

BUFFALO FISCAL STABILITY AUTHORITY
Meeting Minutes
Friday, October 23, 2009

The following are the minutes from the special meeting of the Buffalo Fiscal Stability Authority's Board held on Friday, October 23, 2009, in the 1st Floor Conference Room of the Market Arcade Building.

Directors Present: Arthur, Brown [proxy]¹, Collins, Johnstone, Kolkmeier, Mertz, Messiah and Townsend

Director Absent: Giardino

Staff Present: Kelly, Link, Miller, Mobley and Mongold

Additionally Present: Mr. A.V. Buzard, Esq., Outside Legal Counsel with Harris Beach, PLLC.
Mr. Jay Bartlett, Citigroup
Mr. Chester Johnson, Esq., of Government Finance Associates, Inc.
(Telephonically)

Opening Remarks

The board meeting of the Buffalo Fiscal Stability Authority (BFSA) was called to order at 12:05 pm by Chair Kolkmeier. He summarized the meeting's agenda as follows:

- Financing of Phase IV of the JSCB reconstruction program.

Chair Kolkmeier directed the Board's attention to two additional items that were received and distributed to the Board for review. The first item was a public input letter regarding the City of Buffalo's termination of the Intermunicipal Agreement on Municipal Parks. Additionally a letter from Chair Kolkmeier was sent to Mayor Brown regarding the, "apparent change in the shift's schedule for the City's police that had recently come to the attention [to the Board]."

Following his opening remarks, he asked Secretary Arthur to call roll. Secretary Arthur called roll and determined that a quorum was present; the meeting commenced.

Joint Schools Construction Board
Phase IV Financing Overview

Chair Kolkmeier stated, "This meeting focuses on the financing aspects of the Phase IV of JSCB. The BFSA staff has provided background and preliminary information at the September 30th board meeting." He noted the attendance of several parties of interest including representatives from the City Comptroller's office, the Buffalo School District (the "District"), LP Ciminelli, Inc., and Citigroup, Inc. He directed Executive Director Jeanette Mongold to elaborate on the Phase IV financing.

Ms. Mongold provided the following information for the Board:

¹ City of Buffalo Director of Budget, Ms. Donna Estrich, represented Mayor Byron W. Brown, pursuant to §3853 of the BFSA Act.

PROPOSED BORROWING FOR PHASE IV OF THE JSCB

Ms. Mongold noted that the Board was provided with a revised transaction summary to capture the following changes:

- The interest rates in the municipal bond market are not as favorable as they were as late as October 8th when the initial figures were pulled together and provided to the Board.
- The revised overall transaction amount is \$309 million, a increase of \$900 thousand over what was initially provided. Also, due to the change in the interest rates, there has been a shift in the structure of estimated financing.
- The par amount of the bond proceeds is estimated to be \$293.9 million, a \$10 million increase from the previous estimate. The offset to this is the premium, which is estimated to be \$15.0 million. .This is \$10 million less than the original estimate.
- There have also been some reallocations among the uses of funds. The project fund is now estimated to be \$285.4 million, and the capitalized interest fund is estimated at \$18.0 million.
- The total proposed transaction is \$309 million. Of this, \$285 million is to be used to fund projects directly. \$18 million would be placed in a capitalized interest fund which won't exceed 18 months. This will be used to pay off interest due for the first 3 payments, and investment earnings on this fund will be used towards future interest payments as part of the local share.
- Total costs of issuance are estimated at \$5.5 million.
- The bond issuer is the Erie County Industrial Development Agency (the "ECIDA"). The total building aid is estimated to be 95% of project costs, with the remainder representing the District's local share.
- The local share is ultimately funded through a combination of a few items:
 - amortized interest earnings on the capitalized interest fund;
 - amortized interest earnings on the project fund; and
 - energy savings, representing contractual savings with Johnson Controls.
- There is an estimated \$43 million of excess local share remaining from previous phases which could be used towards the local share requirements of Phase IV.
- The underlying ratings are A1-stable from Moody's, which is consistent with the previous rating, and an upgrade is expected from S&P to AA- from A+.
- The bond insurance market has degraded over the last couple years, and it was deemed to not be cost effective to obtain bond insurance.

Ms. Mongold explained the lack of a "debt financing reserve" in Phase IV due to interest rates in the current market being so low. Similarly, there are no bond insurance costs in Phase IV, as opposed to earlier phases, due to the strong, favorable underlying credit rating of JSCB.

Motion to approve by Mesiah, second by Johnstone.

Following the presentation, Chair Kolkmeier asked if any Directors had questions.

Ms. Estrich asked if Johnson Controls provided an annual report. District Chief Financial Officer, Ms. Barbara Smith, responded that they do provide an annual report detailing savings. Mr. Bartlett of Citigroup, the bond underwriter, added that Johnson Control's energy savings are guaranteed in the contract. They provide an audit every year to the District to show that the savings are realized.

