DANIEL A. MULE'
CITY TREASURER

SALT LAKE CITY CORPORATION

DEPARTMENT OF MANAGEMENT SERVICES
TREASURER'S DIVISION

SCANNED TO: mayor
SCANNED BY: Raye
DATE: 4/9/2010 - 9:21 Am

RALPH BECKER
MAYOR

RECEIVED
APR 09 2010
By Raye

CITY COUNCIL TRANSMITTAL

Karen Hale for David Everitt
David Everitt, Chief of Staff

Date Received: 04/09/2010
Date sent to Council: 04/09/2010

TO: Salt Lake City Council
JT Martin, Chair

DATE: April 9, 2010

FROM: Daniel A. Mulé, City Treasurer DAM

SUBJECT: General Obligation Bonds, Series 2010A - Public Safety Facilities Project

STAFF CONTACT: Daniel A. Mulé, City Treasurer 801-535-6411

DOCUMENT TYPE: Briefing/Discussion

RECOMMENDATION: That the City Council hold a discussion on April 13, 2010 in anticipation of the adoption of a resolution on April 20, 2010 authorizing the issuance and confirming the sale of $25,000,000 Salt Lake City, Utah, General Obligation Bonds, Series 2010A.

BUDGET IMPACT: None. Increased tax collections resulting from the issuance of voter-authorized general obligation bonds for the Public Safety Facilities Project will be sufficient to cover debt service costs for the period in which the bonds are outstanding.

BACKGROUND/DISCUSSION: On November 3, 2009, voters within Salt Lake City authorized the City to issue and sell general obligation bonds in an amount not to exceed $125 million for the purpose of financing the cost of providing a public safety administration and operations building, an emergency operations center, and related facilities.

Previous paperwork on this subject matter (refer to my Council Transmittal dated March 23, 2010) planned for an April 13, 2010 sale date for the bonds with the adoption of the Bond Resolution authorizing the issuance and confirming the sale that same evening. However, there is a good chance that a portion of the bonds will be sold as taxable Build America Bonds (BABs). The Administration thought it best to delay the sale of the bonds one week to April 20, 2010 and brief the City Council on this relatively new financing mechanism on April 13, 2010.

In anticipation of this discussion, I asked Chapman and Cutler, Bond Counsel, to prepare a memo highlighting the benefits as well as identifying potential issues/risks, no matter how insignificant, of issuing Build America Bonds. Bond Counsel's memo is attached. Also attached is an analysis by the City's Financial Advisor, Wells Fargo Securities that uses current interest rate scales to distinguish the results of issuing all tax-exempt bonds vs. all taxable bonds (BABs) vs. a hybrid issue that combines tax-exempt and taxable BABs.

Attachments

cc: Gina Chamness, Boyd Ferguson, Sam Guevara, David H. Hart, Gordon Hoskins, Susi Kontgis, Marina Scott

Chapman and Cutler LLP

MEMORANDUM

TO: Salt Lake City, Utah

FROM: Chapman and Cutler LLP

DATE: April 7, 2010

RE: Qualified Build America Bonds

In February, 2009, as part of the American Recovery and Reinvestment Act of 2009 (the *"Act"*), Congress enacted Section 54AA of the Internal Revenue Code of 1986, as amended (the *"Code"*), permitting a state or local government to issue a new type of taxable obligation called Build America Bonds to finance governmental projects. The interest on Build America Bonds is included in the income of the holders thereof for federal income tax purposes.

The Act permits two types of alternative interest subsidies by the federal government: (a) the issuer of a Build America Bond that is a qualified bond may elect to receive a payment directly from the Secretary of the Treasury (the *"Secretary"*) equal to 35% of the interest on the bond or (b) if an obligation is not a qualified bond or the issuer does not elect to receive a payment with respect to a qualified bond, a holder of a Build America Bond will receive a tax credit if the holder owns the Build America Bond on the interest payment dates for such bonds. This memorandum focuses on the requirements for and the issues surrounding qualified Build America Bonds (*"Qualified BABs"*) for which the issuer has elected to receive a subsidy from the Secretary.

