

**New York State Urban Development Corporation d/b/a
Empire State Development Corporation (“ESDC”)
Request for Proposals (“RFP”) for Liquidity and Letter of Credit Facilities**

Responses are due on February 24, 2011

Introduction

ESDC is seeking Liquidity or Letter of Credit (“LOC”) Facilities to replace expiring Liquidity Facilities for its outstanding Series 2004A-3ABCD Personal Income Tax (“PIT”) variable rate demand bonds (the “PIT Bonds”). The current Dexia Credit Locale (“Dexia”) Liquidity Facilities are due to expire on July 15, 2011 and under the requirements for providing a substitute credit facility contained in the Series 2004A-3ABCD Supplemental Resolution, the new facilities must be effective no later than May 26, 2011. The following table sets forth the outstanding principal amounts for each subseries of PIT Bonds. ESDC’s PIT Bonds are currently rated AAA by Standard & Poor’s and AA by Fitch. A copy of the Official Statement for ESDC’s State Personal Income Tax Revenue Bonds (State Facilities and Equipment) Series 2004-A3 may be obtained by contacting Rob Godley (email shown below). For additional information regarding the State, the most recent Annual Information Statement and Annual Information Update can be found at http://www.budget.state.ny.us/investor/ais/ais_fdp.html.

Maturity Date	2004A-3A	2004A-3B	2004A-3C	2004A-3D	Total
3/15/2025	4,635,000	4,730,000	4,730,000	4,730,000	18,825,000
3/15/2026	8,035,000	8,000,000	8,000,000	8,000,000	32,035,000
3/15/2027	8,320,000	8,300,000	8,300,000	8,300,000	33,220,000
3/15/2028	8,640,000	8,605,000	8,605,000	8,605,000	34,455,000
3/15/2029	8,955,000	8,925,000	8,925,000	8,925,000	35,730,000
3/15/2030	9,280,000	9,260,000	9,260,000	9,260,000	37,060,000
3/15/2031	9,615,000	9,605,000	9,605,000	9,605,000	38,430,000
3/15/2032	9,980,000	9,960,000	9,960,000	9,960,000	39,860,000
3/15/2033	7,245,000	7,230,000	7,230,000	7,230,000	28,935,000
	74,705,000	74,615,000	74,615,000	74,615,000	298,550,000

I. Submission of Proposal and Other Information

Written responses are due via e-mail by 12:00 PM (NYC Time) on February 24, 2011 to the following.

Rob Godley, Treasurer, ESDC rgodley@empire.state.ny.us	Christopher Curtis, Division of the Budget christopher.curtis@budget.state.ny.us	Steven Peyser Public Resources Advisory Group speyser@pragny.com
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State Finance Law Sections 139-j and 139-k: Your RFP response must also include the forms included in Attachment A, which affirm your understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible contacts in the restricted period for a procurement contract in accordance with State Finance Law Sections 139-j and 139-k.

Permissible RFP Contact and Questions: **The permissible contact for this RFP is Rob Godley. All questions regarding this RFP should be sent in writing via email to Mr. Godley at rgodley@empire.state.ny.us, no later than 3:00 P.M. (NYC Time), February 16, 2011. Contact with employees of ESDC, other than Rob Godley, or New York State Division of the Budget regarding this RFP can result in disqualification.**

Answers to any questions that are received will be posted on ESDC’s website as they are received. The address is: <http://www.esd.ny.gov/CorporateInformation/RFPs.html>. Proposers are responsible for checking the ESDC website for answers to any questions.

RFP Amendments: Any amendments or modifications to the RFP will be posted on the ESDC website at: <http://www.esd.ny.gov/CorporateInformation/RFPs.html>. It is the proposers’ responsibility to check the ESDC website for any amendments.

Other Requirements: The successful proposer(s) will also be required to submit the forms included in Attachment B. These forms do not need to be submitted with your RFP response. The successful proposer(s) will also be required to provide evidence of insurance, including commercial general liability insurance of \$1 million per occurrence and \$2 million in the aggregate and worker’s compensation insurance. In addition, ESDC’s non-discrimination and affirmative action policy will apply to the agreement(s) enter into with the successful proposer(s).

