



ADD ON

AGENDA	
Section	New Business
Item No.	VI C 2

Meeting Date
March 17, 2015

**AGENDA REPORT**  
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	DIRECTION FOR PROCUREMENT OF BOND COUNSEL SERVICES
DEPT/OFFICE:	Central Services Department

**Requested Action:**  
 The Board of County Commissioners is requested to provide direction for procurement of bond counsel services.

**Summary Explanation & Background:**

The County has had a contract with Nabors, Giblin & Nickerson, P.A. for bond counsel services since 2010. On May 27, 2014, the Board approved the last one year renewal of the contract commencing July 13, 2014 and terminating on July 15, 2015.

Expenditures for services are contingent upon bonding activity conducted by the County. Expenditures for the last three years are:

- FY 2014: \$70,463
- FY 2013 \$63,826
- FY 2012 \$112,163

The Board has several options to consider:

- 1) Ask Nabors, Giblin & Nickerson, P.A. to extend this existing contract for an additional year under the same terms, pricing and conditions; authorize Chair to execute such extension.
- 2) Go out for Request for Qualifications (RFQ) for bond counsel services and establish a Selection and Negotiating Committee, who will review, score, rank, negotiate and select firm. The Selection Committee and Negotiating Committees are recommended as follows: County Manager, County Finance Director, and the County Attorney, or designees.
- 3) Authorize option 1 and direct staff to prepare RFQ as provided for in option 2 for an effective term to begin July 15, 2016 and as provided for in the RFQ.

**Fiscal Impact:** Expenditures for services are contingent upon bonding activity conducted by the County.

**Contact:** Teresa Camarata, Central Services Director, 5-2543, [Teresa.Camarata@brevardcounty.us](mailto:Teresa.Camarata@brevardcounty.us)

**Clerk to the Board instruction:**

**Exhibits Attached:**

<b>Contract /Agreement (If attached):</b> Reviewed by County Attorney	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
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County Manager	Assistant County Manager, Mel Scott	Department Director / Extension Teresa Camarata, Central Services Director, ext. 52543 
Stockton Whitten	Assistant County Manager, Venetta Valdengo	



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972

July 17, 2015

MEMORANDUM

TO: Teresa Camarata, Central Services Director

RE: Item VI.C.2, Board Director for Procurement of Bond Counsel Services

**This is to correct the memorandum of March 18, 2015.** The Board of County Commissioners, in regular session on March 17, 2015, directed you to go out for Request for Qualifications (RFQ) for bond counsel services and establish a Selection and Negotiating Committee, who will review, score, rank, negotiate and select firm; recommendations for the Selection Committee and Negotiating Committees are as follows: County Manager, County Finance Director, and the County Attorney, or designees; **and allow the Chair the ability to act on the recommendation of the Selection Committee.**

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

/kg



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March 18, 2015

MEMORANDUM

TO: Teresa Camarata, Central Services Director

RE: Item VI.C.2, Board Director for Procurement of Bond Counsel Services

The Board of County Commissioners, in regular session on March 17, 2015, directed you to go out for Request for Qualifications (RFQ) for bond counsel services and establish a Selection and Negotiating Committee, who will review, score, rank, negotiate and select firm; and recommendations for the Selection Committee and Negotiating Committees are as follows: County Manager, County Finance Director, and the County Attorney, or designees.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

/kg

## BOND COUNSEL RETAINER AGREEMENT

THIS AGREEMENT is made as of the 15 day of July, 2015, by and between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA (the "County") and the law firm of NABORS, GIBLIN & NICKERSON, P.A., TAMPA, FLORIDA ("Bond Counsel").

### WITNESSETH:

WHEREAS, the County wishes to retain a firm to serve as Bond Counsel to the County in connection with various bond issues and other matters of the next ensuing three (3) years.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto do hereby agree as follows:

SECTION 1. AUTHORIZATION TO PROCEED AS BOND COUNSEL. Bond Counsel is hereby authorized to provide Bond Counsel services as described in this Agreement and for the professional fees described in this Agreement.

