

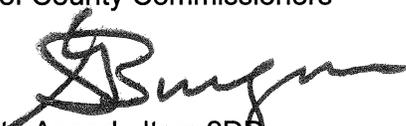
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Supplement to \_\_\_\_\_

Agenda Item No. 2(DD)

**Date:** February 10, 2009

**To:** Honorable Chairman Dennis C. Moss  
and Members, Board of County Commissioners

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

**Subject:** Supplemental Report to Agenda Item 2DD

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This information is provided as a supplement to Budget Planning & Sustainability Committee Agenda Item 2DD (083605). This item requests waiver of competition to allow the inclusion of the joint venture of Ruden, McClosky, Smith, Schuster & Russell, P.A. and Steven E. Bullock, P.A. in the County Bond Counsel Pool (Pool). The item also affects Section 2.2 (II), Item 4(a) of RFQ No. 53A which prohibits an Associate Counsel from remaining in the Pool without its Respondent (senior firm).

Section 2.2 (II), Item 4(a) of RFQ No. 53A states:

4. Removal from Pool
  - a. Once selected, if the Respondent or any of its Associate Counsels, terminates, their contract establishing their business relationship for this RFQ or their municipal finance capability is materially altered for any reason whatsoever, the Respondent and its Associate Counsel(s) will no longer be eligible to serve as a member of either pool and its slot shall be eliminated, provided, however, if Respondent can demonstrate that the dissolution of the Associate Counsel or the termination of the contract between the Respondent and its Associate Counsel is due to events that are beyond their control such as the death of an attorney etc., the County may, in its sole discretion, allow the Respondent to replace the Associate Counsel with an Associate Counsel that meets the requirements set forth in paragraph 2 of Section 2.2 II. In no event shall an Associate Counsel be allowed to remain in either pool without its Respondent.

In accordance with this provision, the senior firm may replace the Associate Counsel under certain conditions. However, an Associate Counsel cannot remain in the Pool without its Senior firm. The intent of the provision is to avoid a situation where a senior firm joint ventures with an Associate Counsel just to get into the Pool and after selection, dissolves the relationship or drops that Associate Counsel. In addition, it assures that the County maintains the nationally recognized and qualified Senior Firm and avoids the situation where an Associate Counsel could bring in a firm that is not qualified. This language mirrors the rationale in the June 3, 2003 ordinance approved by the Board.

Bond Counsel is utilized by the County to draft ordinances, resolutions, indentures, loan agreements, and/or other financing documents authorizing the issuance of bonds, loans or notes, in accordance with Federal and State law. Bond counsel's primary responsibility is to structure the transaction so that it can render an unqualified tax exempt opinion to the issuer for the benefit of the investors of the bonds. Without a Bond Counsel opinion from a nationally recognized firm, the County would not be able to market its tax-exempt debt. Bond Counsel also

provides the County, from time to time, with legal advice on matters involving the interpretation of Federal and State law and other compliance issues.

On December 19, 2008, a solicitation was issued to establish a new pre-qualified pool of bond counsel. Proposals were received on February 2, 2009. It is anticipated that the recommendation for award of the new pool will be presented to the Board in May 2009. There is concern regarding the adding of firms to the bond counsel pool that have not participated in the competitive process, or been evaluated by staff to ascertain their qualifications to carry out the required services. This approach of adding firms to existing contracts may establish an undesirable precedent and send the wrong message to vendors who actively participate in the county's competitive processes.

  
Assistant County Manager