



**Erie County Industrial Development Agency and Affiliates
Buffalo Urban Development Corporation and Affiliates
Western Region Corporation**

*Joint Request for Proposals
For Professional Auditing Services*

*Issued: July 18, 2017
Questions/Pre-submittal Protests Due: July 28, 2017
Required Submission: Five (5) Copies of Response (including Attachments
A - C)
Due: August 25, 2017, 4pm (EDT)*

I. INTRODUCTION

A. Request for Proposals (RFP)

The Erie County Industrial Development Agency and its affiliated corporations (“ECIDA Group”), the Buffalo Urban Development Corporation and its affiliated corporations (“BUDC Group”) and Western Region Corporation (“WRC”) are requesting a joint proposal for professional auditing services for two (2) calendar years from January 1, 2017 to December 31, 2018, with an option of auditing its financial statements for the subsequent three (3) calendar years. In accordance with the ECIDA’s professional services RFP process, these services are to be rebid at least every five (5) years.

Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the ECIDA and the firm selected.

There is no expressed or implied obligation for the ECIDA to reimburse responding firms for any expenses incurred in preparing proposals in response to this request.

B. Current CPA Firm

The above audit services have recently been provided by Lumsden & McCormick, LLP for all companies. In preparing your proposal, be advised that ECIDA management will give permission to contact the prior auditors.

C. Designated Individuals – Procurement Lobbying Law

| | | |
|---------------|-------------------|---------------------|
| Mollie Profic | Controller | mprofic@ecidany.com |
| Bradley Bach | Senior Accountant | bbach@ecidany.com |

D. Questions

Any questions, objections or requests for revisions to this RFP must be submitted in writing via email to the Designated Staff identified in Section C above and received no later than July 28, 2017. All questions will be answered in writing within three (3) business days and copies of the questions and answers will be distributed to all RFP recipients and posted online simultaneously.

E. Protests

Pre-Submittal Protest

If a firm can demonstrate that the RFP issued by the ECIDA Group, BUDC Group and WRC is unduly exclusionary and restrictive or that federal, state or local laws or regulations have been violated during the course of the procurement, then the firm may seek a review by the Chair of the ECIDA Governance Committee at 95 Perry Street, Suite 403, Buffalo, NY 14203. Protests shall be clearly identified as Protests and submitted in writing as early as possible, but no later than July 28, 2017.

Post-Submittal Protest

A protest regarding the acceptance or rejection of any or of all responses for a contract, or to the award thereof, or to any such action proposed or intended by the ECIDA Group, BUDC Group and WRC must

be received in writing by the Chair of the ECIDA Governance Committee no later than five (5) business days after the protesting party first learned, or reasonably ought to have learned, of the action or the proposed or intended action to which he/she protests.

Protest Procedure

In the event of a Protest, the Chair of the ECIDA Governance Committee will make a determination regarding the Protest and communicate a response in writing to the Protester and if applicable, other interested parties. If an amendment to the RFP is deemed to be necessary, all RFP recipients will be provided the amended RFP simultaneously.

In the event of an absence or vacancy in the ECIDA Governance Committee Chair position, the pre-submittal and/or post-submittal protest responses will be conducted by the Chair or Vice-Chair of the ECIDA Board of Directors.

DESCRIPTION OF THE AGENCY

Background Information

The Erie County Industrial Development Agency (“ECIDA”) is a public benefit corporation created in 1970 by an act of the New York State Legislature. The mission of the ECIDA is to provide the resources that encourage investment, innovation, and international trade - creating a successful business climate that improves the quality of life for the residents of the region.

The ECIDA has a related party relationship with the Buffalo and Erie County Regional Development Corporation (“RDC”) and the Buffalo and Erie County Industrial Land Development Corporation (“ILDC”). The same personnel manage all three entities. The ECIDA and RDC share the same board of directors as their oversight body while ILDC has a subset of these directors as its board of directors.

The mission of Buffalo Urban Development Corporation (“BUDC”) is to support the urban economic development efforts of the region through acquisition, remediation and management of distressed properties, and to engage in related real estate development activities for the purpose of attracting and/or retaining new and existing businesses to the City as part of the region. The mission of BUDC also includes supporting the revitalization of downtown Buffalo by serving as the lead management entity for Buffalo Building Reuse Project (“BBRP”) initiatives, working in collaboration with the City of Buffalo; including the coordination of financial assistance for downtown adaptive re-use projects and public right-of-way improvements.

