



Legislation Text

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Clerk 07/15/2003

A MOTION of the county accepting bids for the purchase of \$80,000,000 aggregate principal amount of the county's Limited Tax General Obligation Bond Anticipation Notes, 2003, Series A, and \$28,800,000 aggregate principal amount of the county's Limited Tax General Obligation Bond Anticipation Notes, 2003, Series B; fixing the interest rates and other terms of such Notes, all in accordance with Ordinance 14167, as amended by Ordinance 14463 and Ordinance 14745.

PREAMBLE:

Pursuant to Ordinance 14167, the county council authorized the issuance of one or more series of its limited tax general obligation bonds in an outstanding aggregate principal amount not to exceed \$125,000,000 to provide long-term financing for the Courthouse Seismic Project, the North Rehabilitation Facility Project and the Regional Communications and Emergency Control Center Project, each defined and described in Ordinance 14167, and further authorized the issuance and public sale of one or more series of its limited tax general obligation bond anticipation notes in an outstanding aggregate principal amount not to exceed \$125,000,000 to provide interim financing for such projects pending the issuance of the bonds.

Pursuant to Ordinance 14463, the county council amended Ordinance 14167 to revise the description of the North Rehabilitation Facility Project and to augment the projects authorized to be financed, on a long-term basis, by such bonds, and pending the sale of such bonds, on an interim basis, by such bond anticipation notes by the addition of the Courthouse Earthquake Repairs, all as defined and described in Ordinance 14463.

Pursuant to Ordinance 14745, the county council amended Ordinance 14167, as previously amended by Ordinance 14463, to add the Integrated Security and Jail Health Remodel Project to the list of projects that are authorized to be financed, on a long-term basis, by such bonds, and pending the sale of such bonds, on an interim basis, by such bond anticipation notes, and that the maximum outstanding aggregate principal amount of such bonds and bond anticipation notes be increased to \$145,000,000 as a result; and also to amend certain provisions of Ordinance 14167, as previously amended by Ordinance 14463 (as so amended, the "Note Ordinance"), pertaining to such bonds and bond anticipation notes.

The Note Ordinance provided that such bond anticipation notes may be sold in one or more

series at public sale as determined by the Finance Director.

The Finance Director has determined that two series of such bond anticipation notes, to be designated as the county's Limited Tax General Obligation Bond Anticipation Notes, 2003, Series A, in the aggregate principal amount of \$80,000,000 (the "2003A Notes"), and the county's Limited Tax General Obligation Bond Anticipation Notes, 2003, Series B, in the aggregate principal amount of \$28,800,000 (the "2003B Notes" and, together with the 2003A Notes, the "Notes"), be sold as provided herein.

None of such bonds are currently outstanding, but \$85,000,000 in aggregate principal amount of such bond anticipation notes are currently outstanding, all of which will be repaid and retired with proceeds of the Notes. The aggregate principal amount of all such bond anticipation notes to be outstanding on the date of issuance of the Notes will be \$108,800,000, which amount does not exceed the remainder of \$145,000,000 less the aggregate principal amount of all such bonds to be outstanding on the date of issuance of the Notes.

Pursuant to the Note Ordinance, a preliminary official statement dated September 5, 2003 has been prepared for the public sale of the Notes, the official Notice of such sale (the "Notice") has been duly published, and bids have been received in accordance with the Notice.

The attached bid of Banc of America Securities LLC to purchase the 2003A Notes is the best bid received for such 2003A Notes, and it is in the best interest of the county that such 2003A Notes be sold to Banc of America Securities LLC on the terms set forth in the Notice, the attached bid, the Note Ordinance and this motion.

The attached bid of Lehman Brothers to purchase the 2003B Notes is the best bid received for such 2003B Notes, and it is in the best interest of the county that such 2003B Notes be sold to Lehman Brothers on the terms set forth in the Notice, the attached bid, the Note 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 Note Ordinance.

B. Ratification of Notice of Sale, Acceptance of Bids, and Authorization of Notes. The issuance of the 2003A Notes, designated as the county's Limited Tax General Obligation Bond Anticipation Notes, 2003, Series A, in the aggregate principal amount of \$80,000,000 and the terms and conditions thereof set forth in the Notice, attached hereto as Exhibit A, are hereby ratified and confirmed, and the offer to purchase the 2003A Notes, as set forth in the bid of Banc of America Securities LLC attached hereto as Exhibit B, are hereby accepted. The 2003A Notes shall be dated October 1, 2003, and shall mature on October 1, 2004. The 2003A

Notes shall bear interest at the rates and payable on the dates set forth on Exhibit B. The 2003A Notes shall not be subject to redemption. The 2003A Notes shall conform in all other respects to the terms and conditions specified in the Notice and Note Ordinance.

The issuance of the 2003B Notes, designated as the county's Limited Tax General Obligation Bond Anticipation Notes, 2003, Series B, in the aggregate principal amount of \$28,800,000 and the terms and conditions thereof set forth in the Notice are hereby ratified and confirmed, and the offer to purchase the 2003B Notes, as set forth in the bid of Lehman Brothers attached hereto as Exhibit C, are hereby accepted. The 2003B Notes shall be dated October 1, 2003, and shall mature on November 1, 2003. The 2003B Notes shall bear interest at the rates and payable on the dates set forth on Exhibit C. The 2003B Notes shall not be subject to redemption. The 2003B Notes shall conform in all other respects to the terms and conditions specified in the Notice and Note Ordinance.

C. Undertaking to Provide Ongoing Disclosure.

1. Contract/Undertaking. This section C constitutes the county's written undertaking for the benefit of the owners and beneficial owners of the Notes 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 2004 for the fiscal year ended December 31, 2003):

(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 2002 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 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 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 Notes, 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 Notes;
- (g) modifications to rights of Noteholders;
- (h) optional, contingent or unscheduled calls of any Notes 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 Notes; 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 Notes and no property secures repayment of the Notes.

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 Notes. 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 Notes; 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 C, and any provision of this section C 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 C, 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. Note Owner's Remedies Under This Section. The right of any Note owner or beneficial owner of Notes 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 Notes. 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 Notes, including persons holding Notes through nominees or depositories.

D. 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 Notes and for the proper use and application of the proceeds of such sale.

E. Severability. The covenants contained in this motion shall constitute a contract between the

county and the owners of each and every Note. 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 Notes.