Director Arthur noted his request at prior meetings to hold a public hearing prior to a vote on or approval of JSBC's financing. He referred to a position letter produced by BFS Legal Counsel Harris

Beach, wherein the opinion was submitted that BFSA has the ability to call public hearings as deemed appropriate. Agreeing with this opinion, he cited dialogue from paragraph two of the opinion letter, which reads as follows:

“You have asked whether the Board can hold a public hearing on the issue of whether the project is in compliance with various diversity requirements. Such requirements would presumably include Chapter 421 of Laws of New York, 2004, which sets forth various legislative findings and determinations regarding efforts to ensure a more diverse workforce in connection with the Project and a report from the New York State Comptroller's Office, dated June 8, 2006, and the response.”

Director Arthur stated that while the letter also states that the BFSA's powers are limited to the fiscal implications of contracts per the enabling legislation, the Board needs background information and fact-finding. “In this situation, we have not been permitted to go into that.” The District has submitted unsubstantiated data which is “meaningless.” There used to be a category utilized titled, “Under-Privileged Minorities.” This category has not been referenced in any of the materials submitted to the BFSA from the District. The information submitted to the Board of Education from LP Ciminelli is insufficient and, “brings about more questions than it answers.”

Director Arthur requested that prior to a vote to approve the financing, the Board hold, “a fact-finding hearing” to answer the remaining questions. The information that has been provided “is full of smoke-and-mirrors and has not given the answers that have been requested.”

Chair Kolkmeier asked if a representative from the District would discuss the material submitted to the BFSA and address Director Arthur's concerns.

District Superintendent Dr. James Williams addressed the BFSA board. He provided the following information:

- The Joint Schools Construction Committee is co-chaired by both himself and the Mayor of Buffalo.
- In the original contract from 2002, there were goals specified based on the overall contract, not individual ones.
- When the project was taken over from the previous City Administration, there was one company to monitor these types of goals and report monthly. When Mayor Brown became co-chair of the committee, it was decided to add an additional company in charge of monitoring diversity goals on a more active basis.
- The two monitoring companies look at payrolls, paychecks, contacts, and “all of the data” to comprehensively monitor the project. The companies are “African-American owned” and provide monthly reports to the committee regarding their monitoring efforts.

Director Arthur requested copies of these reports for review.

Superintendent Williams stated that “smoke-and-mirrors,” previously used by Director Arthur, is the wrong term to describe the monitoring efforts. The project is monitored very carefully because “we are very much concerned with spreading the wealth among the minority population.” However, there are some companies which lack an adequate level of minority workforce. In these cases, a strategy is worked out with the company to provide scholarships to minority children and other benefits to the

District to address the issue. There is data to support these efforts.

Director Arthur asked Dr. Williams what the District's definition of "minority-owned" is. Dr. Williams replied that it is defined in the contract language and includes, "Hispanics, African-Americans, and Women." He stated that the term "Under-Privileged Minorities" has never been used. The District's goals are "much higher than normal."

Director Arthur espoused that the term "minorities" has become "all-encompassing;" there are categories for "a percentage of minorities and a percentage of women. The two should not be ranked together."

Dr. Williams noted the difficulty finding "minority-owned" businesses under the definition of the contract for personal services.

Director Arthur asked for data regarding the number of minority legal counsels involved with JSCB. The material provided by Ciminelli is "nothing but PR [public relations]." There are members of the community who are willing but assert that they are unable to get the work. If there were a public hearing than the individuals who are making these types of assertions would have a forum to address the Board.

Dr. Williams replied that the chief characteristic sought is quality. The District does not hire individuals simply because they are a minority but because of the value they provide to the organization. Some minority-owned businesses have not been selected over others because they didn't provide the highest level of quality possible.

Director Arthur replied that he agreed "10,000 percent." As a grandfather of children in the District he wants, "nothing but the best" for them.

Dr. Williams stated that a public hearing was not the method to meet this goal. He invited Director Arthur to attend a meeting of the JSCB to listen to the reports submitted to the committee.

Director Arthur asked for a tour of the newly renovated facilities. He stated that the quality of some of the work "leaves a lot to be desired." Dr. Williams noted that a project of this size does have some problems but that there are mechanisms in place to address them.

Chair Kolkmeier asked for confirmation that the JSCB Board as well as the ECIDA had held a public hearing allowing the public to comment. Dr. Williams confirmed this.

Director Mesiah requested a call to end debate. Chair Kolkmeier ensured that there was no further debate and called for a vote.

Vote to approve 7-1 [Arthur dissent].

**RESOLUTION NO. 09-40
APPROVING FINANCING OF PHASE IV OF BUFFALO SCHOOLS RECONSTRUCTION
PROGRAM**

WHEREAS, the Buffalo City School District ("the District"), in cooperation with the City of Buffalo ("the City") and the Joint Schools Construction Board ("the JSCB"), has undertaken a comprehensive

program to redevelop the educational facilities (“the Program”), has completed Phase I, is nearing completion of Phase II and Phase III of the Program; and

WHEREAS, the State Legislature, by Chapter 605 of the Laws of 2000, as amended by Chapter 59 of the laws of 2003, Chapter 421 of the Laws of 2004, Chapter 283 of the Laws of 2006, Chapter 403, 492 and 497 of the Laws of 2008, and Chapter 209 of the Laws 2009 (collectively, “the Buffalo Schools Redevelopment Act”) has authorized the financing of Phases I, II, III and IV of the Program through the issuance of bonds and notes by the Erie County Industrial Development Agency (“ECIDA”) that, during the existence of a Control Period (as defined in the Buffalo Fiscal Stability Authority Act (the “BFSA Act”), is subject to review and approval by the Buffalo Fiscal Stability Authority (the “Authority”); and

WHEREAS, the scope of projects to be financed in Phase IV has been expressly authorized by the Buffalo Schools Redevelopment Act and is subject to the approval of the New York State Commissioner of Education; and

WHEREAS, Section 16 (b) of the Buffalo Schools Redevelopment Act provides a safeguard against unnecessary costs in the financing of Phases I, II, III and IV by the ECIDA by requiring (a) the JSCB, the City and the District to compare the costs of ECIDA financing with the cost of financing by the Municipal Bond Bank Agency (“MBBA”), (b) a determination by MBBA of the cost and interest rate that would be incurred if the financing were by the issuance of bonds by MBBA, and (c) the JSCB, the City, the District and ECIDA to employ the financing mechanism that will result in the lowest cost to the taxpayers of the City and the State; and

WHEREAS, Section 3858(2)(i) of the Public Authorities Law provides that the Authority “shall, with respect to any proposed borrowing by or on behalf of the city or any covered organization on or after July first, two thousand three, review the terms of and comment, within thirty days after notification by the city or covered organization of a proposed borrowing, on the prudence of each proposed issuance of bonds or notes to be issued by the city or covered organization and no such borrowing shall be made unless first reviewed, commented upon and approved by the authority. The authority shall comment within thirty days after notification by the city or covered organization of a proposed borrowing to the mayor, the comptroller, the council, the director of the budget and the state comptroller and indicate approval or disapproval of the proposed borrowing”; and

WHEREAS, Section 3858(2)(h) of the Public Authorities Law provides that the Authority “may review and approve or disapprove contracts or other obligations binding or purporting to bind the city or any covered organization”; and

WHEREAS, the District has notified the Authority that it proposes to finance Phase IV by agreement with ECIDA for issuance by ECIDA of its School Facilities Revenue Bonds, (City School District of the City of Buffalo Project), Series 2009A (the “Series 2009A Bonds”); and

WHEREAS, the Authority has reviewed the proposed borrowing by ECIDA on behalf of the District and has found it to be financially sound, prudent and in the public interest and especially the interest of the school children of the City;

NOW, THEREFORE, it is:

RESOLVED, that prior to the final pricing of the Series 2009A Bonds the District shall have (i)

provided the Authority with a comparison of the costs and rates of ECIDA financing with the cost and rates that would have been incurred if the financing were undertaken by MBBA, and, (ii) demonstrated that the financing of Phase IV through ECIDA will result in the lowest cost to the taxpayers of the City and the State as required by Section 16 (b) of the Buffalo Schools Redevelopment Act; and further

RESOLVED, that the Authority approves the proposed borrowing by the District through the ECIDA to finance Phase IV of the Program, provided that (i) the aggregate principal par amount of Series 2009A Bonds to be issued shall not exceed \$300 million and (ii) the Chair, the Vice Chair, the Executive Director, or the Comptroller of the Authority shall approve the final terms and pricing of the Series 2009A Bonds in writing. Such approval is further conditioned upon the State Education Department's approval of the plans and specifications for the Program; and further

RESOLVED, that the Authority authorizes the City, the District and the JSCB to enter into necessary and appropriate contracts in connection with the borrowing; and further

RESOLVED, that the Chair, the Vice Chair, Executive Director, Comptroller of the Buffalo Fiscal Stability Authority are hereby authorized and directed to execute and deliver any agreements, certificates, documents, papers or other written instrument, to make any changes, modifications or amendments as he or she deems necessary, to do all other things and to take all other actions necessary and appropriate in their judgment, to consummate the transactions contemplated by this Resolution.

This Resolution shall take effect immediately.

New Business

Harris Beach, PLLC

Chair Kolkmeier asked if there was any new business to discuss.

Director Arthur referred to the second opinion letter submitted by Harris Beach to BFSA. He noted the involvement of Harris Beach with both the BFSA as well as the Buffalo Board of Education and requested an Executive Session at a future date to discuss this issue. Chair Kolkmeier affirmed that this would be on the agenda at a future meeting.

Website – Public Input

Relative to the official BFSA website, Director Mesiah asked that the site be enhanced to further solicit public input. Chair Kolkmeier directed BFSA staff to address the issue.

Chair Kolkmeier's Resignation

Vice-Chair Townsend noted that the meeting was the last to be presided over by Chair Kolkmeier who had announced his intention to resign from the Board effective October 31st. She thanked him for his service and leadership.

Chair Kolkmeier thanked the Board and expressed his willingness to assist the Board in the future.

Adjournment

Chair Kolkmeier asked for a motion to adjourn which was carried unanimously. The meeting adjourned at 12:42 PM.