The ECIDA provides financial management services to BUDC, the Buffalo Brownfield Restoration Corporation (“BBRC”) and the Western Region Corporation (“WRC”) which operate independently of the ECIDA.

See Exhibit A for Corporate Charts for the ECIDA and BUDC’s affiliated and unrelated entities and their relationship.

The Board of Directors of the ECIDA is set forth by the New York State Legislature to include senior representatives from the local political, business, minority, union and school communities. A schedule listing the ECIDA and BUDC Board of Directors is included in Exhibit B.

The Joint Finance and Audit Committee of the ECIDA, RDC and ILDC currently includes:

1. Michael Szukala (Chair)
2. Penny Beckwith
3. James Doherty
4. Hon. Joseph Emminger
5. Glenn Nellis
6. Sr. Denise Roche
7. William Witzleben

The Audit and Finance Committee of BUDC currently includes:

1. Dennis Penman (Chair)
2. Thomas Beauford, Jr.
3. James Comerford
4. Janique Curry
5. David Nasca

II. NATURE OF SERVICES REQUIRED

A. General

The following audit & taxation services are required to be performed under this joint request for proposal:

| Company/Fund | Nature of Company | Audit & Tax Services Required |
|--|--|---|
| 1) ECIDA | Government (ECIDA is a Public Benefit Corporation and a political subdivision of the State of New York) providing tax incentive products. Recipient of NYS DOT Passenger & Freight Rail Assistance Program and IAP grants, EDA grants, NYS and Erie County other grants. Includes UDAG (HUD) fund. | a) Audit of Financial Statements* b) Audit of Financial Statements including Supplemental Project Information (covering ECIDA Bond and tax incentive projects, Leases and Indebtedness) as required by the Office of the State Comptroller and Authority Budget Office c) Audit of Internal Controls d) Audit of compliance with Investment Guidelines |
| 2) RDC | Not-for-profit 501(c)(3). Revolving loan program comprised primarily of EDA grant monies. | Audit of Financial Statements*, Internal Controls, Investment Guidelines Audit & preparation of Federal and New York State not-for-profit returns |
| 3) ILDC | Not-for-profit 501(c)(3). Component unit of Erie County – participates in acquisition and development of industrial sites, revolving loan program comprised primarily of the Erie County BDF (HUD) Loan Fund, issuer of tax-exempt bonds. | Audit of Financial Statements*, Internal Controls, Investment Guidelines Audit & preparation of Federal and New York State not-for-profit returns |
| 4) BUDC | Not-for-profit 501(c)(3). Brownfield Redevelopment Corporation and a recipient of development grants (National Grid, ESDC & others), constructing WNY Workforce Training Center on behalf of NYS, owns & operates Buffalo Lakeside Commerce Park | Audit of Financial Statements*, Internal Controls, Investment Guidelines Audit & preparation of Federal and New York State not-for-profit returns |
| 5) WRC | Not-for-profit 501(c)(3). Operates a revolving loan program (ESDC) | Audit of Financial Statements & preparation of Federal and New York State not-for-profit returns |
| 6) Buffalo Brownfields Redevelopment Fund | Fund within ECIDA | Audit of Fund Financial Statements |
| 7) Buffalo Brownfield Restoration Corporation | Not-for-profit 501(c)(3) | Preparation of Federal and New York State not-for-profit returns |
| 8) Riverbend, LLC, Buffalo Lakeside Commerce Park I, LLC, and BBRC Land Company I, LLC | Real estate holding LLCs (BBRC Land Company I, LLC is currently inactive) | Preparation of LLC tax returns will be needed if there is activity in these LLCs during a calendar year (returns have not been necessary for at least 2 years) |
| 9) 683 WTC, LLC and 683 Northland LLC | Special purpose LLCs created to garner Federal and NYS tax credits | N/A – required services are contracted as part of an overall tax credit consulting proposal |

| | | |
|---|---|-----------------|
| | in connection with WNY WTC project being administered by BUDC | awarded in 2016 |
| 10) Single Audit covering RDC and BUDC's Federal award expenditures. RDC will require a Single Audit each year. BUDC will require a Single Audit for 2017, uncertain of future years at this point. | | |

* These financial statements are currently available on the ECIDA's website at www.ecidany.com or BUDC's website at www.buffalourbandevelopment.com. **ECIDA Financial Statements including the Audit of Supplemental Information on Bond Notes and Straight Leases, Buffalo Brownfield's Redevelopment Fund and the Single Audit report will be provided upon request.**

See Exhibit A for a Corporate Chart which includes the above corporations as well as two corporations (BBRC & BBRC Land Company I) which are not currently audited due to limited activity.

