

NEW YORK JOB DEVELOPMENT AUTHORITY

Meeting of the Members

Tuesday

April 9, 2024 – 2:00 p.m.

AGENDA

I. CORPORATE ACTIONS

- A. Approval of the Minutes of the June 28, 2023 Members' Meeting
- B. Creation of a Local Development Corporation to Engage in Eligible Projects - Authorization to Cause the Creation of the Local Development Corporation to Engage in Eligible Projects

Item I. A.

DRAFT – SUBJECT TO REVIEW AND REVISION

NEW YORK JOB DEVELOPMENT AUTHORITY

Meeting of the Members

Held at:

Empire State Development
633 Third Avenue
New York, New York 10017

With Video Conferencing to:

New York State Department of Labor
W.A. Harriman Campus, Building 12
Albany, New York 12240

and

New York State Department of Agriculture and Markets
10B Airline Drive
Albany, New York 12235

and

Hampton Library
2478 Main Street
Bridgehampton, New York 11932

June 28, 2023

MINUTES

Members Present:

Kevin Younis, Acting Chair – Designee – Commissioner of NYS
Department of Economic Development
Alfredo Vazquez Assad
Benson Martin, Designee - Superintendent of NYS Department of
Financial Services
Steve McGrattan, Designee - Commissioner of NYS Department of
Agriculture and Markets
Christopher White, Designee - Commissioner of NYS Department
of Labor
Emily Youssouf

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JDA Staff: Kathleen Mize, Controller
Raymond Orlando, Chief Financial Officer
Debbie Royce, Acting Corporate Secretary

Present for ESD: Donna Gayden, Interim Assistant Controller
Felisa Hochheiser, Director of Compliance
Douglas Janese, Senior Counsel
Antovk Pidedjian, Senior Counsel – Lending Programs
Ray Salaberrios, Senior Vice President - Division of Small
Business – Capital Access

Also Present: Douglas Zimmerman, Partner – EFPR Group

Following the roll call and confirmation that a quorum was present, the meeting of the Members of JDA was called to order at 10:00 a.m. by Acting Chair Younis. He reminded everyone to please mute their phone when not speaking.

Next, Acting Chair Younis noted that the meeting was being webcast and that the public had been given an opportunity to comment on the Agenda items by submitting their written comments at or before 4:30 p.m. yesterday. He further noted that no comments were received on any of the Agenda items.

Acting Chair Younis stated the Members had received the written materials in advance of the meeting and were allowed to asked questions at any time during the presentations.

Next, Acting Chair Younis entertained a motion to approve the Minutes of June 23, 2022 Members' Meeting.

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Upon motion duly made and seconded, and noting no edits, the following resolution was unanimously adopted:

APPROVAL OF THE MINUTES AND RATIFICATIONS OF ACTIONS TAKEN AT THE JUNE 23, 2022 MEMBERS' MEETING OF THE NEW YORK JOB DEVELOPMENT AUTHORITY

RESOLVED, that the Minutes of the meeting of the Authority held June 23, 2022 as presented to this meeting, are hereby approved and all actions taken by the Members present at such meeting, as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Authority.

* * *

The Acting Chair then asked Kathleen Mize, JDA's Controller, to present the first item on the Agenda related to the Annual Financial Reports for the Members' consideration.

Ms. Mize explained that the Public Authorities Law requires annual approval by the Authority Members and certifications by the President and Chief Executive Officer and the Chief Financial Officer of certain financial reports which consist of financial information set forth in the combined financial statements and independent auditor's report dated March 31, 2023, and March 31, 2022. She advised the reports were prepared EFPR Group, LLC.

Ms. Mize further explained that the audit report for Fiscal Year March 31, 2023, contains an unmodified clean opinion, reflecting that the combined financial statements present fairly in all material respects, the financial position, results of operation and cost flows of the authority.

Ms. Mize noted that the independent auditor's report on internal control over financial reporting and on compliance, addressing whether control deficiencies or material weaknesses

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in internal control exist, did not identify any deficiencies that would be considered material weaknesses.

Ms. Mize further noted that the audit firm was able to obtain reasonable assurance that the Authority's financial statements are free of material misstatement by performing tests of compliance with certain provisions of laws, regulations, contracts, and grant agreements, including the Authority's investment guidelines and other matters.

Ms. Mize noted that non-compliance with any of these could have had a direct and material effect on the financial statements. She advised their testing revealed no instances of non-compliance or other matters that are required to be reported.

Ms. Mize advised that included in the materials is the complete audit report dated March 31, 2023, which included 30 percent preparation participation by MBE and WBE firms and 6 percent by a SDVOB firm.

