


# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

**TO:** Central Florida Expressway Authority Board

**FROM:**  Joseph L. Passiatore, General Counsel

**DATE:** December 3, 2014

**SUBJECT:** Issuer's Bond Counsel – RFP 001046

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CFX recently issued Request for Proposals 001046 to all firms interested in serving as Issuer's Counsel on future CFX bond transactions. The current contract with Shutts & Bowen, LLP expires on December 31, 2014. The law firms of Nabors, Giblin & Nickerson, P.A. and Shutts & Bowen, LLP submitted proposals in response to the RFP.

The technical evaluation committee ranked the firm of Nabors, Giblin & Nickerson, P.A. first and Shutts & Bowen second (see attached minutes). The RFP provided however, that the same firm could not serve as both Disclosure and Issuer's Counsel. Therefore, since Nabors, Giblin & Nickerson was also ranked first for Disclosure Counsel the committee recommended that subject to successful fee negotiations, the Board should award the Disclosure Counsel contract to Nabors, Giblin & Nickerson and then negotiate with Shutts & Bowen on the Issuer's Counsel contract.

The scope of services for Issuer's Counsel is attached. Also attached is a summary of all bond counsel fees paid by the Authority over the past five years. The question has been raised as to the necessity of hiring outside Issuer's Counsel when the Authority already has Bond Counsel to provide the tax exempt determination and Disclosure Counsel to prepare the official statement and file material events notices with the Securities Exchange Commission. In addition, the recent hiring of in house Deputy General Counsel could provide additional legal support on future CFX financial transactions.

At this time the Board would appear to have the following three options with respect to this RFP:

- (1) Proceed with hiring outside Issuer's Counsel and to follow the recommendation of the technical committee;
- (2) Discontinue the RFP and instruct the General Counsel's office to fill the role of Issuer's Counsel with the understanding that it may hire public finance legal counsel to assist on an as needed basis;
- (3) Discontinue the RFP and instruct Procurement to issue a new solicitation.

JLP/ml  
Attachments

cc: Claude Miller  
Lisa Lumbard  
Laura Kelley

**RFP-001046 / RFP-001057 Committee Meeting November 24, 2014 Minutes**

Technical Review Committee for **Issuer's Counsel, 001046, and Disclosure Counsel, 001057**, held a duly noticed meeting on Monday, November 24, 2014, commencing at 9:06 a.m. in the Pelican Conference Room at the CFX Administrative Bldg., Orlando, Florida.

**Committee Members Present:**

Joe Passiatore, General Counsel, CFX  
Lisa Lombard, Interim CFO, CFX  
Sandy Minkoff, General Counsel, Lake County  
Chris McCullion, Treasurer, City of Orlando

**Other Attendees:**

Robert Johnson, Manager of Procurement, CFX

**Discussion and Motions:**

Robert commenced the meeting explaining the RFP process and the purpose of today's meeting was to conduct interviews, and make a final recommendation to the Board with regard to Disclosure Counsel and Issuers Counsel.

**Interviews:**

Robert commenced each of the interviews with an outline of the interview process. Robert stated the interview portion of the meeting is closed to the public and is being recorded in accordance with Florida Statute.

**Disclosure Counsel**

Greenberg, Traurig PA	09:07 a.m. – 09:38 a.m.
Nabors, Giblin and Nickerson	09:44 a.m. – 10:10 a.m.
Squire Patton Boggs (US) LLP	10:20 a.m. – 10:46 a.m.

**Issuers Counsel**

Nabors, Giblin and Nickerson	10:56 a.m. – 11:21 a.m.
Shutts & Bowen LLP	11:34 a.m. – 12:03 p.m.

**Evaluation Portion:**

Robert stated the evaluation portion of the meeting is open to the public in accordance with Florida Statute. The committee members were given the opportunity to discuss the technical and interviews prior to submitting their evaluation forms. Joe Passiatore requested the attached fees paid to Bond, Disclosure, and Issuer's Counsel over the past 5 years be added to the minutes. General Discussion ensued about Issuer's Counsel and the role they play. The committee members individually scored the interviews and submitted them to Robert for tallying.