B. Auditing Standards to be Followed

To meet the requirements of this request for proposals, the audit shall be performed in accordance with generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants, the standards set forth for financial audits in the U.S. Government Accountability Office's (GAO) *Government Auditing Standards*, the provisions of the Single Audit Act Amendments of 1996, and the audit requirements of Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

C. Working Paper Retention and Access to Working Papers

All working papers and reports must be retained, at the auditor's expense, for a minimum of six (6) years, unless the firm is notified in writing by the ECIDA Group of the need to extend the retention period. The auditor may be required to make working papers available, upon request, to the following parties or their designees: U.S. Department of Housing and Urban Development (HUD); U.S. Department of Commerce / Economic Development Administration (EDA); U.S. General Accounting Office (GAO); New York State Office of the State Comptroller; New York State Authorities Budget Office; Auditors of entities of which the ECIDA is a subrecipient of grant funds; and other parties as deemed appropriate or necessary by the ECIDA.

In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

D. Insurance Requirements

Firms selected under this request for proposal will be required to maintain workers' compensation and liability insurance naming the ECIDA and BUDC as an additional insured.

III. TIME REQUIREMENTS

A. Proposal Calendar

The following is a list of key dates up to and including the date proposals are due to be submitted:

| | |
|--------------------------------|---------------------------|
| Requests for proposals issued | July 18, 2017 |
| Questions submitted in writing | July 28, 2017 |
| Due date for proposals | August 25, 2017 (4PM) EDT |

B. Notification Dates

| | |
|---|--------------------|
| Selected audit firm expected to be notified | September 26, 2017 |
|---|--------------------|

C. Date Audit May Commence

The ECIDA will have the majority of records and working papers ready for audit on or around January 15th.

D. Final Audited Financial Statements Due Dates

| Final Audited Financial Statements | Due Date (2017-2021) |
|---|----------------------------|
| ECIDA (excluding Supplemental Information), RDC, ILDC, BUDC, Buffalo Brownfields Redevelopment Fund | March 31 st * |
| ECIDA (including Supplemental Information), WRC | April 30 th ** |
| ECIDA Single Audit | September 30 th |

* Draft financial statements are required by the first week of March in order to comply with the Public Authorities Accountability Act March 31 due date.

** ECIDA audited financial statements (including supplemental information) are due by April 30th in order to comply with Section 859 of General Municipal Law.

IV. ASSISTANCE TO BE PROVIDED TO THE AUDITOR AND REPORT PREPARATION

A. ECIDA Primary Contact

The auditors' principal contact with the ECIDA will be Mollie Profic, Controller, who will coordinate the assistance to be provided by the ECIDA to the auditor.

B. Finance Department and Clerical Assistance

Each year, the audit firm will be provided with detailed working papers for key financial accounts. The finance department staff and other personnel will be available during the audit to assist the firm with further information requests and explanations. The ECIDA can also assist with the preparation of audit confirmations.

C. Extent of Audit Adjusting Entries

Under the current finance staff, most financial statements have not required any adjusting journal entries other than standard entries for presentation purposes.

D. Financial Statement Preparation

Financial statement drafting, preparation, editing and printing shall be the responsibility of the auditor.

V. PROPOSAL REQUIREMENTS

A. Proposal Requirements

Each proposal should be no more than ten (10) pages in length (excluding items such as peer review report, cover letter, fee schedule) and include the following:

1. Qualifications and Experience of the Firm

- List the local firm's most significant engagements performed in the last five (5) years that are similar to the engagement described in this request for proposal.
- Indicate the breadth and depth of the firm's specialized resources for unique accounting or tax situations. Please indicate if you have had any previous experience with HUD, EDA, or tax credit programs such as New Markets Tax Credits or Brownfield Tax Credits.
- Indicate whether the firm has alliances or affiliations with other firms or organizations to share knowledge and resources.
- Indicate performance of local firm on the last peer review, including the nature of any letter of comments that were issued and the firm's response to the letter of comments.

