RECOMMENDED PRACTICE

Selecting Underwriters for Negotiated Bond Sales (2008) (DEBT)*

Note: This Recommended Practice (RP) is one of a group of four relating to the sale of bonds. These four RPs should be read and considered in conjunction with each other because of the interaction of the processes to which they apply. The four RPs are:

Selecting and Managing the Method of Sale of State and Local Government Bonds
Selecting Financial Advisors
Selecting Underwriters for Negotiated Bond Sales
Pricing Bonds in a Negotiated Sale

Background. State and local governments select underwriters for the purpose of selling bonds through a negotiated sale. The primary role of the underwriter in a negotiated sale is to market the issuer's bonds to investors. Assuming that the issuer and underwriter reach agreement on the pricing of the bonds at the time of sale, the underwriter purchases the entire bond issue from the issuer and resells the bonds to investors. In addition, negotiated sale underwriters are likely to provide ideas and suggestions with respect to structure, timing and marketing of the bonds being sold.

Issuers must keep in mind that the roles of the underwriter and the financial advisor are separate, adversarial roles and cannot be provided by the same party. Underwriters do not have a fiduciary responsibility to the issuer. A financial advisor represents only the issuer and has a fiduciary responsibility to the issuer. In considering the roles of underwriter and financial advisor, it is the intent of this Recommended Practice to set a higher standard than is required under MSRB Rule G-23, because disclosure and consent are not sufficient to cure the inherent conflict of interest.

The issuer's goal in a negotiated bond sale is to obtain the highest possible price (lowest interest cost) for the bonds. To maximize the potential of this occurring, the issuer's goal in the underwriter selection process is to select the underwriter(s) that has the best potential for providing that price. Those underwriters are typically the ones that have demonstrated both experience underwriting the type of bonds being proposed and the best marketing/distribution capabilities.

Recommendation. The Government Finance Officers Association (GFOA) recommends that unless the issuer has sufficient in-house expertise and access to market information, it should hire an outside financial advisor prior to undertaking a negotiated debt financing. The financial advisor can lend objective knowledge and expertise in the selection of underwriters for negotiated sales. GFOA recommends that a firm hired as a financial advisor should not be allowed to resign in order to underwrite the proposed negotiated sale of bonds.

GFOA further recommends the use of a Request for Proposal (RFP) process when selecting underwriters in order to promote fairness, objectivity and transparency. The RFP process allows the issuer to compare respondents and helps the issuer select the most qualified firm(s) based on the evaluation criteria outlined in the RFP. An issuer and its financial advisors should have a clear understanding of the issuer's underwriting needs and should carefully develop an RFP that complies with state and local bidding requirements (including the use of regional, local or disadvantaged firms if deemed appropriate by the issuer).

A negotiated bond sale does not entail the purchase of any goods or services by an issuer from an underwriter. Therefore, an RFP process for underwriters should not be treated as a procurement process for goods or services, notwithstanding the obligation of the issuer to comply with state and/or local procurement requirements. The only legal relationship between the issuer and an underwriter is created by a Bond Purchase Agreement signed at the time of the pricing of the bonds, wherein the issuer agrees to sell the bonds to the underwriter at an agreed upon price.

An RFP process can result in selection of one or more underwriters for a single transaction or result in identification of a pool of underwriters from which firms will be selected over a specific period of time for a number of different transactions. Each issuer should weigh the advantages and disadvantages of each type of arrangement with the assistance of their financial advisor.

No firm should be given an unfair advantage in the RFP process. Procedures should be established for communicating with potential proposers, determining how and over what time period questions will be addressed, and determining when contacts with proposers will be restricted.

Request for Proposal Content. The RFP should include at least the following components:

1. A clear and concise description of the contemplated bond sale transaction.

2. A statement noting whether firms may submit joint proposals. In addition, the RFP should state whether the issuer reserves the right to select more than one underwriter for a single transaction.

3. A description of the objective evaluation and selection criteria and explanation of how proposals will be evaluated.

4. A requirement that all underwriter compensation structures be presented in a standard format. Proposers should identify which fees are proposed on a "not-to-exceed" basis, describe any condition attached to their fee proposal, and explicitly state which costs are included in the fee proposal and which costs are to be reimbursed.

