



● **Board of Directors**
Legal and Human Resources Committee

March 10, 2009 Board Meeting

8-3

Subject

Authorize contracts for special bond counsel and co-special bond counsel services for the period ending December 31, 2011

Description

Metropolitan retains outside counsel to assist Metropolitan with the issuance of its bonds and negotiation of related transactions, such as liquidity facilities and lines of credit. This is a requirement of the municipal bond market. An opinion from nationally recognized bond counsel as to the enforceability of the bonds and the tax exemption of bond interest typically is circulated to potential investors, delivered at closing and attached to each bond.

Historically, the Board has authorized, and the General Counsel has executed, three-year contracts with a pool of qualified firms for lead special bond counsel and co-special bond counsel services. This enables Metropolitan to access the credit markets quickly and efficiently. Before work on a bond issue begins, Legal Department staff describes the transaction to the firms in the pool and solicit fee quotes. Staff assigns bond counsel responsibilities to a lead bond counsel firm and a co-bond counsel firm within the pool, based upon each firm's expertise, experience with the particular transaction structure, fee cap for the upcoming transaction and availability of attorneys.

The current contracts for special bond counsel and co-special bond counsel expired on December 31, 2008. Contracts with counsel for Metropolitan's bonds issued in January and counsel advising on the structure for an upcoming bond issue were extended to permit these firms to continue their work and allow Metropolitan to access the capital markets in a timely manner.

Metropolitan issued a Request for Proposals for Special Counsel (RFP), dated January 29, 2009, to 48 firms that the "Bond Buyer" listed as nationally recognized bond counsel with offices in Metropolitan's service area. Twenty-three (23) firms responded.

Representatives of the Legal Department, the Office of the Chief Financial Officer and Metropolitan's outside financial advisor evaluated the proposals. The firms were ranked according to experience involving tax-exempt bond issues nationally, in California and for water utilities; expertise in related financial representation of government agencies; qualifications of staff to be assigned to Metropolitan, including bond attorneys and tax counsel; location and availability of these staff; general depth of staffing; knowledge of Metropolitan; and fee structure.

The review team concurred on six firms to serve as lead bond counsel and four firms to serve as co-bond counsel. This is an expansion of the current lead bond counsel group, a recommendation that will give Metropolitan broader expertise to draw from in dealing with more challenging market conditions. Based on the review team's recommendation, the law firms of Fulbright & Jaworski LLP, Hawkins Delafield & Wood, Nixon Peabody LLP, Orrick Herrington & Sutcliffe, Sidley Austin LLP and Squire Sanders & Dempsey LLP are recommended to form the lead special bond counsel pool and the small business enterprise law firms of Curls-Bartling P.C., Law Offices of Alexis Chiu, Law Offices of Elizabeth Green and Quateman LLP are recommended to form the co-special bond counsel pool.

Four of the firms proposed for the lead bond counsel pool (Hawkins Delafield & Wood, Nixon Peabody, Orrick Herrington & Sutcliffe and Fulbright & Jaworski) were in the most recent pool and acted as special bond counsel to Metropolitan on recent bond issues. Sidley Austin assisted with Metropolitan's bonds issued from 1996 through 2005 and is recommended to return to the pool. The sixth firm, Squire Sanders & Dempsey, has been involved in municipal finance since 1900. It expanded into California in 2001 by merger with Graham and James and has public finance attorneys in its Los Angeles and San Francisco offices, with experience in financing tools that Metropolitan is evaluating.

Three of the firms proposed for the co-bond counsel pool (Curls-Bartling P.C., Law Offices of Alexis Chiu and Quateman LLP) were in the most recent pool and assisted with recent bond issues. The attorney for the fourth firm, Law Offices of Elizabeth Green, served as bond counsel on financings by Metropolitan member agencies before she formed her own small business firm.

The fees and charges of special bond counsel and co-special bond counsel will be capped on a transaction-by-transaction basis, as negotiated for each transaction. These costs are paid from bond proceeds as a cost of issuance. For bond issues during the last three years, the combined bond counsel fees ranged from \$66,000 for "plain vanilla" fixed rate bonds to \$110,000 for multi-modal variable rate refunding bonds.

It is proposed that Metropolitan enter into contracts with these firms effective through December 31, 2011, to provide services on particular transactions as the General Counsel deems appropriate during the contract term.

Policy

Metropolitan Water District Administrative Code Section 6430: General Counsel's employment of attorneys to render special counsel services

California Environmental Quality Act (CEQA)

CEQA determination for Options #1 and #2:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities (Section 15378(b)(2) of the State CEQA Guidelines). In addition, the proposed action is not subject to CEQA because it involves other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to the provisions of CEQA pursuant to Sections 15378(b)(2) and 15378(b)(4) of the State CEQA Guidelines.

CEQA determination for Option #3:

None required

Board Options

Option #1

Adopt the CEQA determination and authorize the General Counsel to retain the firms listed in this board letter as special bond counsel and co-special bond counsel through December 31, 2011.

Fiscal Impact: Variable, depending on number and structure of bond transactions

Option #2

Adopt the CEQA determination and authorize the General Counsel to retain some of the firms listed in this board letter, or other firms, as special bond counsel and co-special bond counsel through December 31, 2011.

Fiscal Impact: Variable, depending on number and structure of bond transactions

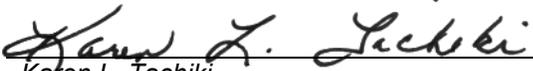
Option #3

Do not retain special bond counsel and co-special bond counsel.

Fiscal Impact: Inability to issue bonds. Special bond counsel must participate in bond issues sold in the tax-exempt bond markets.

Staff Recommendation

Option #1

 3/4/2009
Karen L. Tachiki Date
General Counsel

BLA #6616