REQUIREMENTS FOR QUALIFIED BABS

1. Satisfy Requirements for Tax-Exempt Bonds. Although they are taxable, Build America Bonds must meet the requirements applicable to tax-exempt obligations, with certain modifications. The issuer must make an election to treat the bonds as Build America Bonds and the bonds must be issued before January 1, 2011.

2. Limitation on Original Issue Premium. Original issue premium on a Build America Bond cannot exceed a de minimis amount. Generally, the premium is de minimis if it does not exceed 0.25% multiplied by the number of complete years to maturity of the bonds (or, if earlier, the optional redemption date of the bond that results in the lowest yield on the bond) multiplied by the stated redemption price at maturity of the bond. It is important to note that the premium is calculated on the issue price of the maturity at which a substantial amount of the bonds of the maturity are in fact sold. This is different from the arbitrage rules, where a reasonable expectation test can be applied. As is discussed below, the Internal Revenue Service (the *"IRS"*) has focused on the determination of the issue price for determining premium.

3. Capital Expenditure Requirement. A Build America Bond is a Qualified BAB if 100% of the available project proceeds are used for capital expenditures or to fund a reasonably required reserve. Available project proceeds generally consist of the proceeds from the sale of the issue (and investment earnings thereon) less up to 2% of the lesser of par or the issue price that can be used to pay costs of issuance, including bond insurance premiums. Generally speaking, a capital expenditure is the cost of an asset that lasts for more than one year. Costs of land acquisition are normally capital expenditures, as are costs of building a building or a road or buying furniture or equipment with a life longer than a year. "Soft costs" such as architects and engineering fees that are directly tied to a capital construction project are generally capital expenditures as well.

4. Receiving the Interest Subsidy. Issuers of Qualified BABs must submit Forms 8038-CP to request subsidy payments. For a fixed interest rate bond, a Form 8038-CP must be filed for each interest payment date no later than the date that is 45 days before the relevant interest payment date, but may not be submitted earlier than 90 days before the relevant interest payment date. For a variable interest rate bond, an issuer must total all subsidy payments on a quarterly basis and file a Form 8038-CP for each quarter for reimbursement in arrears no later than the date that is 45 days after the last interest payment date for the quarterly period for which reimbursement is being requested. The IRS has indicated that late filed forms will be processed; however, the subsidy may not be paid by the applicable interest payment date.

ISSUES SURROUNDING BUILD AMERICA BONDS AND QUALIFIED BABS

a. Post-Issuance Compliance Check Questionnaire. The IRS has indicated that it will send a post-issuance compliance questionnaire to each issuer of Build America Bonds. Attached as *Exhibit A* is a copy of the current Direct Pay Bonds Compliance Check Questionnaire. Once received, issuers should respond to the Questionnaire. As can be seen from the attached Questionnaire, the IRS is checking with issuers to see, among other things, what types of procedures issuers have instituted to ensure compliance with the Build America Bonds provisions. While the Tax Compliance Certificate and Agreement prepared by Chapman and Cutler LLP in connection with the issuance of Build America Bonds constitutes a form of written procedures, we recommend that issuers develop other internal procedures to monitor post-compliance (including arbitrage, private activity and remedial actions).

b. Risk of Non-Compliance. In the event an issuer does not comply with the requirement for Qualified BABs, the bonds would no longer be considered Qualified BABs and the issuer would no longer receive the subsidy payment from the Secretary, but the bonds would remain outstanding and bear interest at a taxable rate. Also, while there is currently no guidance on the point, in the event of a controversy regarding compliance Qualified BABs requirements, it is possible that the Secretary may withhold subsidy payments until the controversy is resolved.

c. Funding of Debt Service Reserve Requirement. Currently there is no guidance from Congress or the IRS regarding the proper sizing of a debt service reserve requirement for Qualified BABs. For tax-exempt bonds, the debt service reserve requirement is generally the lesser of (i) 100% of the maximum annual debt service on the bonds, (ii) 125% of the average debt service on the bonds or (iii) 10% of the principal amount or issue price of the bonds. For determining the maximum annual debt service or the average debt service on Qualified BABs, it is not clear at this point if the debt service should be determined net of subsidy payments, which would result in a smaller debt service reserve requirement. If the IRS requires the debt service reserve requirement be determined based on debt service net of the subsidy payment and rating agencies require that the debt service reserve requirement be sized by ignoring the subsidy, issuers may be required to deposit additional monies (not Qualified BABs proceeds) in order to satisfy the debt service reserve requirement.