5. A requirement that the proposer provide at least three references from other public-sector clients, preferably clients where the firm provided underwriting services similar to those proposed to be undertaken as the result of the RFP.

Requested Proposer Responses. RFPs should include questions related to the areas listed below to distinguish firms' qualifications and experience, including but not limited to:

1. Relevant experience of the firm and the individuals assigned to the issuer, and the identification and experience of the individual in charge of day-to-day management of the bond sale, including both the investment banker(s) and the underwriter(s).

2. A description of the firm's bond distribution capabilities including the experience of the individual primarily responsible for underwriting the proposed bonds. The firm's ability to access both retail and institutional investors should be described.

3. Demonstration of the firm's understanding of the issuer's financial situation, including ideas on how the issuer should approach financing issues such as bond structures, credit rating strategies and investor marketing strategies.

4. Demonstration of the firm's knowledge of local political, economic, legal or other issues that may affect the proposed financing.

5. Documentation of the underwriter's participation in the issuer's recent competitive sales or the competitive sales of other issuers in the same state.

6. Analytic capability of the firm and assigned investment banker(s).

7. Access to sources of current market information to provide bond pricing data before, during and after the sale.

8. The amount of uncommitted capital available and the ability and willingness of the firm to purchase the entire offering of the issuer, if necessary, in the case of a firm underwriting.

9. Any finder's fees, fee splitting, or other contractual arrangements of the firm that could present a real or perceived conflict of interest, as well as any pending investigation of the firm or enforcement or disciplinary actions taken within the past three years by the SEC or other regulatory bodies.

Additional Considerations. Issuers should also consider the following in conducting the underwriter selection process:

1. Take steps to maximize the number of respondents by using mailing lists, media advertising, resources of the GFOA, resources of the financial advisor and applicable professional directories.

2. Give adequate time for firms to develop their responses to the RFP. Two weeks should be appropriate for all but the most complicated RFPs.

3. Establish evaluation procedures and a systematic rating process, conduct interviews with proposers, and undertake reference checks. Where practical, one individual should check all references using a standard set of questions to promote consistency. To remove any appearance of a conflict of interest resulting from political contributions or other activities, elected officials should not be part of the selection team.

4. Document and retain the description of how the selection was made and the rankings of each firm.

Underwriter's Compensation. The underwriter in a negotiated sale is compensated in the form of an underwriter's discount or "spread", which consists of the negotiated difference between the amount the underwriter pays the issuer for the bonds and the amount the underwriter expects to receive selling the bonds to investors. The underwriter's discount includes up to four components: the management fee, takedown, expenses and underwriting fee. The only component of spread that can be fixed in a proposal is the management fee. The management fee compensates the investment bankers for the time and expertise brought to the negotiated sale by the investment bankers. It is appropriate to ask the proposer for a firm management fee quote, although its weighting in the evaluation criteria should be low. In addition, issuers may want to leave room to negotiate this fee lower or higher, depending on the actual complexities of the transaction.

The remaining components of spread, as noted below, should be determined through the negotiation process.

1. Expenses – includes various fees and overhead expenses and also should not be part of the RFP evaluation criteria. However it is important to note that all underwriter expenses be clearly identified and defined at the appropriate time during the bond negotiation.

2. Takedown – is the "sales commission" of the deal. Current market levels of takedown can be determined by the issuer or its financial advisor just prior to the time of negotiation. The takedown is the principal component of the potential profit to an underwriter in a bond sale. The issuer must weigh the impact of takedown on the resulting true interest cost to the bond issuer. An inadequate takedown may result in less aggressive marketing of the bonds and a higher interest cost to the issuer. A fair balance must be struck between a "market rate" takedown and the cost to the issuer in future interest costs.

3. Underwriting Fee – is almost never part of the final underwriter's discount and should not be part of the discussion at the RFP stage. Discussion of the payment of an underwriting fee may occur during pricing negotiation, but only to the extent the underwriter agrees to underwrite a substantial amount of unsold bonds.

