



Office of the Comptroller

January 9, 2003

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Comptroller

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The Finance & Personnel Committee  
City of Milwaukee  
City Hall, Room 205

RE: Disadvantaged Businesses:  
Minority/Women Owned Underwriting  
Participation in City Bond & Note Issues

Committee Members:

This letter responds to your Committee's request for a report on the efforts of our Office and that of the Public Debt Commission in the area of minority and women owned underwriting participation in City borrowings. In preparing this letter, we requested that the City Attorney's Office perform a review of relevant court decisions, State laws and local ordinances. We also reviewed existing Public Debt Commission policies regarding this matter. With the help of our financial advisor, Robert W. Baird & Co. Inc., the underwriting selection practices of several peer cities were also examined and compared to our current practice.

The courts, Public Debt Commission policy, State law and the City budget all affect the ways in which the City of Milwaukee can solicit minority-women owned underwriting firms (minority underwriters) in its borrowings. One major constraint is a 1989 decision of the US Supreme Court known as City of Richmond v. J.A. Croson Co. Based on the Croson decision, the City Attorney has opined that the City cannot require minority underwriter participation in the sale of any City bond or note issue: "...the Croson decision precludes the City from requiring that prospective bidders include minority-owned firms in their bidding group."<sup>1</sup>.

The methods of issuance open to the City are public, or competitive, underwriting based on the lowest true interest cost bid; and private, or negotiated, underwriting. Negotiated underwritings do provide additional flexibility to the City in selecting the underwriter(s) because in this approach, the underwriter(s) are selected by the City prior to the actual sale of the bonds/notes. For all negotiated sales, Public Debt Commission policy requires that underwriter selection be based on written proposals in response to a set of criteria adopted by the Commission. This policy prohibits the City's financial advisor from participating in the underwriting of the issue.

<sup>1</sup> Letter dated January 3, 1991 to Comptroller James A. McCann from Grant F. Langley, City Attorney.

State law limits the City to public (competitively bid) sales for its General Obligation (GO) bonds. Under State Statutes Ch. 67.08 (2), private (negotiated) sales are permitted for City GO bond offerings only for refunding bonds or for bonds purchased by the City itself. Also, since 1985, the Public Debt Commission has maintained a written policy of requiring public, competitively bid offerings except in rare situations "and due to unusual circumstances." The Public Debt Commission has historically recognized City refundings as one of the permitted "unusual circumstances" where negotiated sales are permitted. For a refunding issue, a negotiated sale is needed because the size and maturity amounts change with interest rates. The balancing of interest rates and bond issue size is very difficult to accomplish with a public sale. In addition, the primary purpose of a refunding is normally to achieve interest cost savings. Given that those savings are highly dependent on prevailing interest rates at the time of sale, the City must control the exact timing of the sale. Such control over timing is facilitated with a negotiated underwriting.

According to the City Attorney, private sales are permitted for non-GO bonds such as revenue bonds. The City utilized the negotiated sale method in executing its initial Sewer Revenue bond sale – a \$29.1 million revenue bond issued in December of 2001. The negotiated sale method was appropriate as a means of introducing the market to this new City revenue debt instrument. The City Attorney has also opined that City note issues may be sold through private sale. Note issues, however, are limited to a term of 10 years, and are not appropriate to finance the City's infrastructure and most other assets having useful lives of 20 years or more.

Within this framework our Office and the Public Debt Commission continue to promote minority underwriting participation while minimizing the City's cost of financing. I believe strongly that where a City bond or note offering is familiar to and historically accepted by the bond underwriting community, awarding such offerings through a competitive sale based on the lowest true interest cost bid results in the lowest cost to City taxpayers. Tracking minority participation in competitive sales has become more difficult as the market and the City have increased the use of internet bidding. While internet bidding has encouraged increased bidding interest in City bond/note sales and is now the industry standard in competitive bids, information about the bidders' underwriting team and the related level of minority firm participation has generally not been made available with these bids. Our Office intends to take action to acquire this information for future City debt offerings. See our comments below.

