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COUNTDOWN TO THE BOND

Are You Planning a 2020 Bond Election?

Now is the Time to Get Your Bond Election Planning Team on Board

Countdown to the Bond is a multi-part series of advisories designed specifically for California K-12 school districts and community college districts. These advisories are focused on navigating the course to a successful November 2020 local bond measure, election and capital program, beginning about a year ahead.



In Part 1 of *Countdown to the Bond*, we will focus on identifying and bringing together the necessary team of experts to assess the feasibility of a November local bond election for a district. Initial questions a district should assess include:

- What are our facility needs? Have we done a Facility Master Plan or needs assessment? Does the facilities master plan capture all of these needs?
- How do we plan to fund our needs, and what portion of those needs could be funded by general obligation bonds?
- Is a local 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 and transparency have grown as the number of bond measures has increased in California. Voters want to know that their district elected representatives and staff have done their homework, including creating a thoughtful construction plan based on needs and stakeholder input, 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, review enrollment projections, develop preliminary project budgets and help draft the initial bond project list that will be part of the bond measure. Master planning will be a key component of securing state funds under Assembly Bill No. 48. The architect or master planning consultant may be retained on a fixed fee or hourly basis.

ELECTION PLANNING CONSULTANT

An election planning 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 may 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. 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 or reimbursed from bond proceeds. Further, a district may not pay an election consultant to advise regarding advocacy activities or to assist 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 advisor to help formulate a debt financing plan that accomplishes the district's financing goals. At the planning stage, the financial consultant role is typically filled by an independent registered financial advisory firm that will also assist the district with a later bond issuance process. A financial consultant reviews the financial feasibility of the proposed capital projects, assesses available sources of revenue, reviews the district's tax base and assessed valuation, recommends a bond authorization amount that can be supported by tax rates within legal limits, and prepares a tax rate statement that meet statutory requirements. After a successful election, the independent registered 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 that occur after a successful election. Unlike a bond underwriter, an independent registered 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 registered financial advisor to assist with bond issuance.

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

BOND COUNSEL (LAW FIRM)

Bond counsel is a law firm specializing in public finance hired to assist the district both before and after a bond election. Before the election, bond counsel identifies and assists the district in complying with legal requirements to prepare and place a measure on the ballot. During the bond campaign, bond counsel advises the district on permissible and impermissible political communications and activities. Once a bond measure passes, bond counsel drafts the required legal documents to issue bonds. Bond counsel provides its legal opinions confirming that the bonds are valid and that interest on the bonds earned by bondholders is exempt from federal and state income taxes. Bond Counsel can also support for the District's formation of a citizen's bond oversight committee and address legal issues that may arise after the bonds are issued. During the bond issuance phase, a district also needs "Disclosure Counsel" to prepare the required offering document to investors interested in purchasing the bonds. Bond Counsel may serve in this role, or the district may opt to hire a separate firm. As noted above with regard to other consultants, Bond Counsel services must also be separated into pre-election activities and bond issuance activities, since pre-election services may not be paid or reimbursed from bond proceeds.

SELECTING TEAM MEMBERS

The bond election planning team provides professional services for which competitive bidding is not legally required, and there are a myriad of reasons why a District may seek out services of a consultant without a formal selection process. However, the district may always choose to select bond planning team members via a Request for Proposals (RFP). RFPs provide comparative information on qualifications, experience and price. A transparent, accountable selection process may mitigate concern expressed by the California Attorney General about contingent fee contracts incentivizing bond service professionals to make large campaign contributions in order to earn "inflated" bond service fees.

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/>.



Look for Part 2 of Countdown to the Bond, coming in February 2020: "Preparing Your Ballot Measure"

Dannis Woliver Kelley 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. Visit us at www.dwkesq.com/practices/public-finance/.

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