Issuers should include a provision in the RFP prohibiting any firm from engaging in activities on behalf of the issuer that produce a direct or indirect financial gain for the firm, other than the agreed-upon compensation, without the issuer's informed consent. Procedures should be established for communicating with potential proposers, determining how and over what time period questions will be addressed, and determining when contacts with proposers will be restricted.

References.

- GFOA Recommended Practice: *Selecting Bond Counsel*, 2008.
- GFOA Recommended Practice: *Selecting Financial Advisors*, 2008.
- GFOA Recommended Practice: *Selecting and Managing the Method of Sale of State and Local Government Bonds*, 2007.
- *Preparing Requests for Proposals*, Issue Brief No. 3, California Debt Advisory Commission, October 1994.
- *Debt Issuance and Management: A Guide for Smaller Governments*, James C. Joseph, GFOA, 1994.
- *A Guide for Selecting Financial Advisors and Underwriters: Writing RFPs and Evaluating Proposals*, Patricia Tigue, GFOA, 1997.
- Municipal Securities Rulemaking Board Rule G-23, *Activities of Financial Advisors*; http://www.msrb.org/msrb1/rules/ruleg23.htm.

* This Recommended Practice, along with the Recommended Practice on Selecting Financial Advisors, replaces the 1997 RP, Preparing RFPs to Select Financial Advisors and Underwriters.

Approved by the GFOA's Executive Board, October 17, 2008.

Recommended Practice

Selecting Bond Counsel (1998 and 2008) (DEBT)

Background. An essential member of a governmental issuer's bond financing team is bond counsel. Bond counsel renders an opinion on the validity of the bond offering, the security for the offering, and whether and to what extent interest on the bonds is exempt from income and other taxation. The opinion of bond counsel provides assurance both to issuers and to investors who purchase the bonds that all legal and tax requirements relevant to the matters covered by the opinion are met. An issuer should assure itself that its bond counsel has the necessary expertise to provide an opinion that can be relied on and will be able to assist the issuer in completing the transaction in a timely manner.

Recommendation. The Government Finance Officers Association (GFOA) recommends that issuers select bond counsel on the basis of merit using a competitive process and review those relationships periodically. A competitive process using a request for proposals (RFP) or request for qualifications (RFQ) permits issuers to compare qualifications of firms and select a firm or firms that best meets the needs of their community and the type of financing being undertaken. The RFP or RFQ should clearly describe the scope of services desired, the length of the engagement, evaluation criteria, and the selection process. Issuers should have a clear understanding of their service needs (single transaction, multiple transaction, or establishment of a qualified pool of firms) and develop the RFP/RFQ to meet these needs. Additionally, issuers should carefully develop an RFP that complies with state and local procurement requirements.

A RFP or RFQ should require firms proposing to serve as bond counsel to submit information that permits the issuer to evaluate the following factors, at a minimum:

1. Experience of the firm with financings of the issuer or comparable issuers, and financings of similar size, types and structures, including financings in the same state.
2. In preparing the RFP the issuer should determine whether specialized tax advice beyond normal bond counsel services is required. In those instances, the firm's experience in tax matters and the attorneys who practice full time in the area of public finance tax law should be identified in detail. If the firm has no attorneys who specialize in public finance tax law, the response should indicate how the firm intends to provide competent tax advice.
3. Experience of the firm with and its approach to applicable federal securities laws and regulations. In preparing the RFP the issuer should determine whether specialized securities law services beyond normal bond counsel services is required. In those instances, the firm's experience in municipal securities law matters and the attorneys who practice full time in the area of municipal securities law should be identified in detail. If the firm has no attorneys who specialize in municipal securities tax law, the response should indicate how the firm intends to provide competent municipal securities law advice.
4. Knowledge and experience of the attorneys that would be assigned to the transaction, particularly the individual with day-to-day responsibility for the issuer's account.
5. Ability of the firm and assigned personnel to evaluate legal issues, prepare documents, and complete other tasks of a bond transaction in a timely manner.
6. Relationships or activities that might present a conflict of interest for the issuer.