In terms of its negotiated debt offerings, the Public Debt Commission and the Office of the Comptroller have worked hard to achieve minority underwriter participation. Over the past two years, the City of Milwaukee has executed four major negotiated bond sales. In each of these issues, the City has been able to secure meaningful, significant minority underwriting participation as follows:

- 2001A \$26.0 million Tax Exempt Refunding Bond  
minority participation \$7.5 million (29 %)
- 2001B \$4.7 million Taxable Refunding Bond  
minority participation \$1.4 million (30%)

- 2002 \$29.1 million Sewer Revenue Bond  
minority participation \$29.1 million (100 %)
- 2002A \$160.0 million Exempt Refunding Bond  
minority participation \$46.4 million (29%).

**In total, State certified minority owned underwriting firms have been able to underwrite \$84,400,000 in City of Milwaukee long-term bond underwriting through negotiated sales since the 2001A issue in June of 2001.**

In the City's bond sale offering statement and attached bid form for competitive sales, the City strongly encourages all bidders to include in their syndicates minority owned firms certified<sup>2</sup> as such by the State of Wisconsin, and encloses a list of these firms including a contact, address and phone number. Also, for each of its two \$110 - \$135 million revenue anticipation notes sold annually, the City promotes minority and other smaller underwriting firm participation through its use of a "dutch auction" bidding approach. In a dutch auction, underwriters can enter bids for as little as \$10,000,000 for an auction totaling \$120 million or more. Awards are made beginning with the lowest true interest cost bid until the City issue is fully subscribed (underwritten). Minority firms are more able to competitively bid these smaller amounts where they may be precluded from making a bid on the entire issue because of limited available capital. However, marketing of this dutch auction structure may be needed. Although minority owned firms may have been a part of a larger underwriting syndicate, in the past three years, we are not aware of a bid being directly submitted by a State certified minority firm to underwrite any of these revenue anticipation note issues.

At our request, our Financial Advisor, Robert W. Baird & Co. Inc. surveyed governments similar to Milwaukee to inventory their minority underwriting participation policies. See the enclosed. Baird concludes that:

"Based on our research, it is reasonable to conclude that Milwaukee's efforts to include minority, women and emerging business enterprises (M/W/EBE) underwriting firms is comparable to other cities, particularly those who have formal bidding policies or policies encouraging M/W/EBE participation."

In spite of the lack of internet bid data, Baird also concludes that for competitive bids "...We know that M/W/EBEs have bid on the City's issues...We believe this will continue...". Baird also adds, "We also believe that your bidding approach, i.e., "dutch auction" and the wide distribution of the sales materials demonstrate your commitment to work with a wide variety of firms."

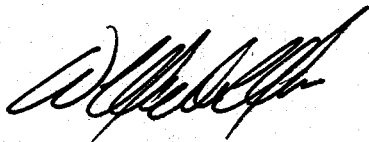
To better track, monitor and report minority/women underwriter interest in the City's competitively bid issues in the future, **we intend to make it a requirement in our Bid form that the winning bidder must provide the Comptroller with information regarding both the composition of its underwriting team and the level of participation of each team member.** We will also take steps to provide incentives for non-winning bidders to also provide this information. Finally, we will make sure that registered woman-minority owned underwriting firms are aware of the opportunities available to them through the City's dutch auction structure for its revenue anticipation notes.

<sup>2</sup> The State certification process covers minority underwriters nationwide.

We will continue to explore new ways to encourage women and minority firms to participate in the City's debt issues, and to encourage other firms to include women and minority firms in their underwriting syndicate.

I hope this report is responsive to your request. Should you have any questions or comments, please contact me immediately.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Martin Morics', written in a cursive style.

W. Martin Morics  
Comptroller

Cc Members of the Public Debt Commission

Keith A. Kolb, Robert W. Baird

Vincent P. Lyles, Robert W. Baird

'02 DEC 18 AM 9:12

**Baird**

December 17, 2002

Mr. Michael J. Daun, Special Deputy Comptroller  
CITY OF MILWAUKEE  
200 East Wells Street  
Room 404, City Hall  
Milwaukee, Wisconsin 53202

Dear Mike,

Enclosed is a summary of the results of our recent survey related to the minority participation policies of cities similar to Milwaukee.

Based on our research, it is reasonable to conclude that Milwaukee's efforts to include minority, women and emerging business enterprises (M/W/EBE) underwriting firms is comparable to other cities, particularly those who have formal bidding policies or policies encouraging M/W/EBE participation. As you know, most of the City's deals are sold competitively, therefore the bidder or bidders who offers the lowest true interest rate will be deemed the winner.