d. Issue Price. Question #2 of the Questionnaire probes what actions, if any, the issuer is taking to ensure that the issue price is within the premium limits for Build America Bonds. For purposes of premium compliance, the issue price is the price at which at least 10% of each maturity of the bonds are sold to the public. The public is defined as a party who is not acting in the capacity of an underwriter or broker (an *"Intermediary"*). If 10% of a maturity has not been sold to the public at an issue price of less than par plus allowable premium, any Intermediary who purchases such maturity may only resell such maturity at a price below the premium limits for Build America Bonds. If Build America Bonds are sold at a price in excess of par plus the allowable premium prior to establishing the issue price certain remedial actions may be necessary.

e. Advance Refunding Considerations. At this point in time there has been no guidance given by Congress or the IRS as to the advance refunding of Qualified BABs; *provided, that*, Qualified BABs cannot be used to refund (either as an advance refunding or a current refunding) any outstanding bonds. Further guidance may be required prior to advance refunding any Qualified BAB.

f. Structuring of Debt Service Payments. Because there is no guarantee that the interest subsidy will be received prior to the interest payment date, the issuer of Qualified BABs will need to ensure that sufficient funds are on hand to make the initial interest payment. Thereafter the subsidy received can be used to off subsequent interest payments.

g. Offset. The amount of the subsidy Qualified BABs may be offset by any amount that the issuer may owe to the federal government. There is a chance that the Secretary can withhold subsidy payments for amounts that the federal government considers is owed to it, even if the amounts are being disputed by the issuer. The offset can be automatic for certain payments and is tied to an issuers employer identification number.

Pending Legislation

While the Build America Bond program is set to expire at the end of this year, there is legislation pending in Congress that, if passed, would continue the program in some form.

Exhibit A

Current IRS Direct Pay Bonds Compliance Check Questionnaire

Form **14127**
(January 2010)

Department of the Treasury — Internal Revenue Service

Direct Pay Bonds Compliance Check Questionnaire

OMB No. 1545-2071

We are asking for information regarding your Direct Pay Bonds, post-issuance bond compliance and record retention practices. Direct Pay Bonds referred to in this questionnaire are Build America Bonds described in section 54AA(g) of the Internal Revenue Code. Please complete the questionnaire and follow the instructions in the accompanying letter for returning it to us. Please note that section references in this questionnaire are to sections of the Internal Revenue Code unless otherwise indicated. For all accompanying documentation, please clearly label the question to which it relates.

Name of Governmental Entity: ______________________________

Employer Identification Number: ______________________________

1. Do you have written procedures to ensure that none of the maturities of your Direct Pay Bonds are issued with more than a de minimis amount of premium as required by section 54AA(d)(2)(C)? ☐ Yes ☐ No

   If Yes, date they were implemented? ____________ *(dd/mm/yyyy)*

   If Yes, describe in detail your procedures for ensuring compliance with such de minimis rule and how you implement such procedures, including dates of revisions, if any. In lieu of the above description, you may attach a copy of your written procedures. If you have no written procedures, explain what guidelines you have in place and from what source these guidelines are derived that ensure Direct Pay Bonds issued with premium fall within the de minimis rule. *(Attach sheet with description)*

2. Are records of secondary market trading activity for your Direct Pay Bonds available through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System *(see http://www.emma.msrb.org)*? ☐ Yes ☐ No ☐ Do not know

   If Yes, did you or a consultant to the issuer, other than the underwriter or initial purchaser of the Direct Pay Bonds, review the records of the secondary market trading activity for the Direct Pay Bonds after the sale date of the bonds but before the bonds were delivered on the date of issue? ☐ Yes ☐ No ☐ Do not know

   If Yes, that is, if such records were reviewed as described above, did any of your Direct Pay Bonds trade at a price greater than the issue price prior to the delivery of those Direct Pay Bonds on the date of issue? ☐ Yes ☐ No ☐ Do not know

