



## MEMORANDUM

Supplement to  
Agenda Item No. 7(O)1(B)

**TO:** Honorable Chairperson Barbara Carey-Shuler, Ed. D.  
and Members, Board of County Commissioners

**DATE:** February 3, 2004

**FROM:** George M. Burgess  
County Manager

**SUBJECT:** Report on RFQ 53-B  
Disclosure Counsel

At the Budget & Finance Committee of January 15, 2004, Proposers not recommended for the Disclosure Counsel Pool questioned the Evaluation/Selection process and the qualifications of some of the recommended firms. They also requested that the Committee and ultimately, the Board, increase the Disclosure Counsel Pool to include all proposers. The Committee members asked that staff address these issues in a memorandum to be considered by the Board along with the agenda item detailing my recommendation. The following is a discussion of the issues raised.

- *Consideration of Past Performance of a firm currently serving as disclosure counsel to the County:*

In the past two Requests for Qualifications (RFQs) for Disclosure Counsel, there was no special consideration awarded for past performance with respect to County matters. This was consistent with the desire of the Board to level the playing field so all qualified firms would have an opportunity to compete for the position of disclosure counsel. Although specific consideration was not afforded to the incumbent firms, past performance was considered as part of the Skill, Expertise and Quality of the Respondent and its Associate Counsel. The RFQ listed the evaluation criteria as Skill, Expertise and Quality of the Respondent, the Associate Counsel and the Core Group for a total eligible score of 85 points out of 100 points. As part of that evaluation, each Respondent included a listing of bond transactions that they had worked on over the past two years. Therefore, an evaluator was aware when assigning points for this criteria whether the Respondent represented the County in the past.

- *Flaws in the Evaluation/Selection Process, only one member of the Evaluation/Selection committee works with disclosure counsel:*

This statement is incorrect. Three of the five committee members had previously worked with disclosure counsel in their capacity as financial administrators for the County's enterprise departments that issue bonds. In addition, the information that was requested was comprehensive enough to permit a committee member to objectively evaluate each response regardless of their expertise. By including committee members who have no past dealings with the firms, the perception of bias or prejudice toward one or more of the firms is eliminated from the selection process.

- *Core Group of Attorneys identified to work with the County will likely not be available to the County and are located outside the State of Florida.*

In response to the RFQ, the firms represented that the work will be assigned to competent attorneys locally, as well as from other offices. The recommended firms meet the requirements listed above and are of national standing with the necessary resources to provide the County with excellent services.

- *Two of the recommended firms do not even appear to meet the minimum requirements of the RFQ.*

RFQ 53-B listed in Section 2-2 II, Requirements for Respondent and Associate Counsel:

- a. Must be in existence for the two year period immediately prior to the due date of this RFQ or must have previously served as Bond Counsel or Disclosure Counsel to the County and must not be a Associate Counsel to any other Respondent responding to this RFQ.
- b. Must be listed as a nationally recognized bond counsel in the Red Book on the Submission Due Date of this RFQ under the firm name of the Respondent.
- c. Must have an operational office in the State of Florida and must have at least one attorney experienced as disclosure/securities counsel who is an active member of the Florida Bar in good standing in that operational office available to handle any County transaction assigned to the Respondent.
- d. Failure to meet any of the requirements set forth in a-c of this paragraph shall deem a Respondent non-responsive and its submission shall not be considered.

Of the firms that submitted proposals to the RFQ, there are three new firms:

1. Hunton & Williams LLP
2. Hogan & Hartson LLP
3. Edwards & Angell LLP

All the firms listed have met the minimum requirements of the RFQ.

- a. **Hunton & Williams LLP** - has been in existence since 1901, and has an operational office at 1111 Brickell Avenue, Suite 2500 Miami, Florida. The attorney identified is Mr. David Wells, a partner in the Miami Office, whose areas of expertise include public security offerings. He was admitted to practice in the State of Florida in 1992.
- b. **Hogan & Hartson LLP** - has been in existence since 1904, and has an operational office at 1111 Brickell Avenue, Suite 1900 Miami, Florida. The attorney identified is Mr. Menashe R. Frank, a corporate and securities attorney in the Miami Office. He will be available to handle any Miami-Dade County transactions. Mr. Frank was admitted to practice in the State of Florida in 1996.

- c. **Edwards & Angell LLP** - has been in existence since 1894 and has an operational office at One North Clematis Street, Suite 400 West Palm Beach, Florida. The attorney identified is Mr. Richard J. Miller. Mr. Miller practices in the West Palm Beach Office and has over thirty years experience in all types of complex taxable and tax-exempt financing including serving as bond counsel. He was admitted to practice in the State of Florida in 1988.
- *In order to address perceived inequities in the selection process because the firms scores were very close, the County should consider increasing the pool of disclosure counsel firms from the proposed 3 firms to 5 firms, so all of the respondents would be included in that pool. Currently the County's disclosure counsel pool consists of 4 firms.*

It is correct that the current pool for disclosure counsel consists of 4 firms, whereas the current bond counsel and authority counsel pools have three firms. Originally, we expected to assign disclosure counsel to negotiated bond transactions only and to assign one firm on an annual basis to handle disclosure issues which may or may not be transaction specific. However, we found that we did not use counsel for that purpose, and therefore minimal work was assigned for non transactional work. Therefore, for the new rotation, we intend to assign disclosure counsel along with bond counsel to each bond transaction (negotiated as well as competitive), thereby creating more opportunity and equity.

Below is an update of the assignments and the dollars allocated to the firms from November 1998 through December 2003.

<u>Bond Counsel</u>	Number of <u>Transactions</u>	<u>Value</u>
Greenberg Traurig with Edwards & Carstarphen	6	\$ 652,460
Holland & Knight with The Law Offices of Steve Bullock	5	\$ 819,473
Squire Sanders & Dempsey with McCrary & Associates (later The Knox Firm)	6	\$ 741,384
<u>Disclosure Counsel</u>		
*McGhee & Associates with Villalobos Law Firm	2	\$ 288,060
Ruden McClosky with Lacasa & Associates	3	\$ 580,781
Golden & Associates with De La Pena et al, and the Law Offices of Williams & Associates	4	\$ 636,973
Nabors, Giblin & Nickerson with Harold Long, Esquire	3	\$ 568,750

\*The Attorney with disclosure expertise has left the firm and no alternate attorney was assigned to perform work.

