GUIDELINES FOR CONTENT AND USE OF IRREVOCABLE LETTER OF CREDIT (ILOC) FOR PERFORMANCE BONDS

Sales of Indian trust resources often require performance bonds. The following procedures apply when using irrevocable letters of credit (ILOC) to secure performance bonds.

# Irrevocable Letter of Credit Defined

* 1. A letter of credit is a document furnished by a bank or other surety on behalf of a Principal (Purchaser or Permittee) certifying that the Bureau of Indian Affairs (BIA) may draw funds by bank draft up to a guaranteed amount as specified in the ILOC agreement. It is an arrangement between the principal and the bank that the bank will pay the BIA if the principal defaults on conditions of the contract or permit up to an amount identified as the performance bond. The term “irrevocable” means that neither the principal nor the bank may modify the terms of the letter of credit without the consent of the BIA.
  2. Except under conditions specified in A(3) below, only ILOC issued by banks or other sureties which are members of the Federal Reserve System or are insured by the Federal Deposit Insurance Corporation are accepted and may be used to secure performance bonds.
  3. Use of ILOC issued by tribal credit committees or equivalent to their own member(s) may be authorized by the Regional Director. Each use will be judged on its’ own merits and must follow the procedures outlined for bank issued irrevocable letters of credit.

# Irrevocable Letter of Credit Contents

There is no uniform ILOC format. Each bank will issue letters of credit on its’ prescribed form or letterhead. The sale advertisement and prospectus must state that an irrevocable letter of credit may be used. An example of an ILOC securing contract performance is shown below.

Each ILOC must include:

1. The Bank’s letter of credit number.
2. A clear statement that it is irrevocable.
3. The name of the bank’s customer: the Principal (the purchaser or permittee).
4. The amount of credit extended must be greater than or equal to the performance bond required in the contract.
5. A statement that the issuer will honor drafts or other demands for payment of the Bureau of Indian Affairs.
6. A certification stating that the person issuing and signing the letter of credit is authorized to sign for the bank.
7. A statement that the Bureau of Indian Affairs certifies by letter to the bank, a draft or other demand for payment because the principal has not fulfilled the terms and conditions of Contract No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ approved on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
8. The expiration date must exceed the timber contract or permit expiration date by a minimum of 90 days. Any extension of the contract or permit date will require modification or replacement of the letter of credit if necessary.
9. A statement declaring that partial drafts or demands are permitted.

# BIA Acceptance of an ILOC.

1. The Approving Officer (AO) of the contract or permit will determine whether an ILOC is acceptable.
2. After approval, the ILOC will be retained in a secure location for retention until the Statement of Completion is approved. Copies of the ILOC will be part of each Official Sale File.
   1. Since there is no standard ILOC form, each ILOC must be reviewed to ensure that required contents are present. If there are additions to, or omissions from, the minimum requirements of the letter of credit, the Approving Officer will determine whether such omissions, additions, qualifications, etc., can be accepted or whether they warrant rejection.
   2. If rejected, the AO may grant the purchaser an appropriate period, usually not to exceed 30 days, to provide an acceptable ILOC or other acceptable performance bond.

# Amendments to an ILOC

An amendment modifying an ILOC, changing the credit limit or expiration date for presentation of drafts, becomes a part of the ILOC. Normally, the need for such amendment will apply only when the contract or permit period has been extended. Amendments are subject to the same requirements and restrictions noted in Section A. As an alternative, the AO may accept a new ILOC to replace the existing ILOC.

# Disposition.

An ILOC, will be returned to the Purchaser or Permittee following completion of contractual obligations and Approving Officer closure of the contract or permit. The release of the surety is included with the standard release language in the letter from the AO to the Purchaser or Permittee. If the ILOC was drawn on include details of those drafts in the letter returning the ILOC to the bank.

# Payments to the BIA.

Demands for payment from an ILOC must be initiated prior to its expiration date. An example of a demand letter for collection from a ILOC is included below. Distribution of payments received by the BIA shall be as follows:

* 1. Where no dispute exists, funds will be distributed to the appropriate account(s) upon receipt from the bank.
  2. When a dispute exists, the ILOC expiration must be extended if necessary or the funds will be collected into an account within the FBMS suspense deposit system and identified solely for use in resolving the dispute.

Sample Irrevocable Letter of Credit to Secure Performance Bond

(Printed Letterhead)

(Name of Issuing Bank)

(City and State)

(Date)

Irrevocable Letter of Credit Number:

Bureau of Indian Affairs

(Local Address)

To BIA Official:

This is an Irrevocable Letter of Credit (ILOC) in your favor for account of (Name of Principal) up to an aggregate amount of $\_\_\_\_\_\_\_\_\_\_\_\_ available by draft or other demand for payment and accompanied by:

A signed statement stating that (Principal) has not fulfilled the terms and conditions under Contract No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Logging Unit, on the

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Reservation, in the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Partial drafts are permitted.

We hereby agree that all drafts or other demand for payment drawn under and in compliance with the terms of the ILOC will be duly honored upon presentation to this bank on or before (expiration date).

(Name of bank with byline for signature of person authorized to sign and their title)

Corporate Seal

Or

Notary Statement

(Signature Certification by Bank Official)

SAMPLE Return of Letter of Credit

When No draft was Drawn Against Letter of Credit

(BIA Letterhead)

(Date)

## REGISTERED MAIL, RETURN RECEIPT REQUESTED

(Name and Location of Issuing Bank)

Banker:

The Bureau of Indian Affairs affirms that the principal has completed their obligations under contract \_\_\_\_\_\_\_\_\_\_\_ and is releasing them from the ILOC obligations effective \_\_\_\_\_\_\_\_\_\_\_\_.

Number

Date of ILOC Issue

Credit Amount

For Account of

(State if drafts were drawn or if no draft) was drawn against this letter of credit.

Sincerely,

(Name and Title of Approving Officer

Enclosure

SAMPLE Demand Letter for Payment Against Letter of Credit

(BIA Letterhead)

### Insert Letter Tracking Number

(Name and title of Approving Bank Official)

(Name and Address of Issuing Bank)

Dear (Name of approving bank official),

The Bureau of Indian Affairs accepted Irrevocable Letter of Credit # in the amount of $ from your bank on (ILOC approval date) on behalf of (Principal) for forest products to be harvested on the Indian Reservation. (Principal) has not fulfilled their contractual obligations, and the BIA requires a bank draft in the amount of $ to satisfy provisions of the logging unit contract, Contract No. .

Please see the enclosed invoice for payment.

Thank you,

(Signature of Approving officer)

(Title)

Enclosure - invoice