3. Do you have written procedures to ensure that your Direct Pay Bonds remain in compliance with the following Federal tax requirements after the bonds are issued:

   a. Timely expenditure of bond proceeds? ☐ Yes ☐ No

      If Yes, date they were implemented? ________________ *(dd/mm/yyyy)*

   b. Correct calculation of Available Project Proceeds *(See section 54A(e)(4))*? ☐ Yes ☐ No

      If Yes, date they were implemented? ________________ *(dd/mm/yyyy)*

   c. Use of 100% of Available Project Proceeds less amount in a reasonably required reserve fund only for capital expenditures *(See section 54AA(g)(2)(A))*? ☐ Yes ☐ No

      If Yes, date they were implemented? ________________ *(dd/mm/yyyy)*

   d. Arbitrage yield restriction and rebate? ☐ Yes ☐ No

      If Yes, date they were implemented? ________________ *(dd/mm/yyyy)*

   e. Costs of issuance financed by the issue do not exceed 2% of the proceeds of sale *(See section 54A(e)(4)(A)(ii))*? ☐ Yes ☐ No

      If Yes, date they were implemented? ________________ *(dd/mm/yyyy)*

   f. Proper determination of the amount of interest payable on each interest payment date? ☐ Yes ☐ No

      If Yes, date they were implemented? ________________ *(dd/mm/yyyy)*

   g. Proper amount of refundable credit reported on Form 8038-CP? ☐ Yes ☐ No

      If Yes, date they were implemented? ________________ *(dd/mm/yyyy)*

   h. Timely filing of Form 8038-CP? ☐ Yes ☐ No

      If Yes, date they were implemented? ________________ *(dd/mm/yyyy)*

   i. Payment of refundable credit will be made to the proper person? ☐ Yes ☐ No

      If Yes, date they were implemented? ________________ *(dd/mm/yyyy)*

   If Yes, describe in detail your procedures for each of the above items *(a-i)* and how you implement such procedures, including dates of revisions, if any. In lieu of the above descriptions, you may attach a copy of your written procedures. If you have no written procedures, explain what guidelines you have in place and from what source these guidelines are derived that ensure bond financings are in compliance with Federal tax requirements. *(Attach sheet with description)*

4. Do you have written procedures to ensure timely identification of violations of Federal tax requirements after your Direct Pay Bonds are issued and the timely correction of any identified violation(s) through remedial actions described in the Treasury Regulations or through the Tax Exempt Bonds Voluntary Closing Agreement Program described under Notice 2008-31? ☐ Yes ☐ No

   If Yes, date they were implemented? ____________ *(dd/mm/yyyy)*

   If Yes, describe in detail your procedures for timely identification and correction of any such violations and how you implement such procedures, including dates of revisions, if any. In lieu of the above description, you may attach a copy of your written procedures. If you have no written procedures, explain what guidelines you have in place and from what source these guidelines are derived that ensure timely identification and correction of any violations of Federal tax requirements. *(Attach sheet with description)*

5. Do you maintain records necessary to support the status of the bonds as qualified to receive the tax advantaged treatment described in section 54AA(g)? ☐ Yes ☐ No

   If yes, for how long?

   ☐ Less than life of bonds

   ☐ Life of bonds

   ☐ Life of bonds plus 3 years

6. How do you maintain your bond records?

   ☐ On Paper

   ☐ Electronic media *(e.g.,CD, disks, tapes)*

   ☐ *Combination of paper and electronic*

Under penalties of perjury, I declare that I have examined this completed questionnaire, including accompanying documents and statements, and to the best of my knowledge and belief, the completed questionnaire contains all the relevant facts relating to the answers to the questionnaire, and such facts are true, correct, and complete.

Signature: ______________________________ Date: ____________________

Printed Name: ______________________________

Title: ______________________________

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need it to ensure that you are complying with these laws.

The IRS may not conduct or sponsor, and an organization is not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103 and 6104.

