



- **Board of Directors**
Legal and Claims Committee

5/8/2018 Board Meeting

8-9

Subject

Adopt CEQA determination and authorize contracts for bond counsel services with Hawkins Delafield & Wood LLP, Nixon Peabody LLP and Stradling Yocca Carlson & Rauth, P.C. and co-bond counsel services with Law Offices of Alexis S.M. Chiu and Curls Bartling P.C. for the period ending June 30, 2021, with costs paid from bond proceeds or from Metropolitan funds

Executive Summary

Metropolitan establishes a pool of bond counsel and co-bond counsel every three years. Counsel are selected from the pool to provide opinions and advice required for the issuance of debt by Metropolitan and for other tax and financial matters. The last pool was approved in 2015. The contracts with the firms in the pool expire June 28, 2018. Staff is requesting authority to enter into contracts with three firms for bond counsel services and two firms for co-bond counsel services to establish the pool through June 2021.

Details

Metropolitan retains outside counsel: to assist with the issuance of its bonds, notes and commercial paper and negotiation of related agreements, such as extension of liquidity facilities supporting variable rate bonds; to advise on interest rate swaps and other instruments connected with such indebtedness; and to provide legal and tax advice on matters affecting Metropolitan's finances. The municipal bond market requires the engagement of bond counsel for the issuance of municipal debt. An opinion from nationally recognized bond counsel as to the enforceability of bonds and the tax exemption of bond interest is typically circulated to potential investors, delivered at closing and attached to each bond. Co-bond counsel are also engaged by Metropolitan to add additional support and expertise to certain transactions. Co-bond counsel can provide a lower cost support option than bond counsel, depending upon the transaction scope, complexity, and timing.

Historically, the Board has authorized, and the General Counsel has executed, three-year contracts with a pool of qualified firms for bond counsel and co-bond counsel services. Expenditures under these contracts are paid from bond proceeds or Metropolitan funds and are generally capped on a transaction-by-transaction basis, as deemed appropriate by the General Counsel. 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 firms in the pool and solicits fee quotes. Staff assigns responsibilities to bond and co-bond counsel firms based upon each firm's expertise, experience with the particular transaction structure, fee quote for the specific transaction and availability of attorneys. Additional services under the contracts are billed at hourly rates that would remain stable for the three-year term of the contracts.

The current contracts for bond counsel and co-bond counsel expire on June 30, 2018. On February 5, 2018, Metropolitan issued a Request for Proposals and Firm Qualifications to Serve as Bond Counsel or Co-Bond Counsel to 35 firms with offices in Metropolitan's service area that were listed by the Bond Buyer's Municipal Marketplace among firms who hold themselves out to be bond counsel firms and to firms requesting to be considered for such services to Metropolitan. Six firms submitted proposals.

Legal Department staff evaluated the proposals based upon: experience involving municipal bond issues nationally, in California and for water utilities; expertise in financial representation of government agencies; qualifications of the staff to be assigned to Metropolitan, including bond attorneys and tax counsel; location and availability of the staff; general depth of staffing; knowledge of Metropolitan; and fee structure.

Based on the review team's recommendation and concurrence by the Office of the Chief Financial Officer, the law firms of Hawkins Delafield & Wood LLP, Nixon Peabody LLP and Stradling Yocca Carlson & Rauth, P.C. are recommended to form the bond counsel pool. Law Offices of Alexis S.M. Chiu and Curls Bartling P.C. are recommended to form the co-bond counsel pool.

The legal costs for bond issues are paid from bond proceeds as a cost of issuance or from Metropolitan funds. In December 2016, the Board authorized the hiring of disclosure counsel which shifted the drafting of disclosure documents from bond counsel to disclosure counsel. Since that time, the combined bond counsel and co-bond counsel fees ranged from \$18,500 to \$55,000 for each bond issuance. Costs for legal advice from bond counsel on existing bond transactions, tax law interpretations, legislation and other questions related to tax and financial matters are paid from Metropolitan funds.

It is proposed that Metropolitan enter into contracts with these five firms effective through June 30, 2021, to provide services on particular transactions and related legal advice in amounts as the General Counsel deems appropriate during the contract term.

Policy

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

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA (Public Resources Code Section 21065, State CEQA Guidelines Section 15378) because the proposed action involves fiscal decisions that will not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. In addition, the proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines) and other government fiscal activities, which do not involve any commitment to any specific project, or which may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State CEQA Guidelines). Finally, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not defined as a project under Public Resources Code Section 21065 and State CEQA Guidelines Sections 15378(b)(2) and 15378(b)(4), and is not subject to CEQA pursuant to Section 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination that the proposed action is not defined as a project under CEQA and is not subject to CEQA, and

- a. Authorize the General Counsel to retain the firms listed in this board letter as bond counsel and co-bond counsel through June 30, 2021; and

- b. Determine that bond counsel and co-bond counsel fees may be approved by the General Counsel in amounts sufficient to procure bond counsel and co-bond counsel services for bond issues and for legal advice, as described in this board letter.

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

Business Analysis: The municipal bond market requires the engagement of bond counsel for the issuance of municipal debt. This option would support quick and efficient hiring of bond counsel to respond to favorable market opportunities. Selection of the five firms recommended for the bond and co-bond counsel pool provides options in the event any of the firms are unavailable to participate in a given financing and provides cost alternatives.

Option #2

Do not authorize the General Counsel to retain bond counsel and co-bond counsel as described in this board letter.

Fiscal Impact: Potential for higher costs with the Board's engagement of bond and co-bond counsel on a finance-by-finance basis.

Business Analysis: The municipal bond market requires the engagement of bond counsel for the issuance of municipal debt. Not determining that the General Counsel may approve bond counsel fees as described in this board letter would require the Board to frequently take action to approve fees for bond and co-bond counsel on a schedule that meets market driven factors, which are unpredictable and fast moving.

Staff Recommendation

Option #1



Marcia Scully
General Counsel

5/2/2018

Date