



County of Fresno

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Legislation Text

File #: 20-0230, **Version:** 1

DATE: March 24, 2020

TO: Board of Supervisors

SUBMITTED BY: Daniel C. Cederborg, County Counsel

SUBJECT: Specialized Legal Services Agreements for Bond Counsel and Disclosure Counsel

RECOMMENDED ACTION(S):

- 1. Approve and authorize the Chairman to execute a specialized legal services agreement with Hawkins Delafield & Wood LLP to act as bond counsel for special projects that may arise during FY 2020-21, effective July 1, 2020 (maximum compensation for services to be limited by amount appropriated by the Board in the FY 2020-21 budget, plus reimbursements from outside funding sources, if any).**
- 2. Approve and authorize the Chairman to execute a specialized legal services agreement with Hawkins Delafield & Wood LLP to act as bond counsel and disclosure counsel for the issuance if the County issues FY 2020-21 tax and revenue anticipation notes (maximum amounts payable for legal fees of \$38,000, and out-of-pocket expenses of \$1,500, plus actual and reasonable costs for certain publications, reports, and transcripts), effective upon execution by the parties until it is terminated by either or both parties.**

Approving the first recommended action will engage Hawkins Delafield & Wood LLP ("Hawkins") as the County's bond counsel as needed for special projects that may arise during FY 2020-21. County Counsel would be able to authorize Hawkins to work on special projects between July 1, 2020, and June 30, 2021. Because some special projects might arise toward the end of that period, bond counsel services may continue past June 30, 2020, for any work authorized during that period. The cost of all specialized legal services under the recommended agreement would be limited to Net County Cost appropriations as may be approved by your Board in the FY 2020-21 budget, plus reimbursements from outside funding sources, if any (for example, if a school district raises issues necessitating bond counsel assistance to the County, County Counsel would seek reimbursement from the district for those services).

Approving the second recommended action will obtain essential specialized legal services of bond counsel and disclosure counsel for FY 2020-21 tax and revenue anticipation notes ("TRANS"). There is a maximum amount of \$38,000 payable for specialized legal services, and a maximum amount of \$1,500 payable for reasonable and necessary out-of-pocket expenses. In addition, the recommended agreement provides that Hawkins will be reimbursed for the actual and reasonable cost of publications and reports obtained for the financing and the preparation of bound or compact disc transcripts. All payment obligations are contingent on the sale and issuance of the TRANS, and all amounts would be paid from the proceeds of the TRANS. The recommended agreement is only for services in connection with an issuance of FY 2020-21 TRANS.

ALTERNATIVE ACTION(S):

There is no viable alternative to retaining bond counsel and disclosure counsel for these services because they must be provided by attorneys who have expertise in federal income tax and federal securities laws. The County Counsel's office does not provide those specialized legal services.

As stated below, Hawkins provided the most competitive proposal in comparison to the only other firm that responded to County Counsel's competitive selection process. The hourly rates for all of the other proposer's attorneys, as well as for its non-attorney financial analysts, were higher than the highest rates for partner attorneys from Hawkins.

SUSPENSION OF COMPETITION/SOLE SOURCE CONTRACT:

Under the Board of Supervisors' Administrative Policy No. 34 (Competitive Bids and Requests for Proposals) for obtaining services, competitive bidding is not required to select specialized legal counsel. Instead, that Board policy requires County Counsel to conduct a salary survey every two years for legal services.

In February of this year, County Counsel conducted a competitive selection process that included five major law firms that routinely provide bond counsel services to local governments in California. Two of those firms responded with proposals. County Counsel recommends Hawkins because it provided the most competitive proposal, based on a variety of factors including the following: its hourly fee rates are the lower of the proposers; its TRANS costs are the lower of the proposers; it possesses a high level of relevant expertise and experience; and it is the only firm to accept all of the County's proposed terms for the recommended agreements.

FISCAL IMPACT:

There is no additional Net County Cost because costs for bond counsel and disclosure counsel services are budgeted annually.

Under both recommended agreements, Hawkins would render specialized legal services at the hourly fee rate of \$350 for associate attorneys, and at a range of rates from \$540 to \$575 for partner attorneys.

Under the special projects agreement (the first recommended action), the cost of specialized legal services would be paid from FY 2020-21 Net County Cost appropriations as may be approved by your Board in the County's FY 2020-21 budget, plus reimbursements from outside funding sources, if any. The fiscal impact of this recommended agreement will depend on the number and complexity of public finance matters that arise for the County during FY 2020-21. Some of those projects are certain to arise (for example, the County's annual continuing disclosure filing in the bond market to satisfy Securities and Exchange Commission reporting requirements), but much of the specialized legal work covered by this recommended agreement is likely to be unexpected and will probably need to be expedited. Given the number and type of financings undertaken by the County in recent years, such legal work will be needed.