2. Qualifications of Partner and Staff

- Identify the Partner, Manager and Senior Accountant who will be assigned to this engagement and provide biographies. Indicate any complaints against them that have been leveled by a state board of accountancy or other regulatory authority, if any. Indicate any corrective actions that have been taken by the firm with respect to these individuals.
- Provide the names and contact information for other, similar clients of the partner and/or manager who will be assigned to our organization, for reference purposes.

3. All-Inclusive Cost

Each firm submitting a proposal is requested to complete Exhibit C "Format for Schedule of Professional Fees & Expenses". This schedule should include all costs to perform the audit, tax and compilation engagements as described in this Request for Proposal. This schedule should also include all direct and indirect costs, including all out-of-pocket expenses (e.g. photocopying, travel, lodging, etc), if any, for each of the potential five (5) years of the engagement. It is important to remember that while price is a primary consideration, it will not be the sole factor in determining which firm will be awarded this audit contract. For out of scope and other services, provide on the pricing sheets a listing of hourly rates for partners, specialists, supervisors and staff levels.

4. Local & Women/Minority-Owned Business Enterprises/Employees

The ECIDA's current procurement policy indicates the following:

"It is the goal of the Agency to provide opportunities for the purchase of goods and services from (i) business enterprises located in Erie County and (ii) certified minority and/or women-owned business enterprises. To that end, the Agency shall use its best efforts to solicit bids and proposals from such

businesses by notifying them of opportunities to submit proposals and/or bids for goods or services when practical.”

Pursuant to the Single Audit Act, the Federal Office of Management and Budget has issued guidance concerning procurement of services from small and minority firms as part of Title 2 U.S. Code of Federal Regulations Part 200. Specifically, non-Federal entities must take all necessary affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible. The ECIDA group has long maintained its commitment to help socially and economically disadvantaged persons by procuring goods and services from them whenever possible.

5. Compliance with local, state or federal statutes and regulations:

Firms should indicate whether they comply with independence requirements as required by the U.S. Government Accountability Office’s Government Auditing Standards and the Public Authorities Law, adhere to the AICPA’s Code of Professional Conduct and are licensed to practice public accounting/auditing in New York State.

6. Identification of Anticipated Potential Audit Problems (if any):

The proposal should identify and describe any anticipated potential audit problems, the firm’s approach to resolving these problems and any special assistance that will be requested from the ECIDA.

7. Submission of Proposal:

Firms should send the completed proposal and five (5) copies to the following address by August 25, 2017 at 4PM (EDT):

Erie County Industrial Development Agency
Attn: Audit and Finance Committee c/o: Mollie Profic, Controller
95 Perry Street, Suite 403, Buffalo, New York 14203

During the evaluation process, the selection committee reserves the right, where it may serve the ECIDA’s best interest, to request additional information or clarifications from proposers, or to allow corrections of errors or omissions.

The ECIDA reserves the right to retain all proposals submitted and use any idea in a proposal regardless of whether that proposal is selected.

Proposals submitted under this request for proposal are subject to public disclosure under the New York State Freedom of Information Law.

VI. EVALUATION PROCEDURES

A. Initial Review of Responses

A Selection Committee comprised of ECIDA and BUDC staff members will initially evaluate each firm's response.

Minimum Requirements:

1. Submission of complete response by due date/time.
2. Completion of Attachments A - C.

The Selection Committee will then select the responses which are most advantageous to the ECIDA Group, BUDC Group and WRC, based on the following scoring criteria:

- 1) Qualifications and experience of the audit firm. (30%)
- 2) Qualifications and experience of the partners and staff. (30%)
- 3) All-inclusive cost for each of the potential five year engagement. (40%)
- 4) Compliance with local, state or federal statutes and regulations.
- 5) Anticipated potential audit problems (if any).
- 6) Submission of proposal by due date.

The Selection Committee reserves the right to award the contract to the lowest responsible bidder it deems best suited and qualified to meet the needs of the ECIDA group. The Selection Committee assumes responsibility for determining if a specific bidder is responsible.

B. Oral Presentations

During the evaluation process, the Selection Committee, at their discretion, may request any one or all firms to make oral presentations. Such presentations will provide firms with an opportunity to answer any questions that these parties may have on a firm's proposal. Not all firms will be asked to make such oral presentations.

C. Final Selection

The Selection Committee will make a recommendation to the respective Audit and Finance Committees upon final review of the proposals. The ECIDA & BUDC Boards of Directors will select a firm based upon the recommendation of the Audit and Finance Committees.

It is expected that a firm will be selected and notified by September 26, 2017. Following the notification of the selected firm it is expected that an engagement letter will be executed between both parties shortly thereafter.

