



Legislation Text

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Clerk 08/30/2004

A MOTION of the county council accepting a bid for the purchase of the county's Limited Tax General Obligation Refunding Bonds, 2004, Series A in the aggregate principal amount of \$57,045,000, and establishing certain terms of such bonds and a plan of refunding, all in accordance with Ordinance 14890.

WHEREAS, pursuant to Ordinance 14890 (the "Bond Ordinance"), the county council authorized the issuance of one or more series of its limited tax general obligation refunding bonds in an outstanding aggregate principal amount not to exceed \$107,500,000 to refund all or a portion of the county's Limited Tax General Obligation and Refunding Bonds (Various Purpose), 1993 Series B and Limited Tax General Obligation and Refunding Bonds (Various Purpose), 1996 Series A, and

WHEREAS, the Bond Ordinance provided that such bonds may be publicly sold in one or more series, any of which may be sold in a combined offering with other bonds of the county, either by negotiated sale or by competitive bid, as determined by the Finance Director in consultation with the county's financial advisors, and

WHEREAS, the Finance Director has determined, in consultation with the county's financial advisors, that a series of the bonds authorized pursuant to the Bond Ordinance, to be designated as the county's Limited Tax General Obligation Refunding Bonds, 2004, Series A (the "Bonds") be sold by competitive bid as provided herein, and

WHEREAS, none of the bonds authorized by the Bond Ordinance are currently outstanding, and

WHEREAS, pursuant to the Bond Ordinance, a preliminary official statement dated August 23, 2004, has been prepared for the public sale of the Bonds, the official Notice of such sale (the "Notice") has been duly

published, and bids have been received in accordance with the Notice, and

WHEREAS, the attached bid of ABN AMRO Financial Services, Inc. to purchase the Bonds is the best bid received, and it is in the best interest of the county that the Bonds be sold to ABN AMRO Financial Services, Inc. on the terms set forth in the Notice, the attached bid, the Bond Ordinance and this motion;

NOW, THEREFORE, BE IT MOVED by the Council of King County:

A. Definitions. Except as expressly authorized herein, terms used in this motion have the meanings set forth in the Bond Ordinance.

B. Ratification of Notice of Sale, Acceptance of Bid and Authorization of Bonds. The issuance of the Bonds, designated as the county's "Limited Tax General Obligation Refunding Bonds, 2004, Series A," in the aggregate principal amount of \$57,045,000, and the terms and conditions thereof, as set forth in the Notice attached hereto as Exhibit A, are hereby ratified and confirmed. The offer to purchase the Bonds, as set forth in the bid of ABN AMRO Financial Services, Inc. attached hereto as Exhibit B, which shall be deemed to be adjusted to reflect the changed total par amount of the Bonds and the changed principal amounts of all of the maturities thereof, as and to the extent permitted by the Notice, is hereby accepted. The Bonds shall be dated their date of issue and delivery and shall be subject to optional redemption as set forth in the Notice. The Bonds shall mature or be subject to mandatory redemption, as applicable, on the dates in each of the years and in the amounts, and shall bear interest at the rates and payable on the dates specified in the Exhibit C hereto. In all other respects, the Bonds shall conform to the terms and conditions specified in the Notice and Bond Ordinance, which terms are hereby ratified and confirmed.

C. Application of Bond Proceeds. All of the proceeds of the Bonds shall be applied to the refunding of \$57,010,000 of the county's Limited Tax General Obligation and Refunding Bonds (Various Purpose), 1996 Series A described in Exhibit D hereto (the "Refunded 1996A Bonds"), and paying costs and expenses incurred in issuing the Bonds.

D. Refunding of Refunded 1996A Bonds.

1. Plan of Refunding. The proper county officials are authorized to carry out the refunding of the Refunded 1996A Bonds in accordance with Section 11 of the Bond Ordinance. The amounts, maturities and redemption dates of the Refunded 1996A Bonds shall be as identified in Exhibit D. The amounts, maturities and interest rates of the Government Obligations to be purchased to accomplish the refunding of the Refunded 1996A Bonds shall be as identified in Exhibit E hereto.

2. Escrow Trustee. The selection of U.S. Bank National Association as Escrow Trustee is hereby ratified and confirmed.

3. Finding of Savings and Defeasance. The county council finds and determines that a substantial savings will be effected by the difference between the principal and interest cost over the life of the Bonds and the principal and interest cost over the life of the Refunded 1996A Bonds but for such refunding, and that the Government Obligations to be deposited with the Escrow Trustee and the income therefrom, together with any necessary beginning cash balance, are sufficient to defease and redeem the above-referenced Refunded 1996A Bonds and will discharge and satisfy the obligations of the county with respect to the Refunded 1996A Bonds under Ordinance 12070, and the pledges of the county in such ordinance. Immediately upon delivery of such Government Obligations to the Escrow Trustee and the deposit of any necessary beginning cash balance, the Refunded 1996A Bonds shall be deemed not to be outstanding under Ordinance 10685, and shall cease to be entitled to any lien, benefit or security under that ordinance except the right to receive payment from the Government Obligations and beginning cash balance so set aside and pledged.