Salt Lake City, Utah

Tax-Exempt and Taxable BAB Yields
As of March 30, 2010

Series 2010A Bonds Tax-Exempt vs. Taxable (Build America Bonds) Make-Whole Call Option						
Year	Tax-Exempt Yields (1)	Taxable Yields (2)	Build America Subsidy (3)	Net Taxable Yields	Optimal Structure	Taxable Spread Benefit
2011	0.450%	0.990%	0.347%	0.644%	0.450%	0.000%
2012	0.870%	1.660%	0.581%	1.079%	0.870%	0.000%
2013	1.180%	2.230%	0.781%	1.450%	1.180%	0.000%
2014	1.520%	3.010%	1.054%	1.957%	1.520%	0.000%
2015	1.840%	3.310%	1.159%	2.152%	1.840%	0.000%
2016	2.280%	3.630%	1.271%	2.360%	2.280%	0.000%
2017	2.580%	4.030%	1.411%	2.620%	2.580%	0.000%
2018	2.810%	4.270%	1.495%	2.776%	2.776%	0.034%
2019	3.000%	4.370%	1.530%	2.841%	2.841%	0.160%
2020	3.120%	4.470%	1.565%	2.906%	2.906%	0.215%
2021	3.260%	4.570%	1.600%	2.971%	2.971%	0.290%
2022	3.340%	4.670%	1.635%	3.036%	3.036%	0.305%
2023	3.430%	4.820%	1.687%	3.133%	3.133%	0.297%
2024	3.500%	4.970%	1.740%	3.231%	3.231%	0.270%
2025	3.580%	5.040%	1.764%	3.276%	3.276%	0.304%
2026	3.660%	5.100%	1.785%	3.315%	3.315%	0.345%
2027	3.740%	5.170%	1.810%	3.361%	3.361%	0.380%
2028	3.810%	5.270%	1.845%	3.426%	3.426%	0.385%
2029	3.880%	5.370%	1.880%	3.491%	3.491%	0.390%
2030	3.950%	5.470%	1.915%	3.556%	3.556%	0.395%

(1) 10-Year Par Ca 6/15/2020
(2) 10-year par call option.
(3) 35% subsidy.

FOR DISCUSSION PURPOSES ONLY

Salt Lake City, Utah
Series 2010A Bonds
Make-Whole Call Option
Rates as of March 30, 2010 (Provided by GKB)

Fiscal Year Ending 6/30	Tax-Exempt/ BABs Net Debt Service	Tax-Exempt Net Debt Service	Difference	Present Value (1) 3.305%
2010				
2011	1,712,200	1,793,745	81,545	78,936
2012	1,710,678	1,795,069	84,391	79,077
2013	1,713,403	1,793,244	79,841	72,420
2014	1,713,103	1,793,444	80,341	70,542
2015	1,714,816	1,795,719	80,903	68,764
2016	1,710,966	1,792,431	81,466	67,026
2017	1,715,316	1,792,375	77,059	61,373
2018	1,712,016	1,794,975	82,959	63,958
2019	1,710,375	1,796,525	86,150	64,293
2020	1,712,141	1,797,025	84,884	61,321
2021	1,712,130	1,795,550	83,420	58,336
2022	1,710,296	1,792,675	82,379	55,765
2023	1,711,593	1,793,400	81,807	53,606
2024	1,710,394	1,796,000	85,606	54,300
2025	1,711,621	1,796,400	84,779	52,056
2026	1,710,757	1,794,600	83,843	49,834
2027	1,712,855	1,795,600	82,745	47,608
2028	1,712,616	1,794,200	81,585	45,438
2029	1,714,692	1,795,400	80,708	43,512
2030	1,713,844	1,794,000	80,156	41,832
Total	34,245,808	35,892,376	1,646,569	1,189,998

Premium:	166,366	553,935	(387,569)	(387,569)
TIC:	3.139%	3.472%		
		NPV Difference (Includes premium)		802,429

Par Amount:	25,000,000	25,000,000	-
Authorization Used:	25,000,000	25,000,000	-
Bond Proceeds:	25,166,366	25,553,935	(387,569)

(1) Present Value Rate:

Tax-Exempt/BABs TIC (True Interest Cost):	3.139%
Tax-Exempt TIC (True Interest Cost):	3.472%
Average TIC:	**3.305%**

FOR DISCUSSION PURPOSES ONLY