

**MINUTES OF THE MEETING OF THE
BOARD OF DIRECTORS OF THE
TEXAS PUBLIC FINANCE AUTHORITY
October 21, 2003**

The Board of Directors (the "Board") of the Texas Public Finance Authority (the "Authority") convened in open meeting, notice duly posted pursuant to law (a copy of which notice is attached hereto as Exhibit "A") at 2:00 P.M., Tuesday, October 21, 2003, Capitol Extension Hearing Room E2.010, Austin, Texas. Present were: Mr. David Kelly, Chairman, Mr. Vaughn Brock, Secretary, Mr. Dan Serna, Member and Mr. Barry Smitherman, Member.

Representing the Authority's staff were: Ms. Kimberly Edwards, Executive Director, Ms. Judith Porras, General Counsel, Ms. Pamela Scivicque, Business Manager and Ms. Paula Hatfield.

Present in their designated capacities were the following persons: Andy Bynam, Citigroup; Richard Ramirez, Goldman Sachs; Jodie Jiles, David Potter, First Albany; Don Henderson, JP Morgan; James Williamson, Randy Baldwin, Texas Department of Mental Health Mental Retardation; Gene Crump, Texas Workforce Commission; Steve Gerdes, Vinson & Elkins; and Jerry Kyle, Andrews & Kurth.

Item 1. Call to order.

Mr. Kelly called the meeting to order at 2:06 P.M.

Item 2. Approval of minutes of the August 19, 2003, and September 23, 2003, Board meetings.

Mr. Kelly asked if there were any corrections or additions to the minutes of the Board meeting of September 23, 2003. There being none, Mr. Smitherman moved to approve the minutes as presented. Mr. Serna seconded the motion. The motion passed unanimously

Item 3. Report on the sale of the Texas Workforce Commission Unemployment Obligation Assessment Revenue Bonds, and discussion of related matters.

Ms. Edwards stated that a brief update on the bond sale had been presented at the meeting convened on September 23 when the amended and restated bond resolution was adopted. At that time, the post sale analysis was not completed. Richard Ramirez, Goldman Sachs, reviewed the post-sale analysis. He reported that the market had been mixed on the day of the sale, but there was good team participation among the syndicate. Mr. Smitherman requested that more than two comparables be provided on the tax exempt Series A Bonds. Mr. Ramirez thanked Mr. Kelly and Mr. Smitherman for attending the pricing in New York.

Gene Crump, Texas Workforce Commission, thanked the Board on behalf of the Commissioners and said the goals of the Commission had been achieved.

Ms. Edwards noted that representatives of each of the three financial advisory firms for the transaction (First Southwest, Coastal Securities, and CKW Financial) and Tax Counsel, Steve Gerdes of Vinson & Elkins were present. Ms. Edwards recognized Mr. Gerdes to provide an update of the status of our private letter ruling request which was filed to try to ensure tax-exempt treatment for the Series C Bonds. The Series C bonds were sized and structured to be converted to tax-exempt bonds when a favorable ruling is obtained. Mr. Gerdes informed the Board that no satisfactory answer has been received. The issue presented to the IRS is solely a tax accounting issue arising from the fact that the bond issue financed working capital, and there is uncertainty in the tax law as to how to apply the arbitrage regulations. Basically, the ruling request asks the IRS to concur that the proceeds of the Series C bonds can be regarded as spent first and that none of the proceeds of the taxable bonds are “available “ to fund the unemployment comp program for the purpose of applying the “proceeds- spent -last” rule.