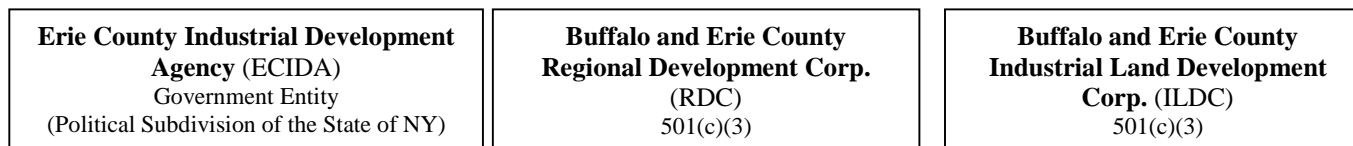
D. Right to Reject Proposals

The ECIDA reserves the right without prejudice to reject any or all proposals.

Exhibit A – Corporate Charts

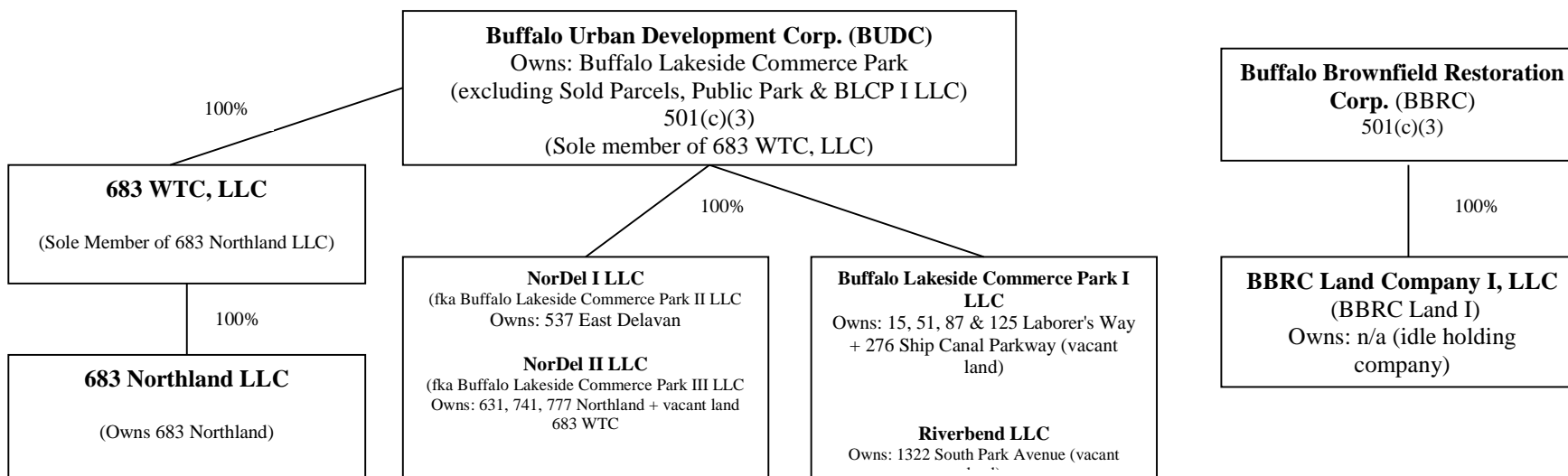
ECIDA Group

Relationship: ECIDA and RDC share the same Board. The Erie County Executive, Deputy County Executive, Chair of the Erie County Legislature, Mayor of the City of Buffalo, Chair of the Erie County Legislature Economic Development Committee, Vice Chairman of the Agency, and the President of the Buffalo Central Labor Council act as the oversight body for ILDC.



BUDC Group

Relationship: BUDC's Real Estate Committee is the Board of BBRC.