SECTION 2. BOND COUNSEL SERVICES. Bond Counsel hereby agrees to provide its professional services and facilities in connection with all bond issuance and other debt activities of the County subject to the conditions and in consideration of the payment of fees set forth herein. Bond Counsel agrees, at the request of the County, to:

2 .1 Review any proposed financing program and advise as to compliance with law and pending or proposed revisions in the law, including U.S. Treasury rules and regulations.

2 .2 Advise as to procedures, required approvals and filings, schedule of events for timely issuance, potential cost-savings techniques and other legal matters relative to issuance of the bonds, whether the financing is undertaken by competitive bid or negotiated sale.

2 .3 Attend all required meetings of the County and if a negotiated sale is undertaken, all meetings with representatives of the selected underwriters, when so requested.

2 .4 Prepare appropriate bond resolutions and any amendments thereto authorizing the issuance of the bonds and certificates.

2 .5 Prepare any trust indentures, escrow deposit agreements, trustee, registrar or paying agent agreements or similar documents necessary, related or incidental to the financing.

2.6 Prepare all pleadings for filing the validation proceedings, if any. Represent the County in validation proceedings in court through appeal, if any.

2.7 Review the transcript of all proceedings in connection with the foregoing item 2.6 and indicate any necessary corrective action.

2.8 If sale is by competitive bid, assist in preparation of the bid documents, notice of sale and any other documentation or action necessary to conduct a sale of the bonds in such manner.

2.9 Assist in the preparation of the preliminary official statement and official statement and prepare the award resolution and any amendments thereto for the sale of the bonds and review the bond purchase agreement.

In connection with the preparation of appropriate disclosure documents, the County agrees that, for each issue, it will cause the Underwriters to employ, or it will independently retain the services of, due diligence counsel to conduct the necessary due diligence for full disclosure with respect to the County, to prepare appropriate official statements and other disclosure documents in connection therewith, and to assist the County and the Underwriter in the compliance with federal and state securities laws, and that such counsel will render appropriate opinions as to the adequacy and completeness of information included in the offering documents relating to Bonds. Bond Counsel will opine on those portions of the Official Statement that purport to summarize the provisions of the Bonds and the applicable resolutions, as amended. Except as specifically described above, unless specifically employed by the County as Disclosure Counsel, Bond Counsel will not be asked to assume any responsibility for any disclosure contained in the Official Statement, nor will it assume any responsibility for compliance by the County or the Underwriters with respect to any federal or state statute, regulation or ruling governing the sale and distribution of securities.

2.10 Prepare (or review when prepared by others) closing papers necessary in connection with the sale and issuance of the bonds, including but not limited to, certified copies of all minutes, ordinances, resolutions and orders; certificates such as officer's seal, incumbency, signature, no prior pledge, arbitrage and others; and verifications, consents and opinions from accountants, engineers, special consultants and attorneys.

2.11 Prepare and deliver at closing a standard, comprehensive bond approving opinion which will, among other things, contain opinions as to the validity and enforceability of the bonds, the security therefor and the exclusion from gross income of the interest thereon for federal income tax purposes (subject to certain exceptions generally accepted in the industry). In connection with rendering such opinions, Bond Counsel may rely on the various certificates described above as to factual matters and may also rely on the opinions of counsel to the Issuer and others concerning the due adoption of various resolutions and the compliance with "public meeting" laws of the State of Florida and the accuracy of the information contained in IRS Form 8038 for the County as prepared by the County's certified public accountants.

In rendering its tax opinion, Bond Counsel will provide general instructions for compliance with the federal rebate laws. Bond Counsel will, at the specific request of the County from time to time pursuant to Section 4 below, undertake to advise the County with respect to ongoing compliance or calculations, or matters regarding changes in the law.

2.12 Assist with bond rating presentations.

2.13 Advise the County from time to time after closing with respect to interpretations of bond documents regarding bond issues for which Bond Counsel has previously rendered bond

approving opinions; provided that tax issues arising under such documents and not directly related to the original issuance shall be governed by Section 4.

2.14 For defeasance transactions, prepare necessary escrow deposit agreements, authorizing resolutions, forms of opinions and certifications; review financial plans and verification reports; and render customary defeasance and tax opinions relating to the defeased obligations.

