statute requires, as a condition precedent to the issuance of special purpose revenue bonds, that the utility and the Department enter into a project agreement under which the utility agrees to pay, among other things, the principal and interest on the special purpose revenue bonds issued to finance the utility's energy facility.

The utility is also required to reimburse the State for any and all costs and expenses (direct or indirect) incurred by it in implementing and administering the statute, as determined by the Department, regardless of whether or not a project agreement is ever entered into or bonds are issued.

Eligible Applicants

Any utility which provides electric energy or gas to the general public for which the State legislature, by affirmative vote of two-thirds of the members of each house, has authorized the issuance of special purpose revenue bonds is eligible to apply to the Department for financing eligible facilities.

Eligible Facilities

A facility eligible for financing from the proceeds of special purpose revenue bonds shall be an "energy project" as defined in Section 39A-191, HRS, which has been certified by the State Public Utilities Commission as being from the local furnishing of electric energy or gas within the meaning of that phase as defined in said Section 39A-191.

In addition to construction and equipment costs, the proceeds of special purpose revenue bonds may be used to pay the costs incurred in the issuance of the bonds including legal fees and consulting fees and the fees of investment bankers in providing services in connection with the issuance of the bonds and other costs authorized by law.

LOAN APPLICATION PROCEDURES

Letter of Intent

In order to provide a means for the Department to coordinate all financings for which it has responsibility and to allocate its resources most efficiently, the Department requires all applicants, as the initial step in the application process, to furnish the Department with a letter of intent. The letter of intent shall consist of a letter, addressed to the Director of the Department which <u>briefly</u> sets forth the following:

- 1. The approximate principal amount of the loan to be requested.
- 2. A general description of the energy project or part thereof to be financed.
- 3. The proposed security for the loan to be requested.
- 4. The estimated timetable for construction and equipment of the energy project.
- 5. The proposed timetable for the bond issue.

If the energy project is a multi-purpose program, the applicant need only refer to those facilities for which financing is being requested.

Formal Application

A formal application for financing shall be made on the Department's application form supplied to the applicant and enclosed with these Application and Review Procedures. Only completed applications will be reviewed by the Department. A completed application consists of:

- 1. An application form with all applicable items completed together with all items required by the application form to be enclosed.
- 2. Two executed copies of the Department's form of Fee Agreement.
- 3. A certified or cashier's check made out to the Department of Finance in the amount of \$1,000.00.

LOAN REVIEW PROCEDURES

Acknowledgment of Receipt of Documents

Within 10 days of receipt of a Letter of Intent, the Department shall send the applicant written acknowledgment of the receipt of the Letter of Intent and shall inform the applicant whether, based upon the information included in the Letter of Intent but subject to the information in the formal application, the applicant is an eligible applicant and the proposed project is an energy project eligible for financing. If requested in the letter of intent, the Department will also commence "official action" within the meaning of Section 1.103-8(a)(5) of the Income Tax Regulations promulgated under Section 103(b) of the Internal Revenue Code of 1954, as amended.

Within 20 days of receipt of the formal application, the Department shall send the applicant written acknowledgment of the receipt of the application and shall inform the applicant as to whether the application received constitutes a completed application and shall specify any missing items.

Initial Conference

Following review by the Department of all documentation submitted as part of the formal application, the Department may schedule a conference with the applicant. It is recommended that the applicant's legal counsel and investment banker attend such conference. The topics to be discussed at the conference include the following:

- 1. The Department's need for any additional information in making its statutorily required determinations.
- 2. The need for the undertaking of a financial feasibility study and the selection of a financial feasibility consultant.
- 3. A proposed timetable for the bond financing.
- 4. The format of the project agreement, including the security to be provided for the obligations of the applicant thereunder. The project agreement will be prepared by the Department's bond counsel based upon the concepts agreed upon at this conference.

In the event that the Department determines that the initial conference is not required prior to making its statutorily required determinations, such conference may be held subsequent to such determinations.

Department Determinations

Following the initial conference (if required) and the furnishing by the applicant of any information required by the Department to statutorily required determinations, and the review by the Department of such information, the Department shall inform the applicant in writing as to whether:

- 1. The applicant is a Project Party, as such term is defined in the statute;
- 2. The applicant (or the guarantor of its obligations under the project agreement, if applicable) is a responsible party as required by the statute.

The Department shall furnish the applicant with such written notification within 60 days following receipt of the completed formal application or the initial conference and receipt of any required additional information, if such conference or additional information is required.

If the applicant has received an adverse determination from the Department, the adverse determination shall include the reasons therefor, and the applicant shall have 30 days to furnish the Department with a written appeal of such determination. The Department shall respond to such written appeal within 120 days of its receipt thereof.

Development of the Documentation for the Bond Financing

Following the initial conference and the making of the required determinations by the Department, work will commence on the documentation required for the bond issue. Such documentation may include the following:

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Trust Indenture Securing Bonds
Project Agreement
Guaranty Agreement*
Mortgage*
Financial Feasibility Study*
Official Statement or Private

Placement Memorandum for Bonds

Contract Between Investment
Banker and Department for Purchase

of Bonds

Party Primarily Responsible For Preparation

Department's Bond Counsel Department's Bond Counsel

Project Party & Project Party's Counsel

Project Party's Counsel

Financial Feasibility Consultant

Investment Banker

Investment Banker

(Note: *If required.)

Following the preparation of drafts of the required documentation, meetings will be scheduled periodically to review such drafts and the progress of the financing. Parties attending such meetings, as required, may include: representatives of the Department, the Department's bond counsel, representatives of the Project Party and its counsel, representatives of the investment banker for the financing and its counsel, representatives of the financial feasibility consultant and such other parties as may be required for a full and complete discussion of items relevant to the bond financing.

Sale of Bonds

The timing of any sale of special purpose revenue bonds shall be at the sole discretion of the Department. In all cases, no sale of bonds shall occur unless the form of all documentation to support the bond issue has been agreed upon by the appropriate parties and all appropriate official action has been taken by the Project Party. Prior to or simultaneously with the bond sale, the Project Party shall execute the project agreement.