

APPENDIX I: BOND TRANSACTION FINANCING TEAM

Bond issuance by OAQDA is coordinated by the Executive Director and may include a variety of staff and outside consultants to fulfill Program and statutory requirements. The financing team members and their respective roles in the transaction are detailed as follows.

A. Issuer

- 1) OAQDA issues conduit² bonds to assist in financing of Air Quality Facilities.
- 2) Operates under Article VIII, Section 13 of Ohio Constitution and Chapter 3706 of Ohio Revised Code.
- 3) Not financial liable for payments of debt service on bonds.
- 4) Is charged with duty to review the projects being financed and to assure that procedures are in place to comply with federal and State laws, including tax and securities laws.
- 5) Executive Director is official representative of OAQDA with respect to bond issues and projects.

B. General Counsel

- 1) Fiduciary duty runs to OAQDA; appointed by OAQDA.
- 2) Represents Issuer in all matters not involving actual bond transactions.
- 3) Assists OAQDA in appointment of Issuer's Counsel and Bond Counsel.
- 4) Reviews specific legal or policy issues that may arise in bond transactions.
- 5) Reviews resolutions as requested for form and helps assure compliance by OAQDA with open meeting requirements and general requirements of Chapter 3706 of Ohio Revised Code.
- 6) Communicates directly with Executive Director of OAQDA about bond issues and projects.

C. Issuer's Counsel

- 1) Fiduciary duty runs to OAQDA; appointed by OAQDA.
- 2) Protects the interests of OAQDA in bond transactions.
- 3) Reviews on behalf of OAQDA the proceedings and bond/loan documents prepared by Bond Counsel.
- 4) Requires legal knowledge and skills different from that of General Counsel, similar knowledge to that of Bond Counsel.
- 5) Fee is paid by the conduit Borrower as a cost of issuance of the bonds.
- 6) Communicates directly with Executive Director of OAQDA about bond issues and projects.

D. Bond Counsel

- 1) Fiduciary duty typically runs to OAQDA; appointed by OAQDA.
- 2) The Borrower, who has the obligation to pay the bonds, may either recommend or approve the recommendation of Bond Counsel.
- 3) Bond Counsel drafts all bond proceedings (resolutions), bond/loan documents and most security documents; as well as closing and tax documents to assure compliance with State and federal law (including tax-exempt bond and tax credit provisions).

² Conduit Bonds are issued by a qualified entity, OAQDA. See "Borrower," for applicant benefits and responsibilities.

- 4) Requires knowledge of Ohio Constitution and State law regarding OAQDA and other types of issuers, security provisions like mortgages and security agreements, federal and State securities laws, and federal and State tax law.
- 5) Usually, Bond Counsel is the “quarterback” for the negotiation, drafting and closing process.
- 6) Provides its legal opinion that the bonds are valid, binding, and enforceable and if appropriate, tax-exempt.
- 7) Fee is paid by the conduit Borrower as cost of issuance of the bonds.
- 8) Communicates directly with Executive Director of OAQDA about bond issues and projects.

E. Borrower

- 1) Makes application to OAQDA for financing.
- 2) Provides documentation to show project qualifies for OAQDA bonds.
- 3) Works with staff, Borrower’s Counsel, Financial Advisor to OAQDA and the Underwriter to establish that is can provide adequate security and revenue to repay bonds.
- 4) Executes documents at bond closing.
- 5) Completes project in accordance with statutory and document requirements.
- 6) Pays debt service on bonds and any applicable ongoing OAQDA fees.
- 7) Provides reports as required to document project performance and conformity with M&V.
- 8) May communicate directly with Executive Director of OAQDA.

F. Borrower’s Counsel

- 1) Fiduciary duty runs to Borrower.
- 2) Appointed by OAG if a state agency or subdivision; or hired by Borrower directly.
- 3) Reviews on behalf of Borrower the proceedings and bond/loan documents prepared by Bond Counsel.
- 4) May draft security documents (mortgage, etc.).
- 5) Requires legal knowledge and skill similar to that of Bond Counsel, as well as familiarity with the business and organizational structure of Borrower.
- 6) Fee is paid by the conduit Borrower as a cost of issuance of the bonds.
- 7) May communicate directly with Executive Director of OAQDA.