II. Preliminary Schedule of Events

<u>Date</u>	<u>Event</u>
February 1 st	Release RFP
February 16 th	Deadline for Submitting Questions
February 24 th	RFP Responses Due
March 2 nd	Select Bank(s)
March 23 rd	Circulate Draft Agreement(s)
April 13 th	Documents to Rating Agencies
May 11 th	Receive Ratings
May 18 th	Close Substitutions

III. Facility Terms, Conditions and Other Information

Minimum Bank Ratings	A minimum of at least one long-term rating in the double-A category from Moody’s, Standard & Poor’s or Fitch and short-term ratings in the highest category (P-1 Moody’s, A-1 Standard & Poor’s and F1 Fitch).
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Facility:	<p>Either (i) a Standby Bond Purchase Agreement or (ii) a Letter of Credit and Reimbursement Agreement, both renewable at the option of the Provider at the request of the Corporation.</p> <p>A draft of the applicable agreement based on the terms provided herein shall be provided by the selected Bank(s) within [three] weeks of the Corporation's acceptance of the proposal.</p>
Facility Amount:	One or more Facilities totaling Principal of \$298,550,000 plus interest at 12% for 34 days for tax-exempt bonds.
Facility Term:	Term of 3 years or longer preferred.
Bond Maturity:	The final maturity of the PIT Bonds is March 15, 2033.
Annual Fee:	Payable quarterly in arrears calculated on an actual 360-day basis. There will be no amendment or transfer fees payable upon replacement of a bank in the event of a long or short term rating downgrade of the bank, and the annual fee will terminate effective upon any such replacement.
Term Out:	Term out commencement date will be the earlier of (i) the 180 th day following the related bank purchase date and (ii) the 120 th day following the last day of the facility commitment period. The payments will be made semiannually with the final payment within five years of the applicable term out commencement date.
Acceleration:	Except as provided for under the Term Out provision, there will be no acceleration provision as a remedy under the Agreement.
Bank Counsel:	Identify the law firm and the individual in charge that you propose as your Bank Counsel. In addition, provide a not to exceed fee for Bank Counsel.
Events of Default:	Events of default and immediate termination events shall comply with the current rating requirements for Liquidity and LOC Facilities from Fitch, Moody's and Standard & Poor's, as applicable.

<p>Optional Termination:</p>	<p>The ESDC will have the option to terminate the Facility at any time upon 30 days notice.</p> <p>The ESDC will guarantee the first-year's annual fee for a three-year facility and up to two years' annual fee for a five-year or longer facility, subject to adjustment for fees already paid in that year. However, no such remaining fee amount will be paid if early termination is due to (i) downgrade of the Bank's short-term or long-term ratings below its current level, (ii) increased costs imposed by the Bank and the replacement bank agrees to charge the ESDC lower fee and charges associated with comparable increased costs, and (iii) the ESDC elects to redeem the PIT Bonds, convert the PIT Bonds to a fixed rate of interest or defease the PIT Bonds, in each case, in full from a source of funds that does not involve a substitute Liquidity or LOC Facility.</p>
<p>Method of Selection:</p>	<p>ESDC intends to select the Bank(s) whose proposal(s) provide the best value and, as such, will take several factors into account including (i) the proposed fees for each term; (ii) the length of time required to obtain credit approval; (iii) other material terms and conditions the Bank will require; (iv) the different bank trading levels as determined by the ESDC and its Financial Advisor; and (v) other factors deemed appropriate.</p>

