

Erie County Fiscal Stability Authority

Resolution No. 08-109

ESTABLISHING A PROCEDURE FOR SELECTING AN UNDERWRITER FOR ECFSA FINANCING

WHEREAS, Chapter 182 of the New York Laws of 2005 created the Erie County Fiscal Stability Authority (“ECFSA”) to serve as a corporate governmental agency and instrumentality of the State of New York, and as a public benefit corporation to “oversee [Erie] County’s budget, financial and capital plans; to issue bonds, notes or other obligations to achieve budgetary savings and to finance short-term cash flow or capital needs; and, if necessary, to develop financial plans on behalf of the County if the County is unwilling or unable to take the required steps toward fiscal stability;” and

WHEREAS, Section 3954(4) of New York Public Authorities Law grants the ECFSA the power to make and execute contracts or agreements necessary or convenient to carry out its purposes; and

WHEREAS, in adopting Resolution 07-99 on October 22, 2007, the ECFSA pre-qualified several firms to serve as Senior Managing Underwriter and/or Co-managing Underwriter for ECFSA financing on an as-needed basis through October 22, 2008; and

WHEREAS, on November 2, 2008, the ECFSA adopted another resolution extending the term of this pre-qualification through December 31, 2008; and

WHEREAS, the ECFSA has issued a Request for Proposals for firms to serve as Senior Managing Underwriter and/or Co-managing Underwriter for the ECFSA’s financing program for one year, lasting from November 1, 2008, through October 31, 2009, or for just over three years, lasting from October 1, 2008, through October 31, 2011 (the “RFP”); and

WHEREAS, this RFP requested the submission of any proposals no later than October 17, 2008; and

WHEREAS, this ECFSA issued this RFP prior to reaching an agreement with Erie County (the “County”) concerning the particular terms of ECFSA financing to subsidize the County’s capital projects; and

WHEREAS, only one firm, Merrill Lynch, responded to this RFP; and

WHEREAS, on December 15, 2008, the ECFSA rejected Merrill Lynch’s bid, thereby requiring the ECFSA to seek new underwriters for any financing that it shall undertake on the County’s behalf in 2009; and

WHEREAS, pursuant to Public Authorities Law section 2879, the ECFSA has adopted Procurement Guidelines to establish a procedure for purchasing goods and retaining professional services; and

WHEREAS, Public Authorities Law section 2879(3) requires the ECFSA to select contractors on a competitive basis, but authorizes the ECFSA to waive such competition by resolution as necessary; and

WHEREAS, section 401 of the ECFSA's Procurement Guidelines establishes a procedure for selecting firms to provide professional services, unless that procedure is "specifically waived;" and

WHEREAS, pursuant to section 404 of the Procurement Guidelines, the ECFSA may waive such procedure when, inter alia, "[e]mergency or other extraordinary circumstances exist which make competition impracticable or inappropriate;" and

WHEREAS, the American economic downturn that intensified in the last quarter of 2008 is likely to continue through 2009; and

WHEREAS, this downturn has contributed to increased volatility in the capital markets; and

WHEREAS, the ECFSA has yet to reach agreement with the County with regard to the terms of any financing that the ECFSA might undertake to fund the County's capital projects; and

WHEREAS, in the absence of such an agreement, the ECFSA cannot offer specific terms of the financing to potential underwriters, which in turn cannot provide a precise quote on the cost of their services; and

WHEREAS, the ECFSA must promptly select an underwriter for any financing of the County's capital projects on the best terms then available once the ECFSA and the County agree to the financing's terms; and

WHEREAS, because time will be of the essence under these extraordinary circumstances, the ECFSA's utilization of the procedure in section 401 of its Procurement Guidelines with regard to selecting an underwriter would be impracticable;

NOW, THEREFORE, BE IT RESOLVED that the ECFSA hereby waives section 401 of its Procurement Guidelines with respect to the limited circumstance of retaining underwriter(s) for any financing of the County's capital projects in calendar year 2009; and

BE IT FURTHER RESOLVED that the ECFSA in 2009 shall select in its best business judgment firm(s) able to perform underwriting services as necessary at a cost that is fair, reasonable, and most advantageous at the time when such services may become necessary.

This resolution shall take effect immediately.

Stanley J. Keysa
Secretary

Date: December 15, 2008