E. Undertaking to Provide Ongoing Disclosure.

1. Contract/Undertaking. This section E constitutes the county's written undertaking for the benefit of the owners and beneficial owners of the Bonds as required by section (b)(5) of rule 15c2-12 (the "rule") of the Securities and Exchange Commission (the "commission").

2. Financial Statements/Operating Data. The county agrees to provide or cause to be provided to each nationally recognized municipal securities information repository ("NRMSIR") and to the state information

depository (the "SID"), if any, in each case as designated by the commission in accordance with the rule, the following annual financial information and operating data for the prior fiscal year (commencing in 2005 for the fiscal year ended December 31, 2004):

(a) annual financial statements prepared in accordance with the Budget Accounting and Reporting System ("BARS") prescribed by the Washington State Auditor pursuant to RCW 43.09.200 (or any successor statutes) and generally of the type included in the official statement for the Bonds under the heading "Appendix B: Audited 2003 Financial Statements," which statements will not be audited, except that if and when audited financial statements are otherwise prepared and available to the county they will be provided;

(b) a summary of the assessed value of taxable property in the county;

(c) a summary of budgeted General Fund revenues and appropriations;

(d) a summary of *ad valorem* property tax levy rates per \$1,000 of assessed value and delinquency rates;

(e) a summary of outstanding tax-supported indebtedness of the county; and

(f) a schedule of the aggregate annual debt service on tax-supported indebtedness of the county.

Items (b) through (f) shall be required only to the extent that such information is not included in the annual financial statement.

Such annual information and operating data described above shall be provided on or before seven months after the end of the county's fiscal year. The county's fiscal year currently ends on December 31. The county may adjust such fiscal year by providing written notice of the change of fiscal year to each then existing NRMSIR and the SID, if any. In lieu of providing such annual financial information and operating data, the county may cross-reference to other documents provided to the NRMSIR, the SID or to the commission, and, if such document is a final official statement within the meaning of the rule, such document will be available from the Municipal Securities Rulemaking Board (the "MSRB").

If not provided as part of the annual financial information discussed above, the county shall provide the

county's audited annual financial statement prepared in accordance with BARS when and if available to each then existing NRMSIR and the SID, if any.

3. Material Events. The county agrees to provide or cause to be provided, in a timely manner, to the SID, if any, and to each NRMSIR or to the MSRB, notice of the occurrence of any of the following events with respect to the Bonds, if material:

- (a) principal and interest payment delinquencies;
- (b) non-payment related defaults;
- (c) unscheduled draws on debt service reserves reflecting financial difficulties;
- (d) unscheduled draws on credit enhancements reflecting financial difficulties;
- (e) substitution of credit or liquidity providers, or their failure to perform;
- (f) adverse tax opinions or events affecting the tax-exempt status of the Bonds;
- (g) modifications to rights of Bondholders;
- (h) optional, contingent or unscheduled calls of any Bonds other than scheduled sinking fund

redemptions for which notice is given pursuant to Exchange Act Release 34-23856;

- (i) defeasances;
- (j) release, substitution or sale of property securing repayment of the Bonds; and
- (k) rating changes.

Solely for purposes of disclosure, and not intending to modify this undertaking, the county advises with reference to items (c) and (j) above that no debt service reserves secure payment of the Bonds and no property secures repayment of the Bonds.

4. Notification Upon Failure to Provide Financial Data. The county agrees to provide or cause to be provided, in a timely manner, to each NRMSIR or to the MSRB and to the SID, if any, notice of its failure to provide the annual financial information described in subsection 2 above on or prior to the date set forth in subsection 2 above.

5. Termination/Modification. The county's obligations to provide annual financial information and notices of material events shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. This section, or any provision hereof, shall be null and void if the county (i) obtains an opinion of nationally recognized bond counsel to the effect that those portions of the rule which require this section, or any such provision, are invalid, have been repealed retroactively or otherwise do not apply to the Bonds; and (ii) notifies each then existing NRMSIR and the SID, if any, of such opinion and the cancellation of this section.

Notwithstanding any other provision of this motion, the county may amend this section E, and any provision of this section E may be waived, with an approving opinion of nationally recognized bond counsel and in accordance with the rule.

In the event of any amendment or waiver of a provision of this section E, the county shall describe such amendment in the next annual report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the county. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a material event under subsection 3, and (ii) the annual report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

6. Bond Owner's Remedies Under This Section. The right of any Bond owner or beneficial owner of Bonds to enforce the provisions of this section shall be limited to a right to obtain specific enforcement of the county's obligations hereunder, and any failure by the county to comply with the provisions of this undertaking shall not be an event of default with respect to the Bonds. For purposes of this section, "beneficial owner" means any person who has the power, directly or indirectly, to vote or consent with respect to, or to dispose of

ownership of, any Bonds, including persons holding Bonds through nominees or depositories.

F. Further Authority. The county officials, their agents, and representatives are hereby authorized and directed to do everything necessary for the prompt issuance and delivery of the Bonds and for the proper use and application of the proceeds of such sale.

G. Severability. The covenants contained in this motion shall constitute a contract between the county and the owners of each and every Bond. If any one or more of the covenants or agreements provided in this motion to be performed on the part of the county shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements of this motion and shall in no way affect the validity of the other provisions of this motion or of the Bonds.