7. Level of malpractice insurance carried, including the deductible amount, to cover errors and omissions, improper judgments, or negligence.

Individuals in the organization with experience in public finance and/or responsible for debt management activities should be involved in the RFP or RFQ development and response review. This may include representatives from the finance department and internal counsel. To remove any appearance of a conflict of interest resulting from political contributions or other activities, elected officials should not be part of the evaluation and/or selection team. In reviewing and evaluating the RFP or RFQ responses, evaluation procedures and a systematic rating process should be established which consider the following:

1. The use of oral interviews of proposers, in which the attorney who would have day-to-day responsibility for the issuer's account should be asked to assume the lead role in presenting the qualifications of the firm.
2. The selection should not be driven solely by proposed fees. The experience of the firm with the type of transactions and the ability to deliver the required legal services in a timely manner are the most important factors in the selection of bond counsel.
3. For issuers that have ongoing needs of a similar nature, continuity should be considered an important factor in the evaluation process.
4. Different fee arrangements are possible depending on the type and nature of the engagement. Fee arrangements include both fixed fee and hourly which may or may not include a cap on the total compensation. Additionally, fees may also be paid contingent on the sale of bonds. Generally bond counsel fees should not be paid on a contingent basis to remove the potential incentive for bond counsel to render legal or tax options that would result in the inappropriate issuance of bonds. However, this may be difficult given the financial constraints of many issuers; in the case of contingent fee arrangements (as well as other fee arrangements), issuers should undertake ongoing due diligence to ensure the bond issue and structure remains appropriate for their organization. Fees and method of compensation (fixed fee, hourly, or retainer) should appropriately reflect the complexity and scope of the services to be provided.
5. Before making a final selection, the issuer should check the references furnished by the prospective bond counsel and determine the outcome of examinations by the IRS or other regulatory agencies of transactions in which the prospective bond counsel was involved. Where practical, one individual should check all references using a standard set of questions to promote consistency.

The issuer may also choose to include a "Form of Contract" in the RFP or RFQ package, which incorporates elements and provisions conforming to prevailing law and procurement processes. The RFP or RFQ should require respondents to comment on the acceptability of the Form of Contract. The comments on the acceptability of the Form of Contract should be part of the evaluation process. The contract development process should allow for reasonable negotiation over the final terms of the contract and/or engagement letter. A final negotiated contract or the engagement letter should make clear those services that will be included within the basic bond counsel fee and any services or reimbursable expenses that might be considered separately billable.

If co-bond counsels are being engaged, the issuer should:

1. delineate in the RFP or RFQ or engagement letter the roles and responsibilities of each firm;
2. assign discrete tasks to each firm in order to minimize cost duplication; and
3. exercise appropriate oversight to ensure coordination of tasks undertaken by the firms.

If co-bond counsels are engaged or if bond counsel firms are rotated, the issuer should:

1. evaluate whether higher costs for legal services will result because of the need for two or more firms to familiarize themselves with the issuer; and

2. consider the possible need to resolve differing viewpoints of each bond counsel.

Throughout the term of the engagement, the performance of bond counsel should be evaluated in relation to the stated scope of services and any areas where service needs to be improved should be communicated to the lead attorney. Ongoing contracts should be reviewed regularly and resubjected to competitive selection periodically.

References

- GFOA Recommended Practice; *Preparing RFPs to Select Financial Advisors and Underwriters*, 1997.
- Patricia Tigue, *A Guide to Selecting Financial Advisors and Underwriters: Writing RFPs and Evaluating Proposals;* GFOA, 1997.
- "Model Engagement Letters," National Association of Bond Lawyers, 1998.
- "The Selection and Evaluation of Bond Counsel," National Association of Bond Lawyers, 1998.

Approved by the GFOA's Executive Board, February 22, 2008.