After discussing the issues informally with the IRS, they invited submission of a ruling request, which was done on August 14. Out of the ordinary practice of considering rulings, they responded within a couple of weeks and asked whether the funds could somehow be segregated at the Bureau of Public Debt level within the State’s federal trust fund account. With the help of John Moore, General Counsel of the TWC, the Department of Labor agreed to the segregation of the funds. The IRS made no other specific requests, but continued struggling with the issue. A draft proposed ruling was emailed to the IRS on September 11, which they considered for a few weeks, ultimately deciding they could not decide. Therefore, they asked that we withdraw the ruling request. Mr. Gerdes discussed the matter with the Authority’s General Counsel and they agreed to ask that the request continue to be considered, and that we be afforded a conference of right. Mr. Gerdes explained that the conference of right is important to ensure that the arguments are presented directly to the reviewers and more senior persons in the IRS. The conference is scheduled for October 30, in Washington, D.C.

Mr. Kelly asked whether it is a frequent practice for the IRS to ask that ruling requests be withdrawn and its significance. Mr. Gerdes thought it was very unusual and speculated on the IRS reasoning: This is a fertile area for audits. A favorable ruling could have broader application than the Service can foresee at this time. Also, the Service may hesitate to rule adversely as it is possible issues are outstanding that are using the arguments we advance. Mr. Kelly also asked what the consequences would be if we moved forward on a tax-exempt basis after having asked for a ruling

which was declined. Mr. Gerdes responded that the bonds could be audited and the auditor could conclude that the entire amount of positive spread, of about 5%, between the yield on the bonds and the investment earnings on the proceeds had to be paid to the US as arbitrage. This would be a worse economic result to the TWC and the State than continuing to pay taxable interest rates on the variable rate Series C bonds.

Mr. Serna asked whether the ruling request was submitted under regulations applicable to private letter rulings, and stated in theory, such rulings are not precedent to other issuers. He believes that the IRS, nonetheless, wants to preserve more flexibility for the future. Mr. Gerdes concurred, and pointed out that the IRS can use one catch-all, refusing to issue a ruling, “when in the best interests of the fair administration of the tax laws of the United States.”

Mr. Smitherman asked whether there could be other ramifications or collateral damage to the other issues from pushing the matter and receiving no answer. Mr. Gerdes responded that he thinks there are no negative consequences. The bonds are already in a taxable mode and an argument can be made that with a negative ruling, we would at least have an interpretation of the law to use in advocating rule amendments or legislation.

Mr. Kelly thanked Mr. Gerdes and all members of the team for working so well together.

Item 4. Consider Requests for Proposals for Bond Counsel and Financial Advisors for the 2004-05 biennium.

Ms. Edwards indicated the Authority’s practice was to issue RFPs every two years following legislative sessions. Typically, the request for bond counsel and financial advisors are issued first and once those teams are in place, a separate RFP is issued for underwriting services. There is a statutory requirement to issued RFPs for bond counsel because the Office of Attorney General administers those contracts. Draft RFPs were provided to the Board for review. She noted that she would also like to issue a separate RFP for Swap Advisory Services this year. Typically, the financial advisors assisted with any questions on Swaps, but Ms. Edwards explained that there are other firms that specialize just in Swaps and felt like a separate RFP would be the best way to compare the qualifications of all firms.

Mr. Smitherman asked how much staff time was used for reviewing SWAP proposals. Ms. Edwards said usually she had a one hour, one-on-one meeting for each proposal. If the proposal has merit, it is sent to financial advisors for review. Ms. Edwards indicated she sometimes spent additional time, but that was more for her own educational benefit.

Mr. Kelly indicated he would like to see a proposal for training from each of the firms and inquired about how SWAP Advisors would be paid. Ms. Edwards said she would like to issue the RFPs and then make a recommendation to the Board. If the services were associated directly with a transaction, the fees could be paid out of the transaction proceeds. There are times when a retainer contract can be used for an annual flat fee or hourly fee. Mr. Serna clarified that historically firms could work either on the financial advisor side or the underwriting side of the transactions, but not both. Mr. Serna requested that sufficient meeting time be allocated to allow for discussion depending on the number and quality of proposals received. He questioned the proposed term of the

contracts. Ms. Porras stated that it would be helpful if the initial term of the contract coincide with the biennium and that the term be the same for all the contracts. Mr. Serna stated that the contracts should run through 2005 for both the financial advisory and swap advisory services, and perhaps with a renewal option as opposed to an annual period. Mr. Serna also stated that he would like to have historical information from the firms back to January 2001. Mr. Smitherman asked that individuals be able to count experience gained at multiple firms. Ms. Edwards responded that firms are asked to footnote experience obtained at multiple firms to avoid double counting.

