



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 26, 2024

To All Bond Counsel:

RE: Contract Value Provisions in Paying Agent Agreements, Escrow Agreements, and Similar Agreements

In paragraph 1(d) of our November 1, 2023, All Bond Counsel Letter, we indicated that we were reevaluating whether paying agent agreements, escrow agreements, and similar agreements that we have historically not required to be considered a “covered contract” is the correct interpretation and indicated that the absence of state law verifications could result in such contracts being void. As certain bond counsel correctly indicated, if our approval of the bonds validates certain of those contracts they would not be void. Thus, regarding paying agent agreements and similar agreements that we have historically permitted to include a provision stating its value is less than \$100,000 for purposes of the state law verification requirements, if such agreement is not validated by our approving opinion, we will neither require the state law verifications¹ nor require the language discussed in paragraph 1(d) of the All Bond Counsel Letter dated November 1, 2023. We will leave the matter to securities and disclosure counsel as to whether there are any material risks for such contracts not having the state law verifications. However, for any such agreements that are validated by our approving opinion, such as escrow agreements for refunding bonds² and contracts providing security for the bonds³, including indentures, the state law verifications must be included.

¹ Please note that there is no value threshold in subchapter F of chapter 2252 of the Government Code, which prohibits governmental entities from entering into governmental contracts with companies engaged in business with Iran, Sudan, or foreign terrorist organizations. Therefore, verification must still be included confirming the company and its affiliates are not listed companies under section 2252.152.

² See Gov’t Code § 1207.064 (validating escrow agreements and any contract providing security or payments with respect to the refunding bond upon delivery and registration of the refunding bonds).

³ See Gov’t Code § 1202.006 (upon approval, registration, and delivery of the bonds, validating the public security and any contract the proceeds of which are pledged to the payment of the public security); see also Gov’t Code § 1371.059(a) (validation extending to contract providing revenue or security for the bonds).

We have provided this letter pursuant to our authority under section 402.044 of the Government Code, which requires that we advise the proper legal authorities regarding the issuance of bonds that by law require the Attorney General's approval. However, please note that this letter does not dictate how a court may rule in a legal proceeding.

Sincerely,

A handwritten signature in cursive script that reads "Leslie Brock".

Leslie Brock
Assistant Attorney General
Chief, Public Finance Division