GFOA Recommended Practice

Selecting and Managing the Method of Sale of State and Local Government Bonds (1994 and 2007) (DEBT)

Background. State and local government bond issuers should sell their debt using the method of sale that is most likely to achieve the lowest cost of borrowing while taking into account both short-range and long-range implications for taxpayers and ratepayers. Differing views exist among issuers and other bond market participants with respect to the relative merits of the competitive and negotiated methods of sale. Moreover, research into the subject has not led to universally accepted findings as to which method of sale is preferable when taking into account differences in bond structure, security, size, and credit ratings for the wide array of bonds issued by state and local governments.

Concerns have been raised about the lack of a competitive Request for Proposals (RFP) process in the selection of underwriters in a negotiated sale and the possibility of higher borrowing costs when underwriters are appointed based on factors other than merit. As a result, issuers have been forced to defend their selection of underwriters for negotiated sales in the absence of a documented, open selection process.

There is also a lack of understanding among many debt issuers about the appropriate roles of underwriters and financial advisors and the fiduciary relationship that each has or does not have with respect to state and local government issuers. The relationship between issuer and financial advisor is one of "trust and confidence" which is in the "nature of a fiduciary relationship". This is in contrast to the relationship between the issuer and underwriter where the relationship is one of some common purposes but also some competing objectives, especially at the time of bond pricing.

Recommendation. When state and local laws do not prescribe the method of sale of municipal bonds, the Government Finance Officers Association (GFOA) recommends that issuers select a method of sale based on a thorough analysis of the relevant rating, security, structure and other factors pertaining to the proposed bond issue. If the government agency has in-house expertise, defined as dedicated debt management staff whose responsibilities include daily management of a debt portfolio, this analysis and selection could be made by the government's staff. However, in the more common situation where a government agency does not have sufficient in-house expertise, this analysis and selection should be undertaken in partnership with a financial advisor. Due to the inherent conflict of interest, issuers should not use a broker/dealer or potential underwriter to assist in the method of sale selection unless that firm has agreed not to underwrite that transaction.

The GFOA believes that the presence of the following factors may favor the use of a competitive sale:

- The rating of the bonds, either credit-enhanced or unenhanced, is at least in the single-A category.
- The bonds are general obligation bonds or full faith and credit obligations of the issuer or are secured by a strong, known and long-standing revenue stream.
- The structure of the bonds does not include innovative or new financing features that require extensive explanation to the bond market.

Similarly, GFOA believes that the presence of the following factors may favor the use of a negotiated sale:

- The rating of the bonds, either credit-enhanced or unenhanced, is lower than single-A category.

- Bond insurance or other credit enhancement is unavailable or not cost-effective.

- The structure of the bonds has features such as a pooled bond program, variable rate debt, deferred interest bonds, or other bonds that may be better suited to negotiation.

- The issuer desires to target underwriting participation to include disadvantaged business enterprises (DBEs) or local firms.

- Other factors that the issuer, in consultation with its financial advisor, believes favor the use of a negotiated sale process.

If an issuer, in consultation with its financial advisor, determines that a negotiated sale is more likely to result in the lowest cost of borrowing, the issuer should undertake the following steps and policies to increase the likelihood of a successful and fully documented negotiated sale process:

- Select the underwriter(s) through a formal request for proposals process. The issuer should document and make publicly available the criteria and process for underwriter selection so that the decision can be explained, if necessary.

- Enter into a written contractual relationship with a financial advisor (a firm unrelated to the underwriter(s)), to advise the issuer on all aspects of the sale, including selection of the underwriter, structuring, disclosure preparation and bond pricing.

- Due to inherent conflicts of interest, the firm acting as a financial advisor for an issuer should not to be allowed to resign and serve as underwriter for the transaction being considered.

- Due to potential conflicts of interest, the issuer should also enact a policy regarding whether and under what circumstances it will permit the use of a single firm to serve as an underwriter on one transaction and a financial advisor on another transaction.

- Issuers with sufficient in-house expertise and access to market information may act as their own financial advisor. Such issuers should have at least the following skills and information: (i) access to real-time market information (e.g. Bloomberg) to assess market conditions and proposed bond prices; (ii) experience in the pricing and sale of bonds, including historical pricing data for their own bonds and/or a set of comparable bonds of other issuers in order to assist in determining a fair price for their bonds; and (iii) dedicated full-time staff to manage the bond issuance process, with the training, expertise and access to debt management tools necessary to successfully negotiate the pricing of their bonds.

