

Developing and Evaluating RFPs/RFQs for Bond Financing Professionals

Bond Issuance Process

Successful Bond Issuance Checklist

Bond Professionals RFPs/RFQs



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I. Steps in the Bond Issuance Process

- Project Identification - Capital planning, initial costing, prioritizing
- Assembling the Financing Team – Municipal Advisor, Bond Counsel, Underwriter (negotiated sale), and others
- Financial structuring and type of debt
- Obtaining all authorizations and approvals required by law to issue the bonds

- Meeting all requirements for a tax-exempt bond issue (if appropriate)
- Preparation of all documentation – including the Preliminary Official Statement (POS)
- Obtaining a rating or credit enhancement (if appropriate)
- Sale of the Bonds – competitive or negotiated
- Closing

II. Checklist for a Successful Bond Financing

- Has the Issuer retained a financing team of bond professionals?
- Is the type of debt being considered the most appropriate?
- Does the maturity structure and estimated debt service match revenue flow in a manner to not raise credit concerns?
- For a competitive sale, do the terms and conditions of sale allow flexibility to structure the most favorable bid possible?
- For a negotiated sale, does the underwriter RFP provide sufficient data for selection of the most qualified firm at the best price?

- Has the Issuer, with professional assistance, developed a POS and is it being properly distributed?
- Does the POS meet or exceed industry standards?
- Has Bond Counsel been consulted regarding all tax and legal requirements?
- Has a credit rating been obtained for the bond issue and credit enhancement considered?
- Have the bonds been sold at a favorable/fair price?
- Have post-issuance compliance policies and procedures been adopted?
- Does the Issuer understand all of the fees related to the financing? Are they necessary for a financing of this nature, size and complexity?

III. Hiring the Bond Issuance Professionals

GFOA has best practices for:

- Selecting and Managing Municipal Advisors
- Selecting Bond Counsel
- Selecting and Managing Underwriters for Negotiated Bond Sales

Selecting a Municipal Advisor

A. GFOA Recommendations Regarding the Municipal Advisor/Issuer Relationship

- GFOA recommends that Issuers hire a Municipal Advisor prior to the undertaking of a debt financing unless the Issuer has sufficient in-house expertise and access to current bond market information.
- Issuer should remain in control of the decision making process necessary for the issuance and sale of the bonds or implementing the financing.



B. Role of Municipal Advisor.

The Municipal Advisor represents the Issuer in the sale of the bonds, and unlike other professionals involved in a bond sale, has an explicit fiduciary duty to the Issuer. Some of tasks performed by a Municipal Advisor in a bond transaction include:

- Assist the Issuer in the structuring and issuance of the bonds;
- Help the Issuer determine the best type of financing vehicle;
- Provide input or direct assistance to the Issuer in selecting other finance professionals;
- Plan the bond sale;
- Assist in the successful sale of the bonds;
- Provide assistance in the closing of the bonds.

C. Duties of the Municipal Advisor to the Issuer

- Under MRSB Rule G-42, the Municipal Advisor owes the Issuer both a Duty of Care and a Duty of Loyalty.
- Duty of Care includes:
 - Possession of the knowledge and expertise needed to provide an Issuer informed advice;
 - Make a reasonable inquiry as to the facts that are relevant to an Issuer's determination as to whether to proceed with a course of action, such as issuing bonds;
 - Make a reasonable inquiry as to the facts that form the basis for any advice the Municipal Advisor provides to the Issuer; and
 - Have a reasonable basis for any advice provided to the Issuer.

- Duty of Loyalty requires the Municipal Advisor to deal honestly and with the utmost good faith and act in the Issuer's best interests without regard to the financial other interest of the Municipal Advisor.
- Other MSRB Rules apply to Municipal Advisors, such as Rule G-17 which makes a Municipal Advisor subject to a duty of fair dealing and prohibits a Municipal Advisor from engaging in any deceptive, dishonest or unfair practice.
- Municipal Advisors must register with the SEC and MSRB and meet professional and testing standards.
- Issuers should be aware that MSRB Rule G-23 prohibits a broker-dealer (underwriter) from providing financial advisory services to the Issuer and underwriting services on the same bond issue.

D. Competitive RFP Process for Municipal Advisor

- GFOA recommends that Issuers select a Municipal Advisor on the basis of merit using a competitive process, RFP or RFQ. GFOA does not recommend a Municipal Advisor RFP or RFQ for every bond financing.
 - Issuer should compare the qualifications of proposing Municipal Advisors and select the most qualified firm based on the scope of services and evaluation criteria outlined in the RFP.
 - The Issuer's selection and use of a Municipal Advisor may vary depending on the level of municipal market knowledge, expertise, and experience of the Issuer's staff.

E. Before Drafting the Municipal Advisor RFP

- The Issuer should determine whether it wants to hire a Municipal Advisor for a specific bond issue or create a pool of Municipal Advisors to select from for future bond issues.
- Determine the best timing for hiring a Municipal Advisor – often early in the financing. The Issuer usually wants the Municipal Advisor to assist it in structuring the bonds and determining the method of sale of the bonds. In the case of a negotiated sale, the Issuer should hire the Municipal Advisor to prepare the underwriter RFP and assist the Issuer in the evaluation of the underwriter responses.
- Because of the actual or appearance of a conflict of interest, the GFOA recommends that an Issuer enact a policy if it wants to allow the same firm to serve as a Municipal Advisor on one bond issue and Underwriter on another bond issue.

