

Countdown to the Bond is a multi-part series of advisories designed to help school and community college districts navigate their way to a successful November 2018 bond election and capital program, beginning about a year ahead. In Part 1, we focus on identifying and bringing together the team of experts a district will need to help assess the feasibility of a November bond election. Initial questions usually include the following:

- What are our facility needs?
- Is a bond measure feasible, and will our voters support one?
- How are debt structure, bond authorization and tax amounts determined?
- How do we best communicate our needs to the public?

WHO SHOULD YOUR TEAM INCLUDE?

Community expectations for district accountability have grown as the number of bond measures has increased in California. Voters want to know that their agencies have done their homework, and have a thoughtful construction plan, before they will support a bond measure. An expert planning team retained early in the process helps districts lay the foundation for a successful bond measure.

Consultants that a district needs initially include: Architect/Master Planning Consultant, Election Consultant/Pollster, Financial Consultant, and Bond Counsel.

ARCHITECT/MASTER PLANNING CONSULTANT

The decision whether to pursue a bond measure should be driven by facility needs. An architect or master planning consultant may be retained early in the planning process, to help develop a master facilities plan and/or to help the district distill a bond project list from an existing facilities master plan. This consultant may analyze current facilities, perform enrollment projections, develop preliminary project budgets and help draft the initial bond project list that will be part of the bond measure. The architect or master planning consultant may be retained on a fixed fee or hourly basis.

ELECTION PLANNING CONSULTANT

An election consultant helps the district determine the feasibility of a bond measure, the likelihood that it will pass, and the parameters for a measure that voters may support. An election consultant typically provides information regarding demographics and voting behavior of registered voters in the district. An election consultant can also perform initial voter surveys, develop an election plan using the results of the survey and develop a plan to cultivate community involvement and interest in the election campaign. The election consultant can also help craft strategic communications from the district, including ballot measure arguments. An election consultant may be retained on a fixed fee or hourly basis, and although the expense lawfully may be paid by the district, the expense may not be paid from bond proceeds. Further, a district may not pay an election consultant to advise a campaign committee, and election consultants should be retained on a basis that clearly distinguishes election planning/communication services from campaign-related services. The line between permissible communication and impermissible advocacy is frequently not clear, so caution is warranted in structuring these contracts.

FINANCIAL CONSULTANT

The district retains a financial consultant to help formulate a debt financing plan that accomplishes the district's financing goals. At this stage, the financial consultant role is normally filled by an independent financial advisory services firm that will also assist the district with a later bond issuance process. However, some districts with existing relationships with underwriting firms may involve that firm in the early feasibility assessment as well. A financial consultant reviews the financial feasibility of the proposed capital projects, assesses the available sources of revenue, recommends a bond authorization amount, and prepares a tax rate statement and debt service schedule that meet statutory requirements.

After a successful election, the independent financial advisor prepares the bond issue for sale into the municipal bond market. If bonds will be sold by negotiated sale, a bond underwriter will join the team at that time. Other responsibilities of the financial consultant include coordinating the finance team, structuring the bonds to meet district needs and tax limitations, preparing rating agency presentations, and a host of other crucial items. Unlike a bond underwriter, an independent financial advisor has a fiduciary responsibility to the district, and for that reason, regardless of the method of bond sale chosen, a district must retain an independent financial advisor to assist with bond issuance.

Independent financial advisors are compensated on either a fixed fee or hourly basis for work in connection with the issuance of bonds, but a 2016 Attorney General opinion concluded that fees for services incurred in planning for an election may not be paid from bond proceeds. Therefore, a financial consultant's fee should be structured to reflect pre-election services distinct from bond issuance services.



BOND COUNSEL (LAW FIRM)

Bond counsel is a law firm that assists the district both before and after a bond election. Before the election, bond counsel assists with identifying and complying with the legal requirements to call an election and place a bond measure on the ballot. During the bond campaign, bond counsel advises the district regarding the legality of its communications and activities. If a bond measure passes, bond counsel drafts the legal documents needed for the issuance of the bonds. Bond counsel provides the required legal opinion confirming that the bonds are valid and binding district obligations and that interest on the bonds earned by bondholders is exempt from federal and state income taxes. Bond Counsel can provide support for the formation of a citizen's bond oversight committee and answer questions that arise after the bonds are issued. During the bond issuance phase, a district also needs a firm to act as Disclosure Counsel. That can be the same firm or a different firm from Bond Counsel. As noted above with regard to other consultants, Bond Counsel services may be separated into pre-election activities and bond issuance activities, since pre-election services may not be paid from bond proceeds.

SELECTING TEAM MEMBERS

The bond election planning team provides professional services for which competitive bidding is not legally required. However, the district may choose to select bond planning team members via a Request for Proposals ("RFP") or Request for Qualifications ("RFQ") process.

RFPs or RFQs provide comparative information on qualifications, experience and price. The process validates the selection to your community. In addition, in 2016, the California Attorney General expressed concern about contingent fee contracts that may incentivize bond service professionals to make large campaign contributions in order to earn "inflated" bond service fees. More information about this opinion can be found at <http://www.dwkesq.com/ag-takes-issue-with-bond-consulting-fees/>. A competitive selection process for all bond professionals can be an important tool to establish the proper basis of your selection to your community.

While education agencies are accustomed to seeking consultants via a proposal process, the technical nature of the work can cause confusion about what types of firms are needed for what tasks and what kinds of qualifications they should demonstrate. The California Debt and Investment Advisory Commission ("CDIAC") publishes unbiased guidance on preparing requests for proposals for bond professionals. You can find CDIAC at <http://www.treasurer.ca.gov/cdiac/>.

2018

*Look for Part 2 of Countdown to the Bond,
coming in February, 2018: "Preparing Your Ballot Measure"*

DWK is a full-service education and Bond Counsel law firm with experts in all areas of education facilities finance and construction. If you need advice regarding a bond election or debt financing, feel free to contact any of our experts.



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