- Remain actively involved in each step of the negotiation and sale processes in accordance with the GFOA's *Recommended Practice, Pricing Bonds in a Negotiated Sale.*

- Require that financial professionals disclose the name(s) of any person or firm compensated to promote the selection of the underwriter; any existing or planned arrangements between outside professionals to share tasks, responsibilities and fees; the name(s) of any person or firm with whom the sharing is proposed; and the method used to calculate the fees to be earned.

- Review the "Agreement Among Underwriters" and ensure that it governs all transactions during the underwriting period.

- Openly disclose public-policy issues such as the desire for DBEs and regional firm participation in the syndicate and the allocation of bonds to such firms as reason for negotiated sale; measure and record results at the conclusion of the sale.

- Prepare a post-sale summary and analysis that documents the pricing of the bonds relative to other similar transactions priced at or near the time of the issuer's bond sale, and record the true interest cost of the sale and the date and hour of the verbal award.

References

- *Who are the Parties in My Deal? What are Their Roles? How Do I Sell My Bonds?*, Julia H. Cooper and David Persselin, Government Finance Review, April 2006.
- *An Elected Official's Guide to Debt Issuance*, J.B. Kurish and Patricia Tigue, GFOA, 2005.
- *Debt Management Policy,* GFOA Recommended Practice, 2003.
- *Pricing Bonds in a Negotiated Sale*, GFOA Recommended Practice, 2000.
- *Preparing RFPs to Select Financial Advisors and Underwriters*, GFOA Recommended Practice, 1997.
- *Debt Issuance and Management: A Guide for Smaller Governments*, James C. Joseph, GFOA, 1994.
- *Competitive v. Negotiated: How to Choose the Method of Sale for Tax-Exempt Bonds*, GFOA, 1994.
- *Competitive v. Negotiated Sale Debt,* Issue Brief No. 1, California Debt Advisory Commission, September 1992.

Approved by the GFOA's Executive Board, October 19, 2007.

RECOMMENDED PRACTICE

Pricing Bonds in a Negotiated Sale (1996, 2000, and 2009) (DEBT)

Note: This Recommended Practice (RP) is one of a group of four relating to the sale of bonds. These four RPs should be read and considered in conjunction with each other because of the interaction of the processes to which they apply. The four RPs are:

- ***Selecting and Managing the Method of Sale of State and Local Government Bonds***
- ***Selecting Financial Advisors***
- ***Selecting Underwriters for Negotiated Bond Sales***
- ***Pricing Bonds in a Negotiated Sale***

Background. The cost of borrowing in a negotiated bond sale is established through the bond pricing process. Compared to a competitive sale, pricing bonds in a negotiated sale requires much greater issuer involvement if the issuer is to be confident that pricing results reflect prevailing market conditions at the time of sale. The key items typically negotiated during the pricing process include bond yields, coupons, the underwriter's discount, optional redemption provisions, and the use of term bonds.

Achieving a successful negotiated pricing requires that the issuer have access to current bond market data as well as skills and experience in negotiating the pricing of bonds. Many, if not most, issuers do not have sufficient in-house access to market data nor extensive experience in negotiating and evaluating bond pricings. In such cases, the Government Finance Officers Association (GFOA) recommends that issuers should only consider a negotiated sale if the issuer intends to retain the services of a financial advisor (unrelated to the underwriter) to advise them on all aspects of the sale, including the selection of the underwriter, structuring of the bonds, preparation of disclosure information, pricing of the bonds, and post-sale evaluation of the sale results.