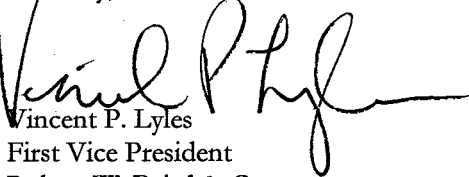
We know from our recent underwriting solicitation for Milwaukee Public Schools that M/W/EBEs have bid on the City's issues; usually they are part of a larger syndicate. We believe this will continue due to the size of your offerings, the high credit quality of the City and the shrinking size of the underwriting community. We also believe your bidding approach, i.e., "dutch auction" and the wide distribution of sales materials demonstrate your commitment to work with a wide variety of firms. Finally, the utilization of the Internet will also enhance the opportunity for smaller firms to bid on the City's issues.

We believe the City's commitment to include M/W/EBEs is a sincere approach and will continue to expand as evidenced by your inclusion of two different M/W/EBEs in your two most recent refundings and the selection of a M/W/EBE firm to serve as Senior Manager of your inaugural sewer revenue transaction in 2001.

We are prepared to assist you in identifying additional opportunities to work with M/W/EBE firms and to provide the taxpayers with the most cost efficient financings.

If I can be of further assistance, please feel free to call me.

Sincerely,



Vincent P. Lyles  
First Vice President  
Robert W. Baird & Co  
(414) 765-3815

VPL: tgm  
Enclosure

cc: Keith A. Kolb, Managing Director, Robert W. Baird & Co.  
Richard Li, Public Debt Specialist, City of Milwaukee

**CITY GENERAL OBLIGATION DEBT ISSUES  
MINORITY UNDERWRITING FIRM PARTICIPATION**

<b><u>CITY</u></b>	<b><u>METHOD OF SALE</u></b>	<b><u>MINORITY PARTICIPATION POLICY</u></b>	<b><u>IMPLEMENTATION</u></b>
CITY OF CHICAGO Mr. Tariq G. Malthance, City Comptroller (Mr. Brian King)	Negotiated	The City seeks to award 30% of underwriting business to minority and women-owned firms	Underwriting teams which reflect our 30% set aside goal are selected by the City Comptroller.
CITY OF DENVER Ms. Margaret Brown, Finance Director (Mr. Bob Gibson) <i>Note: A more detailed correspondence is available upon request.</i>	In that context, the City's Debt Policy proscribes that a competitive sale is the manner of sale Denver bonds will be sold, unless the transactions meet certain criteria as established in the Debt Policy. General Obligation Bonds do not meet the requirements for a negotiated sale. Therefore, competitively sold Denver bonds are awarded to the lowest TTC offer submitted in accordance with the Notice of Sale.	Minority or disadvantaged firms are encouraged to participate. Historically, the City has selected a multi-strata team, consisting of large national firms, local/regional firms and minority/disadvantaged firms.	Not Applicable
CITY OF COLUMBUS Mr. Joe Taylor	Competitive	In the context of underwriting firms, there is no written policy, but as previously stated, Denver seeks opportunities to provide this experience to disadvantaged firms.	Outreach program by a city office to make MBE/FBEs aware of opportunities to participate.
CITY OF HOUSTON Ms. Sylvia R. G��cia, Comptroller (Mr. Jim Moncur)	Negotiated	Yes	On an informal basis, minority firms are included in all underwriting teams, but it is up to them to sell bonds.
CITY OF INDIANAPOLIS Ms. Kathy Davis, Comptroller	Negotiated	Informal policy of 20% minimum minority participation.	Administratively.
CITY OF MINNEAPOLIS Mr. Patrick Born, Finance Officer	Competitive (G.O. Bonds)	No-Due to competitive sale policy	Not Applicable
CITY OF SEATTLE Mr. Dwight D. Divey, Finance Director (Mr. Michael vanDyck)	80% Competitive 20% Negotiated	The City has a practice of encouraging the participation of WMBE Underwriters, but no policy to do so. A recent revision to Washington State law limits the ability of the City to favor WMBE firms.	Not Applicable

*The following Cities have not yet responded to the survey as of December 12, 2002.*

City of Cincinnati  
City of Detroit  
City of Kansas City  
City of Miami