



Public Financing Advisory Committee

Thursday, June 18, 2015 at 1:30 pm

Hall of Administration Planning Commission Room

MEETING MINUTES

Attendees: Lisa Hughes (Chair), Thomas Hammond (Committee Member), John J. Moohr (Committee Member), Wallace Rodecker (Committee Member) Carl Groner (Committee Member), Shari Freidenrich (Treasurer-Tax Collector), Frank Kim (County Executive Officer), Michelle Aguirre (Chief Financial Officer), Angie Daftary (County Counsel), Suzanne Luster (CEO/Public Finance Director), Louis McClure, Victoria Ross, Susie Ortiz; (Public Finance).

Absent: Eric Woolery (Auditor-Controller)

- I. **Call to Order/Introductions/Opening Remarks:** Meeting called to order by Chair Lisa Hughes at 1:34 pm.
- II. **Review and Approval of Minutes:** Meeting Minutes of May 21, 2015 were approved. Member Moohr moved the minutes, Member Freidenrich seconded with amendments, approved unanimously.
- III. **Receive Status Report regarding Amendment of Policies and Procedures for Consideration of Approval of Proposed Public Financings:** Ms. Luster discussed PFAC's opportunity to serve on RFP evaluation committee panels. Ms. Luster notified the committee that she is working on amending the policies and procedures that will go back to the Board of Supervisors, as well as a meeting with the County Procurement Office and County Purchasing Agent to provide training to PFAC members. Member Freidenrich asked to be provided the policy and procedures before the executive session for review. County Counsel Angie Daftary commented that the policies and procedures cannot be discussed in executive session, but the memo can be discussed. Chair Hughes requested an executive session to discuss the memo, agendaize policy and procedures as a subject area for the next meeting, and to circulate the existing policy and procedures, ahead of time.
- IV. **Approval of selection of Orrick Herrington & Sutcliffe LLP as Bond Counsel and Squire Patton Boggs LLP as Disclosure Counsel for the proposed 800 MHz Upgrade financing:** Ms. Luster presented the agenda item to approve the selection of Orrick, Herrington & Sutcliffe LLP as bond counsel and Squire Patton Boggs LLP as disclosure counsel for the 800 MHz Countywide Coordinated Communications System upgrade financing and provided a summarization of the steps taken thus far. She summarized from the last PFAC meeting how the committee did not approve the recommendations by a 4-3 vote and explained the result of the rescore did not change the outcome and recommendation from staff. The committee was under the impression that staff was going to rebid the entire RFP. Ms. Luster responded that was not the direction she received and that rebidding would take months. She also mentioned meeting with Member Freidenrich beforehand and discussed with Ms. Daftary after the meeting that the combined solicitation scored by staff can only be used as additional information, since the evaluation committee did not recommend it. Member Hammond commented that Ms. Daftary's and staff's recommendation of separate counsels for bond and disclosure should

override the purpose of bidding a combined RFP and that this agenda item should be approved and sent to the board noting PFAC's concerns about having separate disclosure counsel.

Chair Hughes called on the representative from Orrick Herrington & Sutcliffe LLP to ask his opinion if the county needs separate bond and disclosure counsel. Phil Morgan, Of Counsel, Orrick Herrington & Sutcliffe LLP informed the committee that it is not uncommon in the municipal industry to have one firm do both, but in recent years with the focus of the SEC on disclosure, it is becoming more common to have separate bond counsel and disclosure counsel. Mr. Morgan responded to Member Moohr's question on the source he is working under and asked for a copy. Mr. Morgan responded that it is the SEC Act of 1993 and 1994, section 10b-5, a current law with renewed emphasis by the SEC for the last four to five years. More investigations, actions, and cease and desist orders have been taken against different municipal entities. Member Freidenrich mentioned her recent return from the County Treasurer's Conference and noted a slight trend in separate bond and disclosure counsels. She asked Mr. Morgan if the entities found to be in violation had a separate disclosure counsel, will counsel allocate extra hours toward disclosure if combined, and if the county were to have separate counsel, does bond counsel do anything regarding the Official Statement. Mr. Morgan responded that he was not sure if the entities having investigations had a separate disclosure counsel, and as bond counsel they do opine on some sections of the disclosure such as bonds, securities section, and tax exempt section. He said they do not give an opinion on the disclosure involved in the county. Chair Hughes asked if Orrick, Herrington & Sutcliffe has been bond counsel for any municipalities in the past five years receiving a cease and desist. Mr. Morgan said no, and responded to Chair Hughes' second question that Orrick is able to be both bond and disclosure counsel. Member Hammond disagreed with PFAC on second guessing the Public Finance department and Member Freidenrich said that PFAC needs to move on with this item before the Federal Reserve increases interest rates.

