

## AGENDA ITEM MEMO

**BOARD MEETING DATE:** July 7, 2021

**TO:** Board Members

**THROUGH:** Jeff Walker, Executive Administrator  
Ashley Harden, General Counsel  
Rebecca Trevino, Chief Financial Officer

**FROM:** Alexis Lorick, Assistant General Counsel

**SUBJECT:** Selection of Bond and Disclosure Counsel

### **ACTION REQUESTED**

Consider approving selection of bond and disclosure counsel and authorizing the Executive Administrator to negotiate and enter into contracts for outside counsel services for the term September 1, 2021 through August 31, 2023.

### **BACKGROUND**

The Texas Water Development Board (TWDB) issues State of Texas General Obligation and Revenue bonds to fund various financial programs. Bond issues are primarily tax exempt for these programs; however, taxable bonds are issued as necessary based upon the type of entity to which the financial assistance is made or the nature of the project financed. The TWDB uses the bond proceeds to purchase debt obligations of Texas political subdivisions and to make limited grants to economically distressed areas in the state. During the upcoming biennium, the TWDB estimates undertaking seven bond sale transactions as well as several defeasances and early redemptions, all requiring bond counsel representation. Additionally, the continued evolution of disclosure requirements make it prudent to dedicate counsel to serve as disclosure counsel in conjunction with specific bond transactions or situations.

Pursuant to Texas Government Code Sections 1201.027 and 2254.004, TWDB selects a pool of bond counsel firms through a formal Request for Qualifications (RFQ) process and enters into contracts with each firm in the pool. The Executive Administrator recommends bond and disclosure counsel from this pool for each debt issuance.

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Leading the state's efforts in ensuring a secure water future for Texas and its citizens

#### [Board Members](#)

Brooke T. Paup, Chairwoman | Kathleen Jackson, Board Member

Jeff Walker, Executive Administrator

On March 26, 2021, an RFQ was posted on the Electronic State Business Daily (ESBD) website and sent to firms listed on the Centralized Master Bidders List seeking responses for outside bond counsel and disclosure counsel services. The RFQ response deadline was April 30, 2021 at 2 p.m., and five firms responded.

### **KEY ISSUES**

An internal evaluation team independently reviewed the responses to develop a recommendation based on the RFQ criteria. The recommendation for the pool of bond counsel firms was based primarily on the firms' and their assigned staffs' legal expertise and experience with public finance that would best benefit TWDB, including experience with pooled financing programs, arbitrage and other tax-related compliance issues, continuing disclosure compliance, bond enhancement agreements, and derivative products in bond transactions.

The Executive Administrator recommends selection of four firms to serve as outside counsel. This will increase financial assistance program and corresponding transaction expertise within the provider market, which will help ensure the best possible service and provide options if a conflict of interest, or even the appearance of a conflict, should develop.

### **RECOMMENDATION**

Based on review of the submitted RFQs and to ensure the best possible service and flexibility to handle the volume of anticipated bond transactions, the Executive Administrator recommends the selection of Bracewell LLP; McCall, Parkhurst & Horton L.L.P.; Norton Rose Fulbright US LLP, and Orrick, Herrington & Sutcliffe LLP to serve in the bond and disclosure counsel pool, and requests authorization to negotiate and enter into contracts for outside counsel services for the term September 1, 2021 through August 31, 2023.