Unrelated Entities

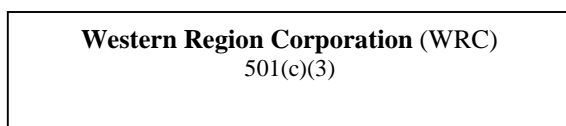


Exhibit B

2017 Erie County Industrial Development Agency Board of Directors

| Name | Title | Organization |
|------------------------------|-----------------------------|--|
| Brenda McDuffie (Chair) | President & CEO | Buffalo Urban League |
| Richard Lipsitz (Vice-Chair) | President | Western New York Area Labor Federation |
| Hon. Diane Benczkowski | Supervisor | Town of Cheektowaga |
| Rev. Mark Blue | President | NAACP |
| Hon. Byron Brown | Mayor | City of Buffalo |
| James Doherty | | |
| Hon. Joseph Emminger | Supervisor | Town of Tonawanda |
| Dottie Gallagher-Cohen | President & CEO | Buffalo Niagara Partnership |
| Tyra Johnson-Hux | President | Blue Sky Design |
| Hon. Joseph Lorigo | Chair, Economic Development | Erie County Legislature |
| David Lowrey | President | Erie County Association of School Boards |
| John Mudie | President | Buffalo Central Labor Council |
| Glenn Nellis | | |
| Louis Panzica | President & CEO | Power Drives |
| Hon. Mark Poloncarz | County Executive | County of Erie |
| Hon. Darius Pridgen | President | Buffalo Common Council |
| Sr. Denise Roche | Chair | NFTA |
| Paul Vukelic | President & COO | Try-It Distribution |
| Hon. Barry Weinstein | Supervisor | Town of Amherst |

2017 Buffalo Urban Development Corporation Board of Directors

| Name | Title | Organization |
|----------------------------|---------------------------------|--|
| Hon. Byron Brown (Chair) | Mayor | City of Buffalo |
| Dennis Penman (Vice-Chair) | Executive Vice President | Ciminelli Real Estate |
| Thomas Beauford, Jr. | Vice President | M&T Bank |
| James Comerford, Jr. | Commissioner | City of Buffalo - Permit & Inspection Services |
| Janique Curry | M/WBE Compliance Coordinator | ECMC |
| Dennis Elsenbeck | Head of Energy & Sustainability | Phillips Lytle |
| Darby Fishkin | CEO | CBRE |
| Dottie Gallagher-Cohen | President & CEO | Buffalo Niagara Partnership |
| Thomas Hersey | Commissioner | Erie County Dept. of Environment & Planning |
| Thomas Kucharski | Executive Director | Invest Buffalo Niagara |
| Brendan Mehaffy | Executive Director | City of Buffalo – Office of Strategic Planning |
| Kimberley Minkel | Executive Director | NFTA |
| David Nasca | President & CEO | Evans Bank |
| Hon. Darius Pridgen | President | Buffalo Common Council |
| Christopher Schoepflin | Regional Director | Empire State Development Corp. |
| Craig Slater | Principal | The Slater Law Firm |
| Stephen Stepniak | Commissioner | City of Buffalo – Dept. of Public Works |
| Maria Whyte | Deputy County Executive | County of Erie |

Exhibit C

**Erie County Industrial Development Agency & Affiliates
Format for Schedule of Professional Fees and Expenses**

| Company/Fund | Audit & Tax Services Required | 2017 Fee | 2018 Fee | 2019 Fee | 2020 Fee | 2021 Fee |
|--|--|-----------------|-----------------|-----------------|-----------------|-----------------|
| 1) ECIDA | a) Audit of Financial Statements (including internal controls and compliance with Investment Guidelines) b) Audit of Financial Statements including Supplemental Project Information (covering ECIDA Bond, Leases and Indebtedness) | \$ - | \$ - | \$ - | \$ - | \$ - |
| 2) RDC | a) Audit of Financial Statements & preparation of not-for-profit returns b) Single Audit of Federal EDA Revolving Loan Fund | - | - | - | - | - |
| 3) ILDC | Audit of Financial Statements & preparation of not-for-profit returns | - | - | - | - | - |
| 4) BUDC | a) Audit of Financial Statements & preparation of not-for-profit returns b) Single Audit of Federal award expenditures (2017 only; future years will be negotiated as necessary) | - | - | - | - | - |
| 5) WRC | Audit of Financial Statements & preparation of not-for-profit returns | - | - | - | - | - |
| 6) BBRF | Audit of Financial Statements | - | - | - | - | - |
| 7) BBRC | Preparation of not-for-profit returns | - | - | - | - | - |
| 8) Riverbend LLC, BLCP I, LLC and BBRC Land Company I, LLC | Preparation of LLC tax returns (if necessary) | | | | | |
| Total | | \$ - | \$ - | \$ - | \$ - | \$ - |
| Add: Out-of-Pocket Costs (if any) | | | | | | |
| Grand Total (including out-of-pocket costs & additional subcontract cost) | | \$ - | \$ - | \$ - | \$ - | \$ - |