Under the TRANS agreement (the second recommended action), the cost of specialized legal services could be paid from current FY 2019-20 appropriations, or from upcoming FY 2020-21 appropriations, depending on when the services are provided. There are sufficient FY 2019-20 appropriations in the Miscellaneous Expenditures Org 2540 Adopted Budget to fund all costs associated with the recommended TRANS agreement. Under this recommended agreement, the County's obligation to pay for legal fees for actual work performed will be capped at \$38,000, and the County's obligation to pay for reasonable and necessary out-of-pocket expenses will be capped at \$1,500. In addition, the County will be obligated to reimburse Hawkins for the actual and reasonable cost of publications and reports obtained for the financing and the preparation of bound or compact disc transcripts. All payment obligations under this recommended agreement are contingent on the sale and issuance of the TRANS.

DISCUSSION:

County Counsel recommends that Hawkins serve as bond counsel to the County for special projects that arise

during FY 2020-21. Generally, Arto Becker, Esq., of Hawkins' Los Angeles office, would be the lead attorney for such special projects. Russell Miller, Esq., of Hawkins' San Francisco office, would be the lead attorney for special projects primarily involving federal income tax issues.

Hawkins currently serves as bond counsel to the County for special projects. Hawkins has consistently provided responsive and effective bond counsel services to the County on various projects for the last several years, including the following:

- The State's SB 1022 financing of the West Annex Jail project, which is ongoing;
- Continuing administration of the use of tobacco securitization bond proceeds; and
- The County's annual continuing disclosure filing in the bond market to satisfy Securities and Exchange Commission reporting requirements.

Special Projects

From time to time, the County requires the specialized legal services of bond counsel in connection with public finance matters, such as the County's required annual continuing disclosure filing in the bond market.

Under the recommended agreement for special projects, County Counsel may consult with Hawkins as needed for special projects that arise in FY 2020-21. County Counsel would inform Hawkins of the need for services on each project as it arises. The County Counsel would authorize the work and monitor Hawkins' services to ensure that Hawkins' time devoted to services is commensurate with County Counsel's expectations. County Counsel would also review line-item entries of invoices to confirm the details of the services provided and charges incurred.

The recommended agreement for special projects also covers bond counsel work due to requests from outside agencies (for example, although not often, if a school district and its bond counsel raise issues related to their bond financings that affect the County). In those cases, the County has usually received reimbursement from the outside agency for the work performed by the County's bond counsel.

If approved, the recommended agreement for special projects is effective on July 1, 2020. Under the recommended agreement, County Counsel may authorize special projects between July 1, 2020, and June 30, 2021. Because some special projects might arise toward the end of that period, bond counsel services may continue past June 30, 2020, for any work authorized during that period.

The recommended agreement for special projects does not cover any legal services that would be required if the undertakes any new bond financings (such as TRANS) or refinancings. Those legal services would be covered by separate agreements.

TRANS

When the County undertakes municipal financings, such as TRANS, the County must comply with complex federal income tax and federal securities laws. For that reason, the County needs the specialized legal services of bond counsel and disclosure counsel in connection with those financings.

TRANS provide annual "cash flow" financing. This municipal financing allows the County, upon your Board's authorization, to issue tax-exempt short-term notes in the first half of the County fiscal year to finance its operations in anticipation of receiving taxes and other revenues during the fiscal year.

In the past, the County's TRANS have closed the first week of July. The County last issued TRANS in 2014, for FY 2014-15. A staff determination to recommend that your Board authorize the issuance of TRANS for FY 2020-21 has not yet been made. But to avoid delay if TRANS are ultimately recommended by staff, an

agreement for bond counsel and disclosure counsel services for the TRANS is included with this item. If no TRANS are issued, no services will be provided and no compensation will be paid under that recommended agreement.

Under the recommended agreement for TRANS, Hawkins, as bond counsel, would prepare and provide the appropriate resolutions, agreements, and legal opinions for issuing the TRANS so that the TRANS financing complies with the applicable tax laws. As disclosure counsel, Hawkins would prepare the bond offering documents (for example, the Official Statement) and continuing disclosure agreement, and provide appropriate securities disclosure opinions, so that the financing complies with applicable securities laws. County Counsel would work closely in association with Hawkins, as Hawkins undertakes these specialized legal services.

REFERENCE MATERIAL:

BAI # 46, June 4, 2019
BAI # 37, June 5, 2018
BAI # 25, February 28, 2017

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Agreement for Specialized Legal Services (Bond Counsel Services for Special Projects - Fiscal Year 2020-21)

On file with Clerk - Agreement for Specialized Legal Services (Bond Counsel and Disclosure Counsel Services for Fiscal Year 2020-21 Tax and Revenue Anticipation Notes)

CAO ANALYST:

Yussel Zalapa