



Legislation Text

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A MOTION of the county council accepting a bid for the purchase of the county's Limited Tax General Obligation Refunding Bonds, 2012, Series D (Federally Tax-Exempt Qualified 501(c)(3) Bonds), in the aggregate principal amount of \$41,810,000, and establishing certain terms of such bonds and the plan of refunding, all in accordance with Ordinance 17409.

WHEREAS, pursuant to Ordinance 17409 (the "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 \$56,000,000 to obtain funds to undertake the Patricia Steel Building Project, as defined and described in the Ordinance, and to pay the costs and expenses incurred in issuing such bonds, and

WHEREAS, the Ordinance provided that such bonds may be issued as Tax-Exempt Obligations, including Qualified 501(c)(3) Bonds, or as Taxable Obligations, and sold at public sale, either by negotiated sale or by competitive bid, in one or more series as determined by the Finance Director in consultation with the county's financial advisors, and

WHEREAS, the Finance Director has determined that a series of such bonds, to be designated as the county's Limited Tax General Obligation Refunding Bonds, 2012, Series D (Federally Tax-Exempt Qualified 501(c)(3) Bonds), in the aggregate principal amount of \$41,810,000 (the "Bonds"), shall be issued as Tax-Exempt Obligations that are Qualified 501(c)(3) Bonds and sold to obtain funds to undertake the Patricia Steel Building Project and to pay the costs and expenses incurred in issuing the Bonds, all as provided herein, and

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

WHEREAS, a preliminary official statement dated October 22, 2012, as amended by an errata notice

dated October 25, 2012, and by an addendum dated November 2, 2012, has been prepared for the public sale of the Bonds, the amended and restated official notice of such sale dated November 2, 2012 (the "Notice"), has been duly published, and bids have been received in accordance with the Notice, and

WHEREAS, the attached bid of R.W. Baird & Co., Inc., to purchase the Bonds is the best bid received for the Bonds, and it is in the best interest of the county that the Bonds be sold to R.W. Baird & Co., Inc., on the terms set forth in the Notice, the attached bid, the 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 Ordinance.

B. Ratification of Notice of Sale, Acceptance of Bids, and Authorization of Bonds. The issuance of the Bonds, designated as the county's Limited Tax General Obligation Refunding Bonds, 2012, Series D (Federally Tax-Exempt Qualified 501(c)(3) Bonds), in the aggregate principal amount of \$41,810,000, to obtain funds to undertake the Patricia Steel Building Project and to pay the costs and expenses incurred in issuing the Bonds, and the other terms and conditions thereof set forth in the Notice attached hereto as Attachment A, are hereby ratified and confirmed. The offer to purchase the Bonds, as set forth in the bid of R.W. Baird & Co., Inc., attached hereto as Attachment B; provided, that such bid has been adjusted with respect to the aggregate principal amount and principal amount per maturity consistent with the terms of the Notice, such that the Bonds will mature on the dates and in the amounts, shall bear interest at the rates, and shall be sold at the purchase price specified in Attachment C. 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 be issued as Tax-Exempt Obligations that are Qualified 501(c)(3) Bonds, each as defined in the Ordinance. In all other respects, the Bonds shall conform to the terms and conditions specified in the Notice and the Ordinance.

C. Application of Bond Proceeds; Refunding of BOP Bonds.

1. Application of Bond Proceeds. All of the net proceeds of the Bonds shall be applied, together with

other funds currently held by The Bank of New York Mellon Trust Company, N.A., in its capacity as successor trustee (the "Trustee") for the Broadway Office Properties ("BOP") Lease Revenue Bonds (King County, Washington Project), 2002 (the "BOP Bonds") under the Indenture of Trust (the "Indenture"), dated as of November 1, 2002, between BOP and the Trustee, to (a) the refunding and defeasance of the outstanding BOP Bonds by providing for the payment of the principal of and the interest on the BOP Bonds that will become due and payable on or before December 1, 2012 (the "BOP Bond Redemption Date"), and the redemption price of the BOP Bonds that will be called for redemption on the BOP Bond Redemption Date; and (b) the payment of the costs incurred in issuing the Bonds and related expenses.

