

BUFFALO FISCAL STABILITY AUTHORITY
Governance Committee
Meeting Minutes March 14, 2012

The following are the minutes from the meeting of the Governance Committee (the “Committee”) of the Buffalo Fiscal Stability Authority (the “BFSA”) held on Wednesday, March 14, 2012, in the Buffalo Market Arcade Complex. The meeting was called to order at 12:30 PM.

Committee Members Present: Olsen and Arthur

Additional Directors Present: Floss and Mesiah

Staff Present: Mongold, Link, R. Miller, and Tyler

Additionally Present: Ms. Pietra Lettieri, Esq., Harris Beach, PLLC

Opening Remarks

Committee Chair Olsen opened the meeting and announced the meeting’s agenda as follows:

- A review of the BFSA 2012 and 2013 Minority & Women-Owned Business Enterprise (“MWBE”) Master Goal Plans;
- A review of the Board of Director’s previous request to enter into banking agreements with local financial institutions; and
- A review of the Committee’s request for a legal opinion from Harris Beach, PLLC, regarding the BFSA’s Lobbying Policy.

Chair Olsen noted that New York State’s Open Meeting’s Law had recently been amended. It is now required that public authorities post material that is not considered privileged on the authorities’ website. The purpose of the law is to create more engagement and awareness of public meeting discussions, activities and actions. Board meeting materials reviewed in today’s Committee meeting is currently available on BFSA’s website for download by any interested party.

Chair Olsen called a roll of the attending Committee members. He confirmed that the two standing members of the Committee were present and that a quorum existed. Former Director Johnstone had served as a member of the Committee; a vacancy exists as a result of her departure.

Secretary Arthur noted the attendance of Directors Mesiah and Floss as guests of the Committee.

Approval of Minutes

Chair Olsen introduced Governance Committee Resolution No. 12-01 “Approving Minutes and Resolution from December 7, 2011.”

Director Arthur offered a motion to approve the resolution.

Chair Olsen seconded the motion.

GOVERNANCE COMMITTEE RESOLUTION NO. 12-01
APPROVING MINUTES AND RESOLUTION FROM DECEMBER 7, 2011

BE IT RESOLVED that the Buffalo Fiscal Stability Authority's Audit, Finance and Budget Committee approves the minutes of its meeting on December 7, 2011.

BE IT FURTHER RESOLVED that the Buffalo Fiscal Stability Authority's Audit, Finance and Budget Committee ratifies and affirms Resolution No. 11-04 that was approved on said date.

The Committee voted 2-0 to approve the resolution.

2012 and 2013 Review of the MWBE Master Goal Plan

Chair Olsen advanced the agenda to the next item for consideration: the BFSA 2012 and 2013 MWBE Master Goal Plans. Chair Olsen asked BFSA Executive Director Jeanette Mongold to discuss the plans.

Ms. Mongold informed the Committee that this is a new State requirement. New York State Empire State Development ("ESD") is the State agency that monitors compliance of MWBE goals. All State agencies, including public authorities, have been scoped into the requirements and are required to develop and submit MWBE goals. As a result, the BFSA is required to have formed MWBE goals approved by the full Board. The BFSA is also required to report quarterly to ESD the total expenditures paid to qualified MWBE entities. Governor Cuomo has cited a 20% minimum threshold for all New York State agencies.

Ms. Mongold noted that Erie County entities certified as MWBE providers are not necessarily recognized by New York State. Each organization must seek separate New York State certification.

Director Arthur inquired if that applied to local certified providers.

Ms. Mongold replied that businesses must be certified as a qualified MWBE through the State of New York to be considered for the stated goal.

Chair Olsen asked if there was a process in place to expedite certification for local and county service providers to become compliant without incurring additional or excess expense.

Ms. Mongold responded she made the same inquiry of ESD. She was informed that there is a considerable backlog related to companies that have applied for certification but have not been approved yet.

Secretary Arthur queried what ESD's timeframe was to eliminate the backlog as well as its cause.

Ms. Mongold noted that ESD advised that they have considerable staff shortages which are hindering their ability to process applications.

Director Arthur hypothesized a scenario of a company being locally certified who submits registration to the ESD and is put on a waiting list for a period of time. As a result of the backlog, that company is unable to secure contracts. Director Arthur conceded the BFSA had no control over how ESD handled their backlog. However, he requested Ms. Mongold prepare a letter to the ESD requesting a response to the following:

- The plan to alleviate the backlog in the certification process and the related timing to have the certification process current; and
- What has been communicated to the City of Buffalo and Erie County advising entities they must be certified at the state level to be considered a qualified MWBE; and
- What outreach programs are conducted at the local level and how these programs monitored.

Chair Olsen replied that it would be helpful to advise the local and county service providers that they need to be registered with ESD in order to be considered for New York State jobs that become available. He also added it would be easier to combine the local, County and State lists of MWBE's into one master list.

Director Mesiah noted that he had recently spoken with Ms. Leecia Eve who has been promoted to the position of Senior Vice-President and Counsel for ESD. He advised that it may be more effective to approach someone within the organization's leadership such as Ms. Eve in order to get assistance in resolving the backlog and as well as other concerns the BFSA may have.

Chair Olsen requested a motion send the 2012 and 2013 MWBE Master Goal Plans to the full Board for consideration with a recommendation for approval.

Secretary Arthur offered a motion.

Chair Olsen seconded the motion.

The Committee voted 2-0 to send the 2012 and 2013 MWBE Master Goal Plans to the full Board for consideration with a recommendation from the Committee to approve.

Authorization to Enter Into Banking Agreements with Local Financial Institutions

Chair Olsen advanced the agenda to the next item of business: consideration to authorize BFSA to enter into banking agreements with local financial institutions. He noted that the item had arisen from the prior Committee meeting and asked Ms. Mongold to provide an update.

Ms. Mongold addressed the Committee. She noted that Secretary Arthur had requested that BFSA investigate the ability to enter into additional banking agreements with local financial institutions in order to achieve the most favorable investment rates.

Additionally, as the Vice-Chair position remains vacant, Ms. Mongold recommended Secretary Arthur's name be added as an authorized check signer, in order to meet the requirements and restrictions of the Board of Directors.

Chair Olsen requested a motion to send a recommendation to enter into banking agreements with local financial institutions to the full Board for approval.

Director Arthur offered a motion to move the item.

Chair Olsen seconded the motion.

The Committee voted 2–0 to send a recommendation to enter into banking agreements with local financial institutions to the full Board for approval.

Lobbying Policy

Chair Olsen advanced the agenda to the final item for consideration: the Lobbying Policy legal memo as provided by Harris Beach, PLLC. He noted that the Authority’s Lobbying Policy was adopted by the full Board upon recommendation by this Committee on December 7, 2011. At that time, additional clarification on certain reporting requirements was requested from Harris Beach. Harris Beach provided two memorandums responding to this request. He asked Ms. Pietra Lettieri, Esq., of Harris Beach, PLLC, to advise the Committee of their findings.

Ms. Lettieri began with the first memorandum, a brief summary of the detailed information in the second memorandum. She noted that there are three segments of the memorandum that the BFSA is subject to in the context of lobbying.

The first item of discussion is as follows:

1. **PARA Lobbying Requirements** - enacted as part of the Public Authorities Reform Act of 2009 and directly relate to the Lobbying Policy. The requirements simply call for the adoption of the policy which includes:
 - a. BFSA to maintain a record of all contacts made in an attempt to influence the adoption or rejection of any rule or regulation *and* the outcome of any rate making proceedings to be in compliance.
2. **Procurement Requirements** – enacted as part of the Procurement Law which is part of the State Finance Law. This piece of legislation has requirements related to what is called “contacts by an offeror,” which is essentially an offering party responding to a request for proposals (“RFP”) who wishes to contract with the BFSA. Such requirements include:
 - a. The collection and recording of certain information pertaining to those who contact the BFSA to influence the procurement that is being solicited;
 - b. The BFSA is required to notify any offerors of the permissible contacts provisions in its solicitation materials. Harris Beach has provided the BFSA with the specific language that needs to be included in those solicitations;
 - c. If the offeror has knowingly and willfully made an impermissible contact during the RFP process there are provisions in the law that requires an investigation.

Secretary Arthur asked for a definition of solicitation.

Ms. Lettieri responded a solicitation is typically an RFP. Solicitation is in the context of the BFSA soliciting services for procurement of its own services.

Chair Olsen asked if the solicitation example applied to professional services.

Ms. Lettieri responded there are certain circumstances when procurement of professional services is outside the RFP requirement. She added that the solicitation of an attorney, for example, is outside the scope of both sets of rules and the solicitation process would not apply.

Ms. Lettieri concluded the summary by stating the important points are the following:

- the designation of a specific contact individual within the BFSA;
- the offeror has to acknowledge they are fully aware of the restrictions when responding to an RFP;
- the act is not applicable to the BFSA unless the BFSA itself conducted lobbying activities which typically is not the case.

Ms. Lettieri asked if there were any additional questions. There were none.

Chair Olsen requested a motion to accept the findings of Harris Beach concerning the Lobbying Policy.

Secretary Arthur offered the motion.

Chair Olsen seconded the motion.

The Committee voted 2-0 to accept the clarification in regards to the Lobbying Policy.

Chair Olsen inquired if there was any new business.

Secretary Arthur noted that a FY 2012-13 budget was included with the Board book. He asked if Directors will have the opportunity to offer input prior to its final adoption.

At 12:50 County Executive Mark Poloncarz joined the proceedings.

Chair Olsen replied that the budget material provided was preliminary and the BFSA Directors will have the opportunity to review the draft and offer input prior to its adoption in June.

Adjournment

Secretary Arthur offered a motion to adjourn.

Chair Olsen seconded the motion.

The Committee voted 2-0 to adjourn

The Committee adjourned at 12:52 PM.