<p>Form of RFP Submission:</p>	<p>Provide a completed Appendix A and a term sheet that addresses the terms, conditions and other information discussed above, as well as the following items:</p> <ol style="list-style-type: none"> 1. <u>Bank Name, Ratings and Contact Information</u>: Provide the name of the bank and current long and short-term ratings, including outlooks. In addition, provide the telephone number and e-mail address of the primary contact(s) regarding this RFP. 2. <u>Facility Term(s) and Amount</u>: Provide the terms your bank would be willing to provide (3 years or longer is preferred). In addition, provide the amount of your proposed commitment. 3. <u>Annual Fee</u>: Provide your proposed annual fees for each term listed above. 4. <u>Other Fees</u>: Detail all other fees including any upfront commitment fees. 5. <u>Interest Rates</u>: Describe how interest rates will be computed for bank bonds and the default rate. 6. <u>Material Terms and Conditions</u>: Detail any material terms and conditions, including events of default and remedies, covenants, representations and warranties, and closing conditions. 7. <u>Bank Counsel</u>: Identify the law firm and primary responsible attorney that you propose to serve as Bank Counsel and the not to exceed fee. 8. <u>Credit Approval</u>: Indicate the length of time required to obtain credit approval as well as any documents or other information the Corporation can provide to facilitate your review. 9. <u>Other Items</u>: Detail any other items you will require. 10. <u>Length of Time Proposal is Valid</u>: Please state how long your proposal will be valid.
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Attachment A

State Finance Law Sections 139-j(3) and 139-j(6)(b)

Background: State Finance Law § 139-j(6)(b) provides that every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer's understanding of and agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity 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:

Attachment A (Continued)

State Finance Law Section 139-k

Background: Under New York State Finance Law § 139-k(2), covered governmental entities are obligated to obtain specific information regarding prior non-responsibility determinations. 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 must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by an 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).

As part of its responsibility determination, a covered governmental entity must consider whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer 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 is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe.

Attachment B

Other Forms



Contractor Certification to Covered Agency

ST-220-CA

(6/06)

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need Help? on back*).

Contractor name		For covered agency use only Contract number or description
Contractor's principal place of business	City State ZIP code	
Contractor's mailing address (if different than above)		Estimated contract value over the full term of contract (but not including renewals)
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)	
Contractor's telephone number	Covered agency name	\$
Covered agency address		Covered agency telephone number

I, _____, hereby affirm, under penalty of perjury, that I am _____

(name)

(title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____

(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this _____ day of _____, 20 _____

(sign before a notary public)

(title)

Instructions

General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. This publication is available on our Web site, by fax, or by mail. (See *Need help?* for more information on how to obtain this publication.) In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

If you have questions, please call our information center at 1 800 698-2931.

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned on or after *April 26, 2006* (the effective date of the section 5-a amendments).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the ___ day of _____ in the year 20___, before me personally appeared _____,
known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that
_he resides at _____,
Town of _____,
County of _____,
State of _____; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

- (If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.
(If a corporation): _he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
(If a partnership): _he is a _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
(If a limited liability company): _he is a duly authorized member of _____, LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public
Registration No.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 306, 429, 475, 506, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 406(c)(2)(C)(i).
This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.
Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.
Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.
This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need help?
Internet access: www.nystax.gov (for information, forms, and publications)
Fax-on-demand forms: 1 800 748-3676
Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday. 1 800 698-2931
To order forms and publications: 1 800 462-8100
From areas outside the U.S. and outside Canada: (518) 485-6800
Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110
Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

AFFIDAVIT OF NON-APPLICABILITY OF STATE TAX LAW § 5-A

State of New York }
 } ss.:
County of }

_____ being duly sworn, do depose and state under penalty of perjury that I am the _____ [state title] of the contractor _____ [state name of contractor] responding to the procurement solicitation by the New York State Urban Development Corporation d/b/a Empire State Development Corporation or it's subsidiary (collectively, "ESDC") herein. I have read and am aware of the requirements of State Tax Law § 5-a with respect to registration with the New York State Department of Taxation and Finance ("NYSDTF") in connection with collection of sales and compensating use taxes imposed by Articles 28 and 29 of the State Tax Law. Neither the contractor nor any affiliate or sub-contractor as defined in the State Tax Law is registered or is required to be registered with NYSDTF for this purpose pursuant to any provision of the State Tax Law. I make this affidavit intending that ESDC will rely thereon in considering the contractor's response to the solicitation, and with knowledge that any false information contained herein shall render the contractor's response to the solicitation non-responsive, and may result in other action by ESDC including, without limitation, reporting the statement to relevant authorities.

Signed: _____

Print Name: _____

Sworn to before me, a Notary Public, this _____ day of _____, 20__

STAMP

My commission expires on _____