

## AGENDA ITEM MEMO

**BOARD MEETING DATE:** August 10, 2023

**TO:** Board Members

**THROUGH:** Jeff Walker, Executive Administrator  
Sergio Rey, Deputy Chief Financial Officer

**FROM:** Georgia Sanchez, Development Fund Manager

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

### **ACTION REQUESTED**

Consider selection of bond and disclosure counsel and authorize the Executive Administrator to negotiate and enter into consultant contracts for outside counsel services from September 1, 2023, through August 31, 2025.

### **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 eight bond sale transactions as well as several 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, the 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. Subsequently and before each debt issuance, the Executive Administrator recommends bond and disclosure counsel from this pool.

On June 2, 2023, an RFQ was posted on the Electronic State Business Daily website seeking responses for outside bond counsel and disclosure counsel services. The RFQ deadline was July 5, 2023, at 2:00 P.M., and nine 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' company profile and history, their assigned staffs' legal expertise and experience with public finance, and the demonstration of the firms' abilities, including transaction experience as bond counsel, co-bond counsel, disclosure counsel, underwriters' counsel, or special tax counsel; innovations developed or worked on for tax-exempt security issues, experience in assisting public finance clients in creating new and/or pooled financing programs, arbitrage and other tax-related compliance issues, continuing disclosure compliance, bond enhancement agreements, and derivative products.

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 the 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 authorization for the Executive Administrator to negotiate and enter into consultant contracts for outside counsel services from September 1, 2023, through August 31, 2025.