ROLES AND RESPONSIBILITIES

THE FINANCING TEAM IN A MUNICIPAL BOND OFFERING

Municipal securities are issued by states and political subdivisions of a state to finance public-purpose projects like roads, airports, hospitals, schools and utilities.

FINANCING TEAM RESPONSIBILITIES

Once a state or local government decides to finance a capital project by issuing bonds, it hires a financing team to:

- → Finalize the plan
- → Develop offering documents
- → Prepare for rating agency and investor presentations
- → Market the bond offering to investors
- → Price the bonds
- → Close the transaction

KEY PARTICIPANTS

Issuer: Undertakes financing for the purpose of financing capital projects or refunding existing debt.

Municipal Advisor:

- → Represents issuer in the financing.
- → Delivers legal opinion at closing that covers:
  - → The issuer validly exists.
  - → The issuer's officers validly hold their offices.
- → Often not an expert in public finance but an experienced lawyer who understands the issuer's operations better than any others involved.
- → Should be diligent in protecting the interests of the issuer by asking questions.

Bond Counsel:

- → Cooperates with issuer and financial advisor/underwriter in structuring transaction, especially on legal matters (state law approvals and compliance with federal tax and securities laws).
- → Prepares all documents required for the authorization and issuance of the bonds.
- → Delivers opinion at closing which covers:
  - → The issuer has properly authorized and issued the bonds.
  - → The bonds are enforceable under the law.
  - → Interest on the bonds is exempt from federal income tax and certain state taxes (to the extent applicable).
- → Bond purchasers rely on the bond counsel opinion when they buy bonds.

Co-Bond Counsel:

- → Used if issuer decides to divide bond counsel's responsibilities.
- → Issuer may want to gain additional experience or capabilities of a second firm or allow two firms to share the work.
- → Means of furthering opportunities and lowering barriers of entry in bond deals for minority, women-owned or local firms.

Financial Advisor and/or Underwriter:

- → Issuer may hire a financial firm to advise on the structuring of the bond issue or to buy the bonds and sell them to purchasers.
- → Underwriter collects gross underwriting spread, the expenses and compensation to the underwriter distributing new issue securities to investors (the difference between the price paid by investors and the amount paid by an underwriter to the issuer).
- → Exact amount received by underwriter depends on whether the initial offering price was obtained for all securities in the issue.

Underwriter's Counsel: Acts on behalf of the underwriter in conducting due diligence and drafting documents.

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THE STEPS

1. Issuer selects bond counsel and financial advisor or underwriter.
2. Once structure is formulated, underwriter and issuer prepare disclosure document.
3. Bond counsel drafts the ordinance, resolution or indenture and other legal documents.
4. Prior to closing, bond counsel distributes for review drafts of various agreements, certificates and legal opinions.
5. At closing, participants execute the closing documents.
6. Underwriter wires purchase price for bonds to the paying agent or trustee.
7. Paying agent or trustee, at the direction of the issuer, pays the costs of issuance and applies the balance to fund a construction or project fund or to refund prior debt.

BOND SECURITY

Bonds are generally defined by the type of security that backs them. Two of the most common types are General Obligation and Revenue Bonds.

GENERAL OBLIGATION BONDS	REVENUE BONDS
→ Backed by general credit and taxing powers of governmental entity → More diverse credit structure → Requires taxing authority → Voter approval	→ Backed by specific revenue stream → Matches sources of payment for bonds to the project financed → Users pay cost of project and financing → Variety of revenues could be pledged to pay debt service → Covenants could limit bonding capacity

The roles and responsibilities of an issuer's team vary depending on the bond offering method of sale.

	COMPETITIVE BID[1]	NEGOTIATED SALE
PROCESS	→ Common method for selecting underwriters for general obligation bonds → In competitive bid process, the issuer, usually with the assistance of a financial advisor, structures the bond issue and publishes a notice of sale requesting bids from underwriters → After bids are received the bonds are awarded to the underwriting syndicate that submitted the best bid (lowest true interest cost to issuer)	→ Issuer works with single underwriting syndicate → Selection of a syndicate based on factors such as past relationships, special expertise, and size and nature of the underwriters' sales efforts → Senior manager of the syndicate will assist the issuer with structuring the bond issue, preparing the official statement, and obtaining bond rating → Syndicate will engage in pre-sale marketing, and then will negotiate interest rates with issuer
ADVANTAGES	→ Since bonds are awarded solely on the basis of lowest bid, no allegations of preferential treatment can be made	→ Underwriter may engage in intensive pre-marketing efforts prior to the bond sale → Marketing may facilitate the sale of more complex bonds → Negotiated sales allow for more flexibility in selection of the underwriter → Governments are more likely to be able to achieve policy goals such as inclusion of historically underutilized businesses in the bond sale → Issuer has increased flexibility with respect to sale date and bond issue structure
DISADVANTAGES	→ Competitive bidding is inflexible with respect to restructuring maturity schedules and interest rates after bonds are awarded → Does not encourage underwriters to participate in substantial pre-marketing efforts → Historically underutilized businesses (firms owned by women or minorities) typically have been at a competitive disadvantage under a competitive process and are less likely to be awarded bonds	→ Because the award of bonds is not based solely on the basis of lowest bid, negotiated sales, in some cases, may appear biased

[1]Clarence Bourne of Loop Capital Markets, *Bonds 101* (2015).

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