F. Content of the RFP. The GFOA recommends that the RFP should include at least the following:

- The Municipal Advisor is registered with the SEC and MSRB. Issuers can visit the SEC/MSRB websites at <https://tts.sec.gov/MATR/index.html> and <http://www.msrb.org/msrb1/pqweb/MARegistrants.asp>.
- A clear and concise description of the scope of work.
- Clarity on whether the Issuer reserves the right to select more than one Municipal Advisor.
- A requirement that all fee structures be presented in a standard format.
- A requirement that the proposer provide at least three references. Issuers may want to check with other issuers that have worked with the Municipal Advisor firm and are not references.
- A description of the objective evaluation and selection criteria and explanation of how proposals will be evaluated.

G. Municipal Advisor Responses should also include:

- Relevant experience of the individuals to be assigned to the Issuer, identification of the individual in charge of day-to-day management, and the percentage of time committed for each individual;
- Relevant experience of the firm with financings of the Issuer or comparable issuers and financings of similar size, types and structures;
- Discussion of the firm's municipal advisory experience necessary to assist issuers with either competitive or negotiated sales;
- 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 and credit rating strategies;

- Demonstration of the firm's knowledge of local political, economic, legal or other issues that may affect the proposed bond issue;
- Discussion of the firm's familiarity with GFOA's Best Practices relating to the selling of bonds and the selection of finance professionals;
- Disclosure of the firm's affiliation or relationship with any underwriter and whether any personnel of the Municipal Advisor who would provide advice to the Issuer was associated with an underwriter within the two years preceding the RFP;
- Analytic capability of the firm;

- Description of the firm's access to sources of current market information to assist in the pricing of negotiated sales and information to assist the Issuer in planning and executing competitive sales;
- Amounts and types of insurance carried;
- Disclosure of any finder's fees, fee splitting payment to consultants, or other contractual arrangement of the firm that could present a real or perceived conflict of interest; and
- Disclosure of any pending investigation of the firm or enforcement or disciplinary actions taken by the SEC, FINRA, MSRB or other regulatory bodies.

H. Evaluation and Selection of the Municipal Advisor

- Allow adequate time for firms to develop their responses to the RFP. Two weeks should be appropriate for all but the most complicated RFPs.
- Establish evaluation procedures and a systematic rating process, conduct interviews with proposers, and undertake reference checks. GFOA recommends that elected officials should not be part of the selection team to remove any appearance of a conflict of interest resulting from political contributions or other activities.
- Document and retain the description of how the selection of the Municipal Advisor was made and the rankings of each firm.

- Ensure that federal regulations and any state and local regulations, standards or policies related to the disclosure of gifts, political contributions, or other financial arrangements are met.
- Establish the basis for payment of the Municipal Advisor (hourly, retainer, contingent). The Municipal Advisor should be prohibited from engaging in activities on behalf of the Issuer that produces a direct or indirect financial gain for the Municipal Advisor, other than the agreed-upon compensation.
- A form of Contract for Municipal Advisory Services can be part of the RFP package, but whether it is or not, the contract should detail the scope of services and basis of compensation. Additionally, the contract should be clear that the Municipal Advisor will only receive compensation for work specifically authorized by the Issuer.

Developing and Evaluating RFPs/RFQs for Bond Team Members Underwriter RFP/RFQ



When and why issuers may want to use (or not use) the RFP/RFQ process?

- Why use RFP/RFQ
 - Debt and/or Procurement Policy
 - Promote fairness, objectivity and transparency
 - Ability to compare underwriter qualifications based on a uniform set of evaluation criteria
 - Open competition
 - Elicit ideas (*e.g.* transaction structure, market access, strategies to broaden investor base, etc.)
- Why to not use RFP/RFQ
 - Preferred underwriter with in-depth knowledge of the Issuer
 - Routine or typical transaction
 - MA in place with capability to monitor bond pricing and underwriter spreads

When to issue the RFP/RFQ?

- As early as possible in the transaction process
- Provide time so the selected underwriter can provide ideas and suggestions
 - Structure – coupons, call date, etc. and ability to provide analytics supporting those suggestions
 - Timing – seasonality, economic calendar, competing issuance, etc.
 - Marketing of the bonds – public sale vs. private placement, rating agency strategy, investor outreach
- Provide time for the underwriter to comply with rules and regulations

How to evaluate RFP/RFQ responses?

- GOAL: Selecting underwriter with the best potential for obtaining lowest borrowing cost for the issuer
- EVALUATION CRITERIA:
 - Should be clearly defined in the RFP
 - Distinguish level of qualifications and experience
 - See GFOA Best Practices, “Requested Proposer Responses”
 - What additional criteria to include in evaluation
 - Unique ideas and value-added services
 - Past/ongoing coverage of the Issuer
 - Recent experience on similar transactions
 - May not be included in evaluation criteria, but can be requested in the RFP in order to provide market/consensus views
 - Proposed/indicative bond pricing scale – market factors and comparative pricings at the time of issuance will dictate pricing.
 - Takedown and expenses (*e.g.* lowest takedown does not always equal lowest total cost to the Issuer)

Developing and Evaluating RFPs/RFQs for Bond Team Members Bond Counsel RFP/RFQ



GFOA recommends:

- A. Review of Financial Service Contracts every 5 years
- B. Using a competitive bidding process
- C. Not being too reliant on one provider

Governments should define the scope of the procurement opportunity, identify specific evaluation criteria and prepare a strategy to evaluate responses. Evaluation criteria should specifically address the following:

- Product and service breadth, depth and quality
- Quality of servicing staff
- Financial strength
- Service capacity
- Regulatory standing
- Reputation and social responsibility
- Cost

Practical Implications:

- When is an RFQ preferable?
- Issues with a Bond Counsel RFP/RFQ
 - Procurement Officer (not Finance Director) preparing the RFP/RFQ
 - Inapplicable information being solicited
 - Evaluation process
- Are all Bond Counsel alike
- Do you hesitate calling an attorney because they will send you a bill
- Importance of Relationship with your bond counsel