2.15 Supervise and coordinate the closing of the bond issue in Florida.

2.16 Bond Counsel has not been engaged to, nor will it undertake to, review the financial condition of the County, any credit enhancement, the feasibility of any facilities being financed, or the financial or statistical information relating to, or sufficiency of, any security provided to the owners of the Bonds, and it will not be asked to express any opinion relating thereto. Similarly, bond counsel will not be engaged to, nor will it be responsible for, the examination or treatment of any issue under federal or state bankruptcy statutes regarding any payments made with respect to the Bonds.

SECTION 3. PROFESSIONAL FEES FOR BOND COUNSEL SERVICES. The County and Bond Counsel agree to the following schedule of fees in connection with bond counsel representation:

(A) BOND RELATED ISSUES:

<u>Amount of Issue</u>	<u>Fee</u>
<b>Up to \$10,000,000 Flat Fee</b>	<b>\$22,500.00</b>
<b>From \$10,000,000 to \$40,000,000 Fee per \$1,000</b>	<b>\$0.85 per bond</b>
<b>Over \$40,000,000 Fee per \$1,000</b>	<b>\$.60 per bond</b>

These fees apply to per transaction and all current bond issues initiated after July 15, 2015.

If two or more issues are closed simultaneously, Bond Counsel will discuss with the County appropriate fee adjustments to reflect time and cost savings, if any, realized by Bond Counsel over what would have been incurred had the issues closed at different times.

Except as otherwise provided herein, or as may otherwise be agreed for specific issues or types of issues, fees payable to Bond Counsel under this paragraph 3 shall be contingent on the delivery of the Bonds to which they pertain.

The fee schedule above does not include multi-modal lower floater programs. If the County chooses to implement such a program, fees will be negotiated at that time. The fee schedule above does not include fees for the validation, if any, of Bonds. Such fees will be

charged pursuant to Section 4 or as otherwise mutually agreed between the County and Bond Counsel.

SECTION 4. ANCILLARY SERVICES. In addition to being asked to perform typical Bond Counsel services in connection with various issues of the County as noted above, subsequent to bond issues, the County anticipates calling upon Bond Counsel for a variety of ancillary services relating, among other things, to negotiations with letter of credit providers, bond insurers, rating agencies and others, providing necessary legal opinions and interpretations of bond documents regarding bond issues for which Bond Counsel has not previously provided bond approving opinions, rendering advice on a variety of County issues that may or may not be directly related to the issuance of Bonds, preparing pleadings and litigating legal matters in relation to the above services and representing the County in court in these matters, if any. Bond Counsel agrees to undertake the representation of the County in all such matters requested of it, subject to certain limitations involving the ethics rules of the Florida and American Bar Associations, Brevard County Policy BCC-36 and other policy matters referred to in Schedule A attached hereto, which terms are incorporated herein by reference.

For all services performed by Bond Counsel under this Section 4, Bond Counsel shall be entitled to fees calculated in accordance with its normal hourly rates in effect from time to time. Bond Counsel shall charge a maximum flat fee of \$275.00 per hour for attorney time and a maximum flat fee of \$80.00 for paralegal time. Hourly rates for litigated matters (including consultation in contemplation of litigation) will be separately negotiated. At the request of the County, Bond Counsel will periodically provide budgets of work being performed on an hourly rate basis and will undertake to notify the County in the event it expects the fees charged in connection with such matters to exceed the budget therefor previously submitted to the County.

#### SECTION 5. PAYMENT FOR EXPENSES AND COSTS.

(A) Bond Counsel shall be entitled to receive from County reimbursement for out-of-pocket expenses reasonably and necessarily incurred by it in performance of its duties hereunder, subject to the following restrictions:

(i) Subject to the limitations in clause (ii) below, travel expenses and any lodging expense incurred in connection therewith must be approved in advance by County Attorney, in order to be subject to reimbursement by County; all statements for reimbursable expenses shall be supported by copies of hotel bills, airline tickets, restaurant receipts and such other supporting documentation as County may from time to time request; all reimbursement for air travel by Bond Counsel shall be based upon economy or coach airfare unless otherwise approved in advance by County; and any reimbursement for lodging shall be at rates not in excess of the standard prevailing rates for a hotel in the area in which such lodging is obtained.