NEW YORK STATE FINANCE LAW REQUIREMENTS

Permissible Contacts

Pursuant to State Finance Law §§139-j and 139-k, this Solicitation/Request for Proposal includes and imposes certain restrictions on communications between the ECIDA and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit Request for Proposals through the final award and approval of the Procurement Contract by the ECIDA and, if applicable, Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified on page 1 of this solicitation. ECIDA employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Offerer/bidder is barred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

Offerer/Bidder’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

State Finance Law §139-j(6)(b) requires that the ECIDA seek written affirmations from all Offerers/Bidders as to the Offerer’s/Bidder’s understanding of and agreement to comply with the ECIDA’s procedures relating to permissible contacts (described above) during a Governmental Procurement pursuant to subdivision three of this section. It is recommended that this affirmation be provided to the ECIDA as early as possible in the procurement process, such as when the Offerer/bidder submits its proposal or bid. Attachment A may be used to satisfy this requirement.

Offerer’s/Bidder’s Certification of Compliance with State Finance Law §139-k(5)

New York State Finance Law §139-k(5) requires that every Procurement Contract award subject to the provisions of State Finance Law §§139-k or 139-j shall contain a certification by the Offerer/Bidder that all information provided to the ECIDA with respect to State Finance Law §139-k is complete, true and accurate. It is recommended that the certification be provided to the ECIDA as early as possible in the process, such as when an Offerer/Bidder submits its proposal, bid or other form of offer. Attachment B may be used to satisfy this requirement.

Offerer/Bidder Disclosure of Prior Non-Responsibility Determinations

New York State Finance Law §139-k(2) obligates the ECIDA to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer/bidder must disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms “Offerer” and “Governmental Entity” are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions).

NEW YORK STATE FINANCE LAW REQUIREMENTS

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer/bidder fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with the law, no Procurement Contract shall be awarded to any Offerer/bidder that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer/bidder is necessary to protect public property or public health safety, and that the Offerer/bidder is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

The ECIDA must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. Attachment C entitled “Offerer Disclosure of Prior Non-Responsibility Determinations” must be completed by the Offer/Bidder and submitted to the ECIDA.

Public Disclosure

Responses submitted under this Request for Proposals are subject to public disclosure under the New York State Freedom of Information Law. If the respondent does not want certain data disclosed for any purpose other than for the evaluation of the submitted proposal, the respondent must prominently identify sections or pages of the response which they wish to have restricted. Such sections shall be restricted from disclosure, if allowed by law.

Contract Termination Provision

New York State Finance Law §139-k (5) provides that every procurement contract award subject to the provisions of State Finance Law §§139-k and 139-j contain a provision authorizing the ECIDA to terminate the contract in the event that the certification is found to be intentionally false or intentionally incomplete. This statutory contract language authorizes, but does not mandate, termination. “Governmental Entity” and “procurement contract” are defined in State Finance Law §139-k(1). If a contract is terminated in accordance with State Finance Law §139-k (5), the ECIDA is required to include a statement in the procurement record describing the basis for any action taken under the termination provision.

ECIDA Termination Provision

Pursuant to New York State Finance Law §139-k(5), the ECIDA reserves the right to terminate any contract in the event it is found that the certification filed by the Offerer in accordance with New York State Finance Law §139k was intentionally false or intentionally incomplete. Upon such finding, the ECIDA may exercise its termination rights by providing written notification to the Offerer/bidder in accordance with the written notification terms of this contract.

NEW YORK STATE FINANCE LAW REQUIREMENTS

ATTACHMENT A

Affirmation of Understanding & Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

I affirm that I understand and agree to comply with the procedures of the ECIDA relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

By: _____ Date: _____

Name: _____ Title: _____

Contractor Name: _____

Contractor Address: _____

NEW YORK STATE FINANCE LAW REQUIREMENTS

ATTACHMENT B

Offerer/Bidder Certification:

I certify that all information provided to the ECIDA with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____

Name: _____ Title: _____

Contractor Name: _____

Contractor Address: _____

NEW YORK STATE FINANCE LAW REQUIREMENTS

ATTACHMENT C

Offerer Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

Address: _____

Name and Title of Person Submitting this Form: _____

Contract Procurement Number: _____

Date: _____

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility:

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No

Yes

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

(Add additional pages as necessary)

Offerer certifies that all information provided to the ECIDA with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____
Signature

Name: _____ Title: _____