2. Plan of Refunding. The proper county officials are authorized to carry out the refunding plan in accordance with Section 11 of the Ordinance. The amounts, maturities and redemption dates of the BOP Bonds shall be as identified in Attachment D to this motion. The amount of the initial cash balance to be deposited and held uninvested in the Escrow Account to accomplish the refunding of the BOP Bonds shall be as identified in Attachment E to this motion; no Government Obligations shall be purchased.

3. Escrow Agent. The selection of The Bank of New York Mellon Trust Company, N.A., as Escrow Agent for the refunding of the BOP Bonds is hereby ratified and confirmed.

4. Finding of Savings and Defeasance. The county council finds and determines that the issuance and sale of the Bonds will effect a savings to the county. In making such finding and determination, the county council has given consideration to the fixed maturities of the Bonds and the BOP Bonds, the rental payments payable by the county under the Lease that secures the BOP Bonds and the costs of issuance and sale of the Bonds. The county council further finds and determines that the initial cash balance to be deposited with the Escrow Agent will be sufficient to defease and redeem the BOP Bonds and will discharge and satisfy the obligations of BOP under the Indenture and the obligations of the county under the Lease, and the pledges of the county set forth in the Lease.

D. Undertaking to Provide Ongoing Disclosure.

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

2. Financial Statements/Operating Data. The county agrees to provide or cause to be provided to the Municipal Securities Rulemaking Board (the "MSRB") the following annual financial information and operating data for the prior fiscal year (commencing in 2013 for the fiscal year ended December 31, 2012):

(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 attached to the official statement as "Appendix B," 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 statements.

Such annual information and operating data described above shall be provided on or before the end of 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 the MSRB. In lieu of providing such annual financial information and operating data, the county may make specific cross-reference to other documents available to the public on the MSRB's internet web site or filed with the SEC.

If not provided as part of the annual financial information discussed above, the county shall provide to the MSRB the county's audited annual financial statements prepared in accordance with BARS when and if available.

3. Specified Events. The county agrees to provide or cause to be provided, in a timely manner not in excess of ten business days after the occurrence of the event, to the MSRB, notice of the occurrence of any of the following specified events with respect to the Bonds:

- (a) principal and interest payment delinquencies;
- (b) non-payment related defaults, if material;
- (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, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (g) modifications to rights of Bondholders, if material;
- (h) Bond calls, if material, and tender offers;
- (i) defeasances;
- (j) release, substitution or sale of property securing repayment of the Bonds, if material;
- (k) rating changes;
- (l) bankruptcy, insolvency, receivership, or similar event of the county;
- (m) the consummation of a merger, consolidation or acquisition involving the county or the sale of all or substantially all of the assets of the county, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any

such actions, other than pursuant to its terms, if material; and

(n) appointment of a successor or additional trustee or the change of name of a trustee, if material.

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

4. Notification Upon Failure to Provide Financial Data. The county agrees to provide or cause to be provided to the MSRB, in a timely manner, 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. Electronic Format; Identifying Information. The county agrees that all documents provided to the MSRB pursuant to the Undertaking shall be provided in an electronic format and accompanied by such identifying information, each as prescribed by the MSRB.

6. Termination/Modification. The county's obligations to provide annual financial information and notices of specified events shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. The Undertaking, 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 the Undertaking, or any such provision, are invalid, have been repealed retroactively or otherwise do not apply to the Bonds; and (ii) notifies the MSRB of such opinion and the cancellation of the Undertaking.

Notwithstanding any other provision of this motion, the county may amend the Undertaking, and any provision of the Undertaking 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 the Undertaking, 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 specified 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.

7. Bond Owners' Remedies Under the Undertaking. The right of any Bond owner or beneficial owner of Bonds to enforce the provisions of the Undertaking 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 the Undertaking shall not be an event of default with respect to the Bonds. For purposes of the Undertaking, "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.

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

F. 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.