(ii) Per diem and travel expenses incurred in fulfilling the Bond Counsel services outlined in Sections 2.1 through 2.16 above, shall be reimbursed at the rate provided for in Section 112.061, Florida Statutes, Brevard County AO-21 and BCC-29 as amended. Bond Counsel shall be reimbursed at the rate of \$.15 per copy for photocopies, subject to appropriate documentation. Payment for expenses listed in this Section shall not be contingent upon the successful closing of a particular bond issue.

(B) All statements for reimbursable expenses shall be submitted to the County on or before the 25th of each month and shall be paid by County within thirty-one (31) days after its receipt from Bond Counsel of an itemized statement therefor, with all appropriate receipts and supporting documents attached, unless within said thirty-one (31) day period County notifies Bond Counsel in writing of its objection to any items of expense. Such notice shall set forth the exact nature of County's objection, and shall be accompanied by County's payment of the undisputed portion of such statement. Any such dispute shall then be promptly resolved and settlement made by mutual agreement of the parties.

(C) Any payment under this Agreement which is not made when due in accordance with the requirement set forth above will bear interest until paid at the rate of 1% per month. Additionally, the County will be obligated to pay attorney's fees and costs if collection activities are necessary with respect to any unpaid statements.

SECTION 6. INDEMNIFICATION AND INSURANCE. Bond Counsel agrees to protect, defend, indemnify and hold the County and its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or due to any negligent act or omission of Bond Counsel, its employees, agents and subcontractors in connection with or arising directly or indirectly out of this Agreement and/or the performance hereof. Without limiting its liability under this Agreement, Bond Counsel shall procure and maintain during the life of this Agreement professional liability insurance in an amount in excess of \$1,000,000. This provision shall survive the termination of this Agreement.

SECTION 7. CONFLICT OF INTEREST. It is understood by the County and Bond Counsel that Bond Counsel is not aware of any clients of the firm that currently present any conflict between the interests of the County and other clients of Bond Counsel. If any conflict of interest arises during the time Bond Counsel is representing the County, the provisions of Schedule A attached hereto will control. It is the further intent of the parties that this Agreement shall not serve as a limitation or restriction on Bond Counsel in representing other clients, except to the extent that such other representations are limited or restricted by law or the ethical rules pertaining to attorneys.

SECTION 8. CONSTRUCTION AND AMENDMENTS. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. This Agreement may be amended only by a writing duly entered into by the County and Bond Counsel.

SECTION 9. TERM. This Agreement will be effective for three (3) years from the date of execution and may be extended for two one (1) year renewals following that upon written agreement by the Board of County Commissioners.


SECTION 10. TERMINATION. This Agreement may be terminated at the pleasure of either party upon thirty (30) days written notice. If the County elects to terminate this Agreement without cause, it shall pay Bond Counsel for work in progress at Bond Counsel's standard hourly rates plus expenses to the date of termination.

IN WITNESS WHEREOF, the County and Bond Counsel have executed this Agreement as of the date first written above.

ATTEST:

  
\_\_\_\_\_  
Scott Ellis, Clerk


BOARD OF COUNTY COMMISSIONERS OF  
BREVARD COUNTY, FLORIDA

By:   
\_\_\_\_\_  
Robin Fisher, Chairman

Date: JUL 22 2015

As approved by Board on March 17, 2015

BOND COUNSEL

By:   
\_\_\_\_\_  
Steven E. Miller, Shareolder

Date: July 16, 2015

Nabors, Giblin & Nickerson, P.A.  
2502 Rocky Point Drive, Suite 1060  
Tampa, FL 33607  
813/281-2222

ATTEST:

  
\_\_\_\_\_  
Eileen Gianfrancesco, Office Manager

Assistant County Attorney  
Sharon H. Hilton  
Reviewed for legal form and  
content:  
5/17/15