Following the full presentation, the Acting Chair called for questions or comments. Hearing none, and noting that no comments were received from the public upon motion duly made and seconded, the following resolution was unanimously adopted:

NEW YORK JOB DEVELOPMENT AUTHORITY (the "Authority") – Annual Financial Reports
- Approval of Certain Annual Financial Reports and Authorization to take Related Actions

WHEREAS the Authority wishes to comply with §2800 of the Public Authorities Law (the "Law"), which mandates that public benefit corporations annually prepare certain financial reports (the

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“Report”), which for the Authority consists of the independent audit;

WHEREAS an independent audit is required by §2802 of the Law;

WHEREAS §2800 of said Law also requires the annual approval by the Members and certifications by the President and Chief Executive Officer and Chief Financial Officer of the Report;

WHEREAS an independent audit has been prepared for the fiscal year ended March 31, 2023;

WHEREAS, the Authority has reviewed said Report and found it to be satisfactory; and

NOW, THEREFORE, based on the materials submitted herewith, IT IS HEREBY RESOLVED that the Report is hereby approved; and it is further

RESOLVED, that the President and Chief Executive Officer, Chief Financial Officer, Controller, Treasurer or their designees be, and each of them hereby is, authorized and empowered to submit said Report, as required by law, and to take such action and execute such agreements and instruments as he or she may consider necessary or desirable or appropriate in connection with the implementation and approval of the Report and to take related actions.

* * *

The Acting Chair then called on Ray Salaberrios, ESD’s Senior Vice President of Small Business, Capital Access, to present the next item on the Agenda related to the Mission Statement and Related Performance Measurements for the Members’ consideration.

Mr. Salaberrios explained that the New York Job Development Authority utilizes the authority it has been granted by leveraging State-guaranteed bonds to support low-interest loans to manufacturers and other targeted industries throughout New York State.

Mr. Salaberrios noted that the performance measures are: annual number of transactions closed; the aggregate value of the bonds issued; the number of jobs retained and created with each investment transaction; the amount of private capital investment leveraged;

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the number of delinquent transactions; the number of transactions in default; and, the number of transactions approved by the Authority during the reporting period.

Mr. Salaberrios explained that the JDA Direct Loan Program provides loans to manufacturing and other agribusinesses within New York State by financing a portion of the cost of acquiring and renovating existing buildings, construction of new buildings and the purchase of machinery and equipment. He explained the funds for these loans are derived from the sale of state-guaranteed bonds and recycled loan payments.

Mr. Salaberrios noted that in 2022, three JDA agriculture projects were approved for a total of \$2,051,129 and will leverage \$1,201,129 in private capital while retaining 260 jobs and creating an additional 9 jobs.

Mr. Salaberrios further noted that the Agriculture Loan Program was created to provide loans to lenders that provide financing to businesses that serve the agriculture industry that would otherwise face difficulty in obtaining capital at a reasonable cost in order to establish or expand their businesses.

Lastly, Mr. Salaberrios stated that in Fiscal Year 2022-2023, no transactions were defaulted on, and the Authority did not issue any new bonds during the reporting period.

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Following the full presentation, the Acting Chair called for questions or comments.

Member Youssouf asked if there is any interest in this program going forward and Mr.

Salaberrios replied that there was interest.

Acting Chair Younis asked if interest was coming from borrowers. Mr. Salaberrios stated yes, and with interest rates above what they normally are and because JDA is financing some of these projects with SSBCI money, JDA will be able to lower the cost of capital for many of the borrowers searching for loans.

The Acting Chair then called for any further questions or comments. Hearing none, and noting that no comments were received from the public upon motion duly made and seconded, the following resolution was unanimously adopted:

NEW YORK JOB DEVELOPMENT AUTHORITY — Mission Statement, Related Performance Measurements, and FY 2022-2023 Performance Measurement Report — Re-Examination of Mission Statement and Related Performance Measurements; and Acceptance of FY 2022-2023 Performance Measurement Report

WHEREAS, the New York State Public Authorities Law § 2824-a requires each Authority to re-examine its Mission Statement and Performance Measurements annually, therefore

BE IT RESOLVED, that the Members hereby confirm that they have re-examined the Mission Statement as previously adopted and recommend no further amendments; and

RESOLVED, that the FY 2022-2023 Performance Measurement Report contained in the materials presented to this meeting and hereby ordered to be filed with the records of the Authority is hereby accepted.

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The Acting Chair then called on Doug Janese, ESD’s Senior Counsel, to present the next item on the Agenda related to the 2023 Revised Procurement Guidelines for the Members’ consideration.