Ms. Edwards explained the evaluation process included the staff reviewing the proposals and preparing a matrix that is provided to the Board. Each Board member will also receive a copy of each proposal. Discussion ensued about the Board's options in interviewing and further evaluating firms, particularly for SWAP advisory services. The Board deferred a final decisions with respect to such procedures pending an initial review of the number and quality of proposals.

Item 5. Consider a Request for Financing from the Texas Department of Mental Health Mental Retardation for the financing of repairs and renovations of facilities in the amount of \$35,350,000 through the issuance of general obligations, select a method of sale, and take other necessary related action.

Ms. Edwards explained this request is one of the few new money issues authorized by the Legislature during the past session. In the Appropriations Act, the Legislature required MHMR to pay the debt service for these bonds from MHMR general revenue appropriation for the 2004-2005 biennium, and the debt service is not to exceed \$1,000,000. Staff recommends that this financing be handled through the commercial paper program. The expenditure schedule reflects an estimated \$670,000 for debt service for the biennium, with the issuances staggered as commercial paper issues, at an estimated interest rate of 4%. Mr. James Williamson, MHMR Finance, said the design phase was anticipated to be about one year. Mr. Baldwin, MHMR Director of Maintenance and Construction, said the agency was working down a list of projects including life safety deficiencies and roof systems that protect all the other building systems. An amount of 10% of the estimated project costs has been allocated as a contingency. Ms. Edwards reported that this request had been submitted to the Bond Review Board, and the representative from the Lieutenant Governor's Office inquired about the study on the consolidation or closing of facilities. MHMR was cautioned to plan its projects in conjunction with that study to ensure that additional funds are not used on facilities that the State will not retain.

Mr. Brock moved to accept staff's recommendation to fund the request with commercial paper. Mr. Serna seconded. The motion passed unanimously.

Item 6. Consider a Request for Financing from the Texas Department of Human Services for the financing of an additional portion of the TIERS project, at an estimated project cost of \$17,014,926, through the issuance of revenue obligations, select a method of sale, and take other necessary related action.

Ms. Edwards said this request was to finance part of the integrated, eligibility re-design system (TIERS), a large informational technology project, to integrate the intakes systems for several of the human services agencies. The project is being financed through TPFA, other state funding sources and federal funds. This request is for the third phase of software design and acquisition. Charlie Bertero, Steve Rohn, and Cathy Payne from Department of Human Services were available to explain the project and respond to questions.

Mr. Bertero reviewed the project and stated that the useful life of the software is estimated to be five years. The old system was built about 25 years ago, and it probably should have been replaced about ten years ago. It was written in a program that is no longer supported by the manufacturer which makes modifications and service very difficult. The DHS vision for TIERS is that the system be designed and built so it is modular, scalable and Windows-based, to permit adding the other health and human service agencies as users. TIERS software is based on file-server technologies instead of mainframes, and it is written in Java code. The cost is split between the state and the federal government, about 50/50.

Mr. Brock moved to accept staff's recommendation to accept the financing request and fund it through the Master Lease Program. Mr. Serna seconded. The motion passed unanimously.

Item 7. Other Business/Staff Report.

No other business was discussed.

Item 8. Adjourn.

The meeting adjourned at 3:40 P.M.

The foregoing minutes were approved and passed by the Board of Directors on November 18, 2003.

Vaughn Brock
Secretary, Board of Directors

ATTACHMENT: Posting Notice - Exhibit "A"