

MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

FILED by order
of the Board of Directors of
The Metropolitan Water District
of Southern California
at its meeting held MAY 12, 1992
Barro E. Duff
Executive Secretary

39634

9-16

April 22, 1992

To: Board of Directors (Finance & Insurance Committee--Information)
(Legal & Claims Committee--Information)
From: General Counsel
Subject: Proposed Revenue Bond Issue

Report

The General Manager has indicated to you the need for the issuance of up to \$500 million of revenue bonds in the summer of 1992. It is currently proposed that the transaction proceed by negotiated sale. Use of a negotiated sale would be based on Section 225¹ of the Metropolitan Water District Act ("Act") and on the premise that the District's interests will be best served by the flexibility which such a sale affords.

However, the proposed transaction should be reviewed not only to assess whether to sell bonds and how large the issue should be; but also whether the proposed method of sale properly balances the District's interest in obtaining what is assumed to be the best price with the need to assure the public that such price was obtained in an open and objective manner.

In considering the General Manager's recommendation, the Board should be mindful of a number of factors. As a general rule, the business of a public agency of the State of California is subject to competitive bidding. There are recognized exceptions, such as contracts for professional services, where what is sought is unique, where the competitive bidding process affords no advantage, or where other express statutory authority exempts the contract from bidding, as does Section 225. Indeed, sale by competitive bidding is the assumed standard for bonds under that provision, and sale by

¹ Section 225, found in the chapter of the Act dealing with general obligation bonds, applies to the sale of revenue bonds by virtue of Section 239.1 of the Act.

negotiation is authorized only on two-thirds vote of the Board.²

The policy underlying competitive bidding is that it makes contracting an objective process open to all who believe themselves qualified to furnish the required services. In such a process personal interest and the possibility of inappropriate influence is avoided. Also, some cases have assumed that the competitive process, on balance, is most likely to secure the best price for the public agency by requiring all bidders to bid their most favorable price.

While the District generally adheres to competitive bidding in most of its major contracting, some argue that competitive bidding should not apply to the sale of bonds or, at least, to bonds in excess of a certain amount. Given the fact that a negotiated sale inherently prevents public review of all aspects of the transaction, the Board should carefully consider whether a negotiated sale is the most appropriate vehicle for the sale of the 1992 bonds. This is the very reason that the Act requires a two-thirds vote of the Board to waive the requirement of competitive bidding in the sale of bonds.

² Section 225 provides in part:

"Unless the board determines by a two-thirds vote of the total vote of the board that the interests of the district and the public interest or necessity require that the provisions of this section . . . be waived, so that the bonds may be sold at private sale upon such terms and conditions as the board may deem necessary, convenient, or desirable, the bonds shall [be sold by competitive bid]"


April 22, 1992

Committee Assignment

This letter is being referred for information to the Finance and Insurance Committee because of its responsibility to study, advise and make recommendations with regard to sale of bonds, pursuant to Administrative Code Section 2441(b).

Recommendation

For information only.


Fred Vendig

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