Member Freidenrich made the motion to recommend Orrick, Herrington & Sutcliffe LLP as bond counsel for this issue and requested a separate motion for disclosure counsel. Member Hammond seconded the motion. Member Freidenrich had questions about the ratings for disclosure counsel regarding total points being the same for two firms, with no explanation how one was chosen over the other. Chair Hughes referred to the memo sent from County Counsel in regards to PFAC's role and responsibility for selection and hiring of financial professionals and the language, "is responsible for," "shall," and "for," that was used in the memo. A discussion ensued on the meaning of these phrases and words in regards to PFAC's role. Ms. Daftary clarified that PFAC is responsible for recommending and the Board has the ultimate authority in selection and hiring. Another discussion ensued about the word "shall" in the memo and Chair Hughes stated that she does not have to take staff's recommendation. Member Moohr had a question about the radio financing. County Executive Officer Frank Kim and Ms. Luster informed the committee that the county is not sure what they intend to do on the financing for the radios, and that will be a separate discussion in the near future. Ms. Daftary informed the committee they can approve the recommendation and staff can include concerns as part of the ASR to the board. Mr. Hammond re-seconded Member Freidenrich's motion. Member Rodecker added that he agreed with Chair Hughes on her interpretation of PFAC's duties and agreed that it is not

always the committee's job to agree with staff's recommendations. A roll call vote was given for the selection of Orrick, Herrington & Sutcliffe LLP as bond counsel for the CCCS financing:

Member Freidenrich: Yes
Member Rodecker: Yes
Member Hammond: Yes
Member Groner: Yes
Member Moohr: Yes
Chair Hughes: Yes

Member Hammond made the motion to approve the selection of Squire Patton Boggs LLP as disclosure counsel for the CCCS financing. Member Groner seconded. Ms. Luster responded to a question on the scoring. She said the numbers have been rounded to the nearest whole number, which is consistent with the county procurement office method of scoring, the contract policy manual and with past scoring practices. The scoring is subjective, and there is a panel discussion where thoughts are exchanged with a goal to eliminate wide variances and come to a consensus recommendation. Mr. Kim noted at this point, it is up to PFAC whether they support the staff's recommendation and responded to Member Moohr's question about rounding; it is an accepted method in procurement. A roll call vote was given for the selection of Squire Patton Boggs LLP as disclosure counsel for the CCCS financing:

Member Moohr: No
Member Rodecker: No
Member Hammond: Yes
Member Groner: Yes
Member Freidenrich: Yes
Member Hughes: No
The motion failed with a tie of three to three.

Member Freidenrich had questions regarding fee negotiations. Ms. Luster reminded the committee that not moving forward with a recommended disclosure counsel will delay the financing, and responded to Member Freidenrich's questions that with a recommendation, staff has the ability to further negotiate price and expenses. Ms. Daftary told the committee it can be done and that is part of the policies of staff to move on to contract negotiations after the recommendation has been completed. She suggested if the committee approved staff's recommendation on disclosure counsel, then negotiations can begin. Chair Hughes and Member Moohr said that will not be their recommendation and that PFAC can have a special meeting. Member Freidenrich asked if the pricings will go back to the old ratings from the original spreadsheets since the combined bid prices were for information purposes only. Committee Member Moohr motioned to adjourn, Member Rodecker seconded.

- V. **Date of next meeting:** August 27, 2015 at 1:30 pm
- VI. **Public Comment:** None.
- VII. **Adjournment:** The meeting was adjourned at 2:54 pm.