



**SUMMARIZED MINUTES OF THE
PUBLIC FINANCING ADVISORY COMMITTEE
Thursday, May 21, 2015 at 1:30 P.M.
Hall of Administration
Planning Commission Room**

Committee Members Present: Chair, Lisa Hughes; Committee Member Thomas Hammond; Committee Member, John J. Moohr; Committee Member Wallace Rodecker; Committee Member, Carl Groner; Shari Freidenrich, Treasurer-Tax Collector; Eric Woolery, Auditor-Controller; Frank Kim, County Executive Officer

County Representatives Present: Angie Daftary, County Counsel; CEO/Public Finance: Suzanne Luster, Public Finance Director; Louis McClure, Victoria Ross, Susie Ortiz

Committee Members Absent: None

- 1. Call to Order:** The meeting was called to order at 1:30 P.M by PFAC Chair Lisa Hughes.

Congratulations were passed on to Frank Kim as the newly appointed County Executive Officer.

- 2. Approval of the Minutes of April 9, 2015 Meeting:** PFAC Chair Lisa Hughes asked for a motion to approve the minutes of the April 9, 2015 PFAC meeting.

Member Moohr moved that the minutes of the April 9, 2015 PFAC meeting be approved with the comment of liking the new format of the minutes. Ms. Luster informed the PFAC Committee of Tracy Leake, the new Clerk of the Committee.

Member Freidenrich commented on a grammatical error on page 3, second to last paragraph with the word "the." Member Moohr accepted the amendment to the motion, Member Hammond seconded; the motion to approve the April 9, 2015 PFAC minutes was unanimously approved.

- 3. Approval of selection of Orrick Herrington & Sutcliffe LLP as Bond Counsel and Squire Patton Boggs LLP as Disclosure Counsel for the proposed 800MHz Upgrade financing.** Ms. Luster, CEO Public Finance, presented the agenda item, requesting approval of the selection of bond counsel and disclosure counsel for the 800 MHz Countywide Coordinated Communications System upgrade financing. She provided a brief summary of the previously approved financing in concept and approved financial advisor and underwriter. The remaining professionals to appoint are the bond counsel and the disclosure counsel. A Request for Proposal (RFP) was issued to the qualified panel. The RFP evaluation committee selected Orrick Herrington & Sutcliffe (Orrick) as bond counsel and Squire Patton Boggs (Squire) as disclosure counsel.

Member Moohr asked why the evaluation panel did not have a representative from

PFAC. Ms. Luster informed the Committee that the RFP was done in an expedited fashion. Member Moohr expressed that he hopes PFAC members are given an opportunity to be involved in the evaluation process. Ms. Luster informed PFAC that they will be given an opportunity in the future and will be notified if an expedited evaluation time frame is expected. Chair Hughes asked County Counsel Angie Daftary, if it is appropriate to receive an email to participate in the RFP panel. Ms. Daftary recommended that a PFAC member not be present in RFP panels. Member Hammond clarified the question by asking if a PFAC member should be on that evaluation committee. Ms. Daftary's response said it is strictly a policy decision for the department. County Executive Officer, Frank Kim, acknowledged that moving forward PFAC members will have the opportunity to participate in the RFP panel, and if one does participate, they may only have discussions about the scoring with the RFP panel. Ms. Daftary informed the Committee that there is not an issue in wanting to participate in the panel. Ms. Luster said she will discuss with Counsel to amend the policy. Chair Hughes asked for the policy to be in the agenda for the next meeting. Ms. Luster concluded her presentation.

Member Hammond asked about the difference between a disclosure counsel and a bond counsel and if the County has always had two difference counsels. Ms. Luster answered, stating that bond counsel prepares the bond legal documents and the disclosure counsel prepares the official statement, the county disclosures, and conducts the due diligence meetings. She said that in the recent past the County has employed one counsel for bond and disclosure, but that for a complex financing it is important to have a focus on the disclosure counsel and it gives the County an opportunity to work with more firms. Ms. Luster informed the Committee that there are past financings with the County employing separate counsels. Chair Hughes expressed the concern about it costing the County more to have separate counsels.

Sean Baxter, Project Manager from Orrick informed the Members that he cannot speak to the cost to the County, but complex financings often have separate bond and disclosure counsels. Chair Hughes asked Mr. Baxter if there was a conflict. He replied to the Chair no, but it is good to have extra input from a separate disclosure counsel when you are disclosing facts about the County to the Public.

Chair Hughes asked for the price of the combined bid and Ms. Luster said that a combined bid was not asked for. Chair Hughes expressed that she felt having two sets of lawyers was going to cost more than having one set of lawyers, and that she will not have a vote until the cost can be answered, specifically, what the price difference would be. Ms. Luster clarified that she is specifically requesting the separate disclosure counsel for this more complex financing. Chair Hughes asked if this has to do with the allegations that the County was not disclosing appropriately. Ms. Luster responded to the Chair and Members that it is not directly related, but a byproduct and the County's desire to continue to improve the disclosure process.

