



- Board of Directors
Legal and Claims Committee

12/13/2011 Board Meeting

7-6

Subject

Authorize contracts for special bond counsel and co-special bond counsel services for the period ending December 31, 2014

Description

Metropolitan retains outside counsel to assist Metropolitan with the issuance of its bonds and negotiation of related agreements, such as extension of liquidity facilities supporting variable rate bonds. 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 solicits 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 quote for the specific transaction and availability of attorneys.

The current contracts for special bond counsel and co-special bond counsel will expire on December 31, 2011. Metropolitan issued a Request for Proposals for Special Counsel (RFP), dated October 28, 2011, to 51 firms that the "Bond Buyer" listed as nationally recognized bond counsel with offices in Metropolitan's service area. Thirteen firms responded.

Representatives of the Legal Department and the Office of the Chief Financial Officer 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 four firms to serve as lead bond counsel and three firms to serve as co-bond counsel. Based on the review team's recommendation, the law firms of Fulbright & Jaworski LLP; Hawkins, Delafield & Wood; Nixon Peabody LLP; and Sidley Austin LLP are recommended to form the lead special bond counsel pool and the small business enterprise law firms of Curls Bartling P.C.; GCR LLP; and Law Offices of Alexis S.M. Chiu are recommended to form the co-special bond counsel pool.

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. The legal costs for bond issues 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 \$270,000 for the initial issue of SIFMA notes (variable rate refunding bonds with interest based on the Securities Industry and Financial Markets Association (SIFMA) Index that use Metropolitan's self-liquidity instead of a liquidity facility from a commercial bank). Costs for legal

advice requested from bond counsel on existing bond transactions, tax law interpretations and other questions related to financial matters are operations and maintenance costs.

It is proposed that Metropolitan enter into contracts with these firms effective through December 31, 2014, to provide services on particular transactions and related legal advice 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, 2014.

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 as special bond counsel and co-special bond counsel through December 31, 2014.

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 market bonds. An opinion of nationally recognized bond counsel is required for marketing of tax-exempt bonds.

Staff Recommendation

Option #1



Marcia Scully
Interim General Counsel

11/30/2011

Date