G. Financial Advisor to OAQDA

- 1) Fiduciary duty of Financial Advisor runs to OAQDA; not to Borrower, nor the purchaser (Lender /Investor) of the bonds.
- 2) Appointed by OAQDA.
- 3) Reviews on behalf of OAQDA the bond/loan documents prepared by Bond Counsel.
- 4) Recommends how to structure the bond issue if it is an OAQDA program bond and may assist in the offering of the bonds.
- 5) Reviews the structure of the bond issue if it is a non-program bond (like a utility solid waste disposal bond) as recommended by the Borrower or the Financial Advisor to the Borrower. [Note: There may not be a Financial Advisor to the Borrower, but an underwriter may make similar recommendations.]
- 6) Ultimately, assists OAQDA in providing the best financing structure to the Borrower.
- 7) Fee is paid as a cost of issuance of the bonds.
- 8) Communicates directly with Executive Director of OAQDA about bond issues and projects.

H. Financial Advisor to Borrower

- 1) Fiduciary duty runs to Borrower; not the OAQDA or to the purchasers of the bonds. [Contrast this to the duty of an underwriter/placement agent; it runs to the bond purchasers.]
- 2) Hired by Borrower.
- 3) Reviews on behalf of the Borrower the bond/loan documents prepared by Bond Counsel; and any documents prepared by other counsel.
- 4) Recommends how to structure the bond issue if it is a non-program bond (like a utility solid waste disposal bond) and may assist in the sale of the bonds.
- 5) Reviews the structure of the bond issue if it is an OAQDA program bond.
- 6) Ultimately, assists Borrower in getting the best financing structure for its deal.
- 7) Fee is usually paid as a cost of issuance of the bonds.
- 8) May communicate directly with Executive Director of OAQDA.

I. Underwriter (or Placement Agent)

- 1) Underwriter or Placement Agent is not required on every transaction, speak to OAQDA to determine.
- 2) Help Issuer and Borrower structure the borrowing, security structure and bond terms.
- 3) Work with Financial Advisor to OAQDA, Borrower and Financial Advisor to Borrower, if any, as well as various legal counsel, to accomplish that goal.
- 4) Hired by Borrower; may be retained by OAQDA in extraordinary circumstances on the advice of Borrower.
- 5) Fee is paid as a cost of issuance of the bonds.
- 6) May communicate directly with Executive Director of OAQDA.

J. Underwriter's Counsel

- 1) Fiduciary duty runs to Underwriter; hired by Underwriter.
- 2) Protects the interests of the Underwriter in the transaction.
- 3) Reviews on behalf of the Underwriter the proceedings and documents prepared by Bond Counsel.
- 4) Usually prepares the Official Statement, Bond Purchase Agreement, and Continuing Disclosure Agreement. [Bond counsel may do these documents for certain issues like OAQDA program bonds.]
- 5) Fee is paid by Underwriter, or by conduit Borrower, as a cost of issuance of the bonds.
- 6) May communicate directly with Executive Director of OAQDA.

K. Lender / Investor

- 1) Purchaser of bonds issued through OAQDA for benefit of Borrower.
- 2) Selected by Borrower, unless bonds sold through public offering.
- 3) Not fiduciary to any of the other transaction parties.
- 4) May be paid upfront fee through cost of issuance, in addition to receiving debt service from the Borrower.
- 5) May communicate directly with Executive Director of OAQDA.

L. Lender's/ Investor's Counsel

- 1) Similar to role of Underwriter's Counsel; but works in a private placement of bonds to a single Lender (or group of Lenders).

- 2) Fiduciary duty runs to Lender(s); hired by Lender(s).
- 3) Protects the interests of the Lender in the transaction.
- 4) Reviews on behalf of the Lender the proceedings and documents prepared by Bond Counsel.
- 5) Fee is paid by Lender, or by conduit Borrower, as a cost of issuance of the bonds.
- 6) May communicate directly with Executive Director of OAQDA.