Harriet Welch, Partner from Squire responded to committee's questioning regarding the need for separate counsel. She informed the Committee that the focus for the disclosure counsel would be on the preliminary official statement, official statement, and the particular information about the County itself. Ms. Welch emphasized that the Securities and Exchange Commission (SEC) has increased their focus on

disclosure, therefore issuers are benefited by having a separate counsel to focus solely on disclosure. Member Moohr asked of Ms. Welch's company location and if she has worked for the County of Orange before. Ms. Welch indicated that her office is located in Los Angeles and she has never worked for the County of Orange. Member Groner reflected that Squire bid on the bond counsel work as well and asked if she would have done that work personally. She responded by saying yes.

Member Freidenrich had questions regarding the overall process of the RFP panel. She mentioned the scoring system being equally weighted, but the number of relevant transactions should have a higher weight than a firm who has done other various transactions and is not a local firm. She asked what the innovated approach is for giving the firms different grades and if it is just based of their rate, it means relevant experience and transactions have no weigh in scoring. The last question was in regards to fees and if there were actual expenses for the locals and whether or not they have any travel expenses that would change total costs. Ms. Luster responded that Stradling's proposals did not list any expenses, but as the County manager responsible for the bond financing process, the County is keeping the Stradling very busy with several other bond issuance processes. Ms. Luster advised the Committee that it would be her preference to use a different law firm so that the County does not experience diminishing returns on already contracted work. Member Freidenrich mentioned the discrepancy in the fee scoring, stating that both Orrick and Stradling scored a 75, but Stradling's fees are different than Orrick's since they do not have any expenses. Member Freidenrich agreed with the concept of "not putting all of our eggs in one basket," but she does not have a clear understanding if the current rating category allows PFAC to consider that subjective area of diversity.

Member Moohr asked Mr. Baxter if his company typically bids on projects they know they cannot handle. Mr. Baxter responded, no. Chair Hughes asked Ms. Luster what the price would have been if Orrick had done a combined bid. Ms. Luster reiterated that a combined bid was not asked for from the bidding firms and that staff requested separate bids in order to provide more focus on disclosures.

Member Groner asked for a combined bid from Orrick and Squire. Ms. Daftary objected to this question, stating it does not give a fair opportunity to the other firms to offer a combined bid and that the bids before the Committee now is what can be considered. Member Hammond asked if there was a timing urgency on this item. Mr. Kim explained that staff is trying to get the financing done quickly since there are many participants in this particular financing and all the cities have to get their participation passed through their counsels. He mentioned Suzanne alluding to the disclosures being a byproduct of past concerns and that it is important to have a strong focus on the disclosure side and to meet the new higher standards that staff and the County want to maintain. In July of this year, it is the intention to begin the meetings with cities in terms of having a team in place, explaining the expedited time frame. Ms. Daftary commented that the new direction, trend, and recommendation from her peers is that separate bond and disclosure counsel be brought in and that it is among the growing trend to bifurcate the work; especially now with the focus on disclosure.

Chair Hughes expressed that Orrick has proven to have the ability and staff to do both bond and disclosures work, and that the deciding factor is the cost of having separate counsel. She stated that unless it is absolutely urgent, the Committee would like to see the costs and to have a lawyer from Orrick present. Member Hammond mentioned he did not feel it is PFAC's job to decide on the separate counsels, but that it should be called to the Board of Supervisors attention. Chair Hughes and Member Moohr respectfully disagreed.

Chair Hughes asked the Members for any further comments. Member Freidenrich mentioned the proposed fee scores need to be clarified since both Orrick and Stradling scored the same, but Stradling has less fees. Ms. Daftary commented that is not advised to make changes to the scoring and that re-scoring and adding a PFAC member to that panel would involve re soliciting the item. Member Rodecker expressed that there had been enough strong concerns and it merits going back and being re-scored, and he is not ready to move forward. Member Hammond reiterated the responsibility of PFAC and he suggested not holding the deal up, moving forward, and call attention to the Board of Supervisors about the scoring process and concerns. Member Groner commented that he felt the rubric was great, and it is good to give other counsel the opportunity to work with the County. He agrees with Member Hammond on moving forward and that the RFP is an imperfect process and will always be. Mr. Woolery commented that he was ready to move forward. Mr. Kim commented that it is fair for PFAC members to express concerns about the existing process, but we have to be careful in engaging in too much dialog about the re-scoring in order to avoid bid protests.

Chair Hughes asked for a motion. Member Freidenrich made a motion to send back to the interview panel to correct the fee portion to make sure that the fees are gathered properly and to bring this back to the board at a special meeting if we need to. Mr. Moohr added to rebid on the combined fee for bond and disclosure counsel. Member Freidenrich amended the motion and the vote was as follows:

Member Freidenrich: Yes

Member Moohr: Yes

Member Rodecker: Yes

Member Hammond: No

Member Groner: No

Member Woolery: No

Chair Hughes: Yes

The motion passed four to three.

Ms. Luster provided slides on to the Members on the County General Fund for capital reserves and proposed financings for the current year and the next fiscal year.

Committee Member Rodecker motioned to adjourn. Member Moohr seconded the motion. The motion was approved unanimously

Public Comment: None received

Adjournment: The meeting was adjourned at 2:32PM.