Recommendation. The GFOA recommends that the primary goal of state and local government issuers should be to achieve the lowest overall cost of financing. The GFOA recommends that issuers, together with their financial advisors, undertake the following to enhance the issuer's ability to achieve a successful negotiated pricing:

1. Select negotiated sale underwriters through a formal request for proposals (RFP) process. Among the information requested in the RFP, proposers should be required to state their estimated underwriter's discount for the proposed bonds by component (takedown, management fees, and expenses). The proposed underwriter's discount should be used by the issuer during the final bond pricing negotiations as the basis for the amount of compensation to be paid to the underwriter. Any significant increase in any component of the underwriter's discount from the proposal to the actual bond pricing should be fully explained to the satisfaction of the issuer and its financial advisor.

2. Develop an understanding of prevailing market conditions, evaluate key economic and financial indicators, and assess how these indicators may affect the timing and outcome of the pricing. Request and obtain a pricing book from the underwriter several days prior to the sale which includes a discussion of at least the following information:

- the near-term supply and expected demand for municipal bonds;
- the timing of the release of key economic data, anticipated actions by regulatory or political bodies, and other factors that might affect the capital markets;
- the coupons and yields of recently priced bonds with characteristics similar to that of the issuer's bonds (e.g., ratings, security, structure);
- data showing the issuer's historic pricing data for the type of bonds being sold, indexed to the current market;
- the proposed scale of coupons and yields for the proposed bonds based on the information provided above;
- the proposed underwriter's discount for the bonds.

3. Prepare independent bond pricing ideas separate from those of the underwriter. In order to ensure an active negotiation and successful bond pricing, the issuer and its financial advisor should not rely solely on information provided by the underwriter. As such, the issuer and financial advisor should assemble data on recent pricings of comparable bonds (especially bonds sold through competitive sale), the issuer's historic indexed pricing data, and, most importantly, the issuer's/financial advisor's independent determination of expected market yields for the proposed bonds.

4. Work with the underwriter to develop an appropriate pre-marketing effort to gauge and build investor interest. Consider inclusion of a one- or two-day retail order period.

5. Request that the senior managing underwriter propose a consensus pricing scale on the day prior to the pricing that represents the individual views of the members of the underwriting syndicate and obtain a number of interest rate scales from other syndicate members.

6. Evaluate whether structural features, such as call features and original issue premiums or discounts, that impact the true interest cost (TIC) of a bond offering, but limit future flexibility in managing the debt portfolio, will result in greater overall borrowing costs.

7. Maintain close contact with the underwriter and actively monitor bond market conditions during the marketing period of the bonds. Request access to the underwriter's electronic order entry system in order to observe and evaluate the flow of orders by maturity during the pricing process. Consider re-pricing at lower interest rates at the end of the order period, giving consideration to order flow and order volumes.

8. Negotiate the order priority and designation policies with the underwriter prior to the sale. Issuers have a legitimate role in determining how bonds will be allocated among underwriting syndicate members and ultimate investors. The designation policy has a significant impact on the distribution of underwriter compensation among the syndicate members. The results of these negotiations should be accurately reflected in the preliminary pricing wire prepared by the underwriter prior to the sale.

9. Approve underwriter's proposed allotment of the bonds prior to the final allocation in order to ensure that the issuer's allocation objectives are achieved.

10. Document and evaluate the final pricing of the bonds and compare the results to the pricing data that was prepared prior to the sale. Observe secondary market trading activity on the bonds for several days following bond pricing as a further indication of the fairness of the pricing of the bonds. Such information is available without charge on the internet via web sites such as the Municipal Securities Rulemaking Board (MSRB) Electronic Municipal Market Access (EMMA) platform (www.emma.msrb.org). Pre- and post-sale bond pricing data should be retained by the issuer in order to fully document the bond pricing.

11. Develop a database with information on each issue sold with regard to pricing performance, including the types of bonds sold (general obligation or revenue bonds), credit rating, maturities, yield and takedown by maturity, and TIC.

References.

- GFOA Recommended Practices:
  - Selecting and Managing the Method of Sale of State and Local Government Bonds (2008)
  - Selecting Underwriters for Negotiated Bond Sales (2008)
  - Selecting Financial Advisors (2008)
- *Pricing Bonds in a Negotiated Sale: How to Manage the Process*, J.B. Kurish, GFOA, 1994

Approved by the GFOA's Executive Board, February 27, 2009.