Robert Johnson tallied the score sheets utilizing the raw scores assigned by each committee member and averaged the raw scores for each Proposal received. Attached are the individual score and summary results.

<u>FIRM</u>	<u>Issuers Counsel</u>	<u>Points</u>
Nabors, Giblin and Nickerson		92.5
Shutts & Bowen LLP		85.0


<u>FIRM</u>	<u>Disclosure Counsel</u>	<u>Points</u>
Nabors, Giblin and Nickerson		94.5
Squire Patton Boggs (US) LLP		92.0
Greenberg, Traurig PA		91.75

Joe Passiatore made a motion to approve the rankings and recommend Board authorization to negotiate with Nabors, Giblin and Nickerson on the Disclosure Counsel contract. In the event negotiations are unsuccessful, then staff would negotiate with the second ranked firm of Squire Patton Boggs (US) LLP. In the event negotiations are unsuccessful, then staff would negotiate with the third ranked firm of Greenberg, Traurig PA. Further, in the event Nabors, Giblin and Nickerson is not awarded the Disclosure Counsel contract, staff will next negotiate with Nabors, Giblin and Nickerson on the Issuer's Counsel contract. If Nabors, Giblin and Nickerson is awarded the Disclosure Counsel contract, staff will negotiate with Shutts & Bowen LLP, for the Issuer's Counsel contract due to the fact that one firm cannot be awarded both contracts. Lisa seconded the motion and the Committee unanimously agreed.

They're being no other business to come before the Committee; the meeting was adjourned at 12:53p.m.

These minutes are considered to be the official minutes of the Evaluation Committee meeting held Monday, November 24, 2014, and no other notes, tapes, etc., taken by anyone takes precedence.

Submitted by:   
Robert Johnson

Approved by:   
Joe Passiatore

**EXHIBIT “A”**  
**SCOPE OF SERVICES for ISSUER’S COUNSEL SERVICES**

The firm selected will be required to perform all services and duties customarily and usually performed by Issuer’s Counsel. Services to be performed by Issuer’s Counsel may include, but are not limited to, the following:

A. Services Relative to Primary Debt Offerings:

1. Serve as a member of the Authority’s financing team;
2. Assist the financing team in determining the information and specific language to be included in the Official Statement for bond and/or note issuances;
3. Render appropriate opinions as to the adequacy and completeness of information included in the offering documents relating to Authority financings;
4. Assist the Authority in complying with Federal and State regulatory agencies’ laws and regulations;
5. Review of primary financing documents, as applicable, including but not limited to:
  - a. Authority resolution(s)
  - b. Offering documents
  - c. Engineering and traffic reports
  - d. Financial statements
  - e. Escrow documents
  - f. Credit support or enhancement documents
  - g. Continuing disclosure undertaking
  - h. Swap documents
  - i. Counsel opinions
  - j. Closing documents

B. Due diligence review of Authority disclosures in offering documents.

C. Review and commenting on the Bond Purchase Agreement between the Authority and the Underwriters.

D. Services relative to providing general advice and consultation to the Authority and its financing team related to disclosure issues.

E. Such additional matters as the Authority may from time to time direct Issuer’s Counsel to undertake.

The Authority separately selects other financing team members, including Bond Counsel and Disclosure Counsel. The Authority may adjust the responsibilities and assignments of the financing team members in order to best utilize, in the Authority’s judgment, the expertise of its various financing team members.

	Bond Transactions	Expenses and Hourly Fees	Total
Bond Counsel	\$ 1,168,659.00	\$ 114,864.19	\$ 1,283,523.19
Disclosure Counsel	\$ 779,463.90	\$ 65,708.55	\$ 845,172.45
Issuer's Counsel	\$ 870,484.78	\$ 50,655.72	\$ 921,140.50

\$ 1,437,860,000 Revenue Bonds  
 \$ 166,185,000 Bank Loans  
 Legislative Issues  
 SEC Initiative  
 IRS Audit