Mr. Janese explained that the Members were being asked to approve the revised guidelines for the use, awarding, monitoring and reporting of procurement contracts for this year as Public Authorities Law requires its annual adoption.

Mr. Janese further explained that while the 2023 guidelines are substantially similar to the adopted 2022 guidelines, staff is recommending some changes to clarify and better organize the guidelines, make them more use-friendly, logical and coherent, while ensuring that JDA obtains goods and services in an open, accountable and transparent manner.

Mr. Janese noted that the changes include: permitting staff to use the federal general supply schedules to make purchases without competitive procurement, provided that staff determined that those purchases represent the best overall value to JDA; clarifying both the bid submission process and opening procedures for bids and proposals that are received electronically that were adopted in last year’s guidelines; providing a link to the new Request for Qualifications template being adopted to assist staff in developing a pre-qualified list of vendors; verifying the invitation to the bidder’s process and providing a link to the new standard IPB tablet; and updating and clarifying Section 8.4 relative to contractor and supplier diversity, to make it more easily understood and utilized by staff.

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Following the full presentation, Acting Chair Younis called for questions or comments. Hearing none, and noting that there were no comments from the public, upon motion duly made and seconded, the following resolution was unanimously adopted:

NEW YORK JOB DEVELOPMENT AUTHORITY – 2023 Procurement Guidelines - Adoption of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Authority, the proposed 2023 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts (“Guidelines”), a copy of which is attached to the materials, be and hereby is approved and adopted as of the date hereof, and the Chairman, President and Chief Executive Officer or his or her designee is authorized to promulgate the Guidelines in electronic form and other media for the use by JDA, and to take such other and further action as may be deemed necessary or appropriate to effectuate the foregoing Resolution.

* * *

The Acting Chair then called on Mr. Salaberrios to present the final item on the Agenda, an oral report on the State Small Business Credit Initiative Program for the Members’ Information.

There being no further business, the meeting was adjourned at 10:28 a.m.

Respectfully submitted,

Debbie Royce
Acting Corporate Secretary

Item I. B.



FOR CONSIDERATION

April 9, 2024

TO: The Members

FROM: Hope Knight

SUBJECT: Creation of a Local Development Corporation to Engage in Eligible Projects

REQUEST FOR: Authorization to Cause the Creation of the Local Development Corporation to Engage in Eligible Projects

I. Background

The State has been asked to facilitate the financing or refinancing of one or more projects, which would serve a public purpose or otherwise are eligible to be funded with tax-exempt bonds.

Federal tax law also imposes certain restrictions on the types of entities that can issue tax-exempt bonds. The New York Job Development Authority (the “Authority”) has the power, set forth in the Not-For-Profit Corporation Law and the Public Authorities Law, to create local development corporations that comply with these federal restrictions and are also consistent with applicable State law.

The Authority is now being asked to form a local development corporation (the “LDC”) for the purpose of issuing obligations (including tax-exempt bonds or other federally tax-advantaged obligations) to finance or refinance eligible projects.

II. Projects

The eligible projects that the LDC could carry out include, but would not be limited to, any energy-related projects that the New York Power Authority would be permitted to carry out under State law and projects involving the issuance of obligations to prepay the cost of future deliveries of gas, electricity or renewable energy.

III. Creation of the LDC

The Authority is being requested to cause to be created the LDC. The LDC would be authorized to issue obligations (including tax-exempt bonds or other federally tax-advantaged obligations) to finance or refinance eligible projects.

The structure that would be used by the LDC was previously validated by an IRS private letter ruling, dated September 27, 2002.

The LDC will have two members: The Governor and the Authority. Each member will elect up to three directors and one director elected from each member must be present for a quorum. In addition, the members will sign a voting agreement which provides that at any meeting to remove an Authority appointed director, the Authority will vote as instructed by the Governor. Along with the federal TEFRA requirement to have the Governor consent to any financing of tax-exempt private activity bonds, if applicable, this structure ensures that the State controls the LDC and that only projects supported by the Governor will be permitted.

The LDC's purposes will be, among other things, to issue obligations (including tax-exempt bonds or other federally tax-advantaged obligations) as may be appropriate in accordance with applicable law.

I. Environmental Review

ESD staff on behalf of the Authority has determined that the authorization of the creation of a local development corporation constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required in connection with the authorization.

II. Requested Action

The Members are being requested to authorize the creation of the LDC, which would be empowered, among other things, to issue obligations (including tax-exempt bonds or other federally tax-advantaged obligations) to finance or refinance eligible projects.

Attachment
Resolution

NEW YORK JOB DEVELOPMENT AUTHORITY - Authorization to Cause the Creation of a
Local Development Corporation for Eligible Projects

WHEREAS, the New