

TO: ALL COUNTY PERSONNEL

**FROM: VERDENIA C. BAKER
COUNTY ADMINISTRATOR**

PREPARED BY: COUNTY ATTORNEY

**SUBJECT: SELECTION OF BOND COUNSEL AND DISCLOSURE COUNSEL
POLICY**

PPM#: CW-F-079

ISSUE DATE
February 4, 2016

EFFECTIVE DATE
February 4, 2016

PURPOSE:

To establish parameters and guidance for the selection of a Bond Counsel firm and a Disclosure Counsel firm for all Debt Obligations (i.e. bonds, notes, letters and lines of credit) issued by Palm Beach County.

UPDATES:

Future updates to this PPM are the responsibility of the County Attorney.

AUTHORITY:

1. Florida Statutes, Sections 129.06, 218.38 and 218.385 as may be amended;
2. Palm Beach County Administrative Code, Sections 101.00, 301.00 303.00, 304.00, 304.03, 304.034, 304.04, 311.00, as may be amended ; and
3. PPM CW-F-074, as may be amended.

OVERVIEW:

The Board of County Commissioners periodically considers the issuance of Debt Obligations to finance the construction or acquisition of infrastructure and other assets or to refund outstanding debt.

This PPM provides guidance for selecting a Bond Counsel firm and a Disclosure Counsel firm for each bond sale.

The County is seeking law firms with experience in municipal bond law to serve as Bond Counsel and Disclosure Counsel in connection with financings, transactions and legal matters relating to ongoing debt activities of the County. Bond Counsel renders an opinion on the validity of the bond offering, the security for the offering, and whether and to what extent

interest on the bonds is exempt from income and other taxation. The opinion of Bond Counsel provides assurance both to the County and to investors who purchase the bonds that all legal and tax requirements relevant to the matters covered by the opinion are met. Disclosure Counsel must offer complete services to meet the County's needs in future bond financings and the preparation of primary and secondary market disclosure documents.

In order to be considered for Bond Counsel and Disclosure Counsel to the County, proposing firms must be listed in the most recent edition of the Bond Buyer's Municipal Marketplace (the "Red Book"). The firm must be available to meet with and advise County staff, County retained consultants and members of the Board of County Commissioners on a continuous and as needed basis.

Each firm must have sufficient depth of talent and experience in municipal bond law, securities law, tax law, local government law, the trial and appeal of bond validation actions and the issuance of tax exempt municipal bonds and notes, to be able to allot sufficient time to meet with sometimes great demand that the County will place on Bond Counsel and Disclosure Counsel and be in a position to respond quickly and efficiently.

DEFINITIONS:

1. **Fixed Rate Debt** – Debt obligation issued with a predetermined interest rate.
2. **General Obligation Debt** – Debt obligations which are secured by the full faith and credit of the county and are payable by a levy of ad valorem taxes. General obligation bonds require approval by election prior to issuance.
3. **MSTU and Special District Bonds** – Debt issued to provide funding for capital projects within a portion of the County, and for which only revenues derived within the district are used to pay debt service.
4. **Negotiated Sale** – The sale of bonds by an issuer directly to an underwriter or underwriting syndicate selected by the issuer.
5. **Non-Self Supporting Debt** – Debt secured by covenant to budget and appropriate from legally available non-ad valorem revenues. Debt service expenditures for this debt are in direct competition with other general fund expenditures.

POLICY:

It is the policy of the County that Debt Obligations will be issued and administered in such a manner as to ensure and sustain the long-term financial integrity of the County and to achieve the highest possible credit rating.

Selection of Bond Counsel and Disclosure Counsel will be made through an RFP process administered by the County Attorney in accordance with the provision in PPM CW-F-074 for all financings, transactions and legal matters relating to the issuance and management of the

County's Debt Obligations. A selection committee comprised of a representative from the County Attorney's Office and the members of the County Financing Committee will evaluate and rank the RFP responses to select 1 Bond Counsel and 1 Disclosure Counsel to serve as Bond Counsel and Disclosure Counsel on future Debt Obligations for a period of three years. The selection committee will reevaluate Bond Counsel and Disclosure Counsel every three years and recommend the appropriate action.

Scope of Services

A. Bond Counsel

The service of Bond Counsel shall include, but not be limited to the following:

1. Render an opinion on the validity of the bond offering, the security for the offering and to what extent interest on the bonds is exempt from income and other taxation.
2. Provide a legal opinion that assures the County and the investors who purchase the bonds that all legal and tax requirements relevant to the matters covered by the opinion are met. Have in-house expertise to provide specialized tax advice beyond normal bond counsel services, if needed.
3. Provide demonstrated ability, knowledge and expertise in the areas of municipal bond law, securities law, tax law, local government law, trial and appeal of bond validation actions, and the issuance of tax exempt municipal bonds and notes, and to be able to allot sufficient time to meet the demand that the County places on its Bond Counsel and respond quickly and efficiently.
4. Recommend the necessary provisions and covenants to be contained in the financing including but not limited to redemption provisions, flow of funds, debt service reserve fund requirements and security pledges.
5. Coordinate work with County's in-house attorney, staff and professional consultants, including financial advisors and underwriters, regarding the financial and security provisions to be contained in the bond documents authorizing and securing the financing, and attend meeting and hearings and otherwise assist to the extent reasonable and necessary, with exhibits and testimony.
6. Prepare all legal forms and documents necessary to execute the sale and closing of the financing including, notice of sale, bid form and legal publications.
7. If necessary, oversee the validation procedures and prepare and file all necessary legal documents.

B. Disclosure Counsel

The service of Disclosure Counsel shall include, but not be limited to, the following:

1. Review all bond documents applying knowledge and experience of the firm with financings of the issuer or comparable issuers.
2. Prepare preliminary official statement and official statement for the sale of the County's bonds, advise and assist the County to assure that the information contained in the official statement is accurate and complete in all material respects, and render to the underwriters(s) a 10b-5 opinion as to no material omissions or misstatements (or as an alternative to rendering such opinion to the underwriter(s)), deliver to the underwriter(s) an unqualified consent to rely upon such opinion).
3. Prepare the County's continuing disclosure agreement pursuant to Section 15c2-12 of the Securities Exchange Act of 1934. Disclosure Counsel would be accountable solely to the County, rendering a 10(b)-5 disclosure opinion directly to the County.
4. Advise on disclosure matters with regard to the structuring and timing of the County's debt issues.
5. Advise on matters of material event disclosures and related matters regarding secondary market disclosure.
6. Advise on changes in Federal and State Legislation and regulatory matters involving disclosure matters applicable to the County.

C. Proposal Requirements

Minimum required information to be submitted in response to the requests for proposals for Bond Counsel or Disclosure Counsel is as follows:

1. State the full legal name and organization structure of the firm. List and profile all attorneys with your firm who have experience with the issuance of tax-exempt bonds or notes for Florida local governments. Responses to this section should include information as to length of time that your firm has provided these services.
2. Submit resumes of partners and principals who will be assigned to the County's engagement. This information should describe the qualifications, education and professional background and special training of each attorney and indicate the experience each attorney possesses with respect to bond counsel and disclosure counsel representation, and any other information deemed relevant to their ability to handle bond matters.
3. Submit resumes of associates, attorneys of counsel or other staff that you anticipate

assigning to the County's engagement.

4. Submit a statement of the firm's local availability and degree of accessibility to the County.
5. List specific bond issues, with the attendant cover page of the Official Statement for such issues, within the last five (5) years for which your firm has served as bond counsel and disclosure counsel and has issued an opinion. A response to this section should include information which is representative of the type and variety of bond issues in which your firm has been involved. Also, please describe your firm's tax capability and experience in handling complex tax matters pertaining to bond transactions and the use of derivative products. Please include information as to whether litigation has resulted arising out of these opinions and provide details.

When providing an answer to this question, please include the following information:

- a) Purpose of issue (public improvement, housing, industrial development, etc.);
 - b) Type of issue (general obligation, advanced refunding, revenue, commercial paper, or certificates of participation);
 - c) Size of issue and term of bonds.
 - d) Manner in which sold (competitive bid or negotiated);
 - e) Use of derivative products and type of product;
 - f) Governmental unit issuing bonds;
 - g) Form of bond counsel opinion used; and
 - h) Name of attorney in your firm responsible for the bond issue.
6. The County may choose to sell bonds by means of an internet-based platform from time to time in the future. In connection with such sales, the County will evaluate the use of electronic disclosure of bond sales documents and ancillary information. Please provide a clear statement of your firm's position on this issue, including the preferred direction for such regulation. Provide specific examples of advice given to your past and present clients in this area, plus copies of any position papers the firm has published. In addition, provide the names and phone numbers of three clients whom the County may contact to discuss their experiences with your firm's service in this area.
 7. Describe the capabilities of your firm to provide the County advice and representation in matters related to the County's disclosure obligations regarding current and future financial, legislative, regulatory, legal and demographic matters.

8. Describe the general capabilities of your firm including information relating to total size and staffing, research capabilities, professional staff and clerical support.
9. Make an affirmative statement to the effect that, to your knowledge, the retention of your firm would not result in a conflict of interest with any party. Alternatively, should any potential conflict exist, specify the party with which there might be a conflict, the nature of the potential conflict, and the means proposed to resolve such conflict. List all governmental entities in Florida that you have a current contractual relationship with and briefly describe the nature of the relationship.
10. Describe any disciplinary action, administrative proceeding, malpractice claim or other like proceeding against your firm or any of its lawyers, whether current or pending, as well as any such action, proceeding or claim occurring during the past five years.
11. Describe the nature and magnitude of any litigation or proceeding whereby, during the past five years, a court or any administrative agency has ruled against your firm in any matter related to the professional activities of the firm. Similar information should be provided for current or pending litigation.
12. Describe any financing for which your firm or lawyers proposed to be assigned to the County's work, have rendered any opinion which has resulted in the loss of tax exemptions on bonds issued by clients.
13. List at least three (3) Florida governmental clients the County can contact as references with respect to your firm's work performance. For each reference, include the following: a) name of client, b) contact person, c) title of contact person, d) telephone number and e) indicate your role with the agency.
14. Provide the name of your professional liability insurers, the amount of coverage provided and the policy number.



VERDENIA C. BAKER
COUNTY ADMINISTRATOR

Supersession History

1. PPM CW-F-079, issued September 1, 2009.
2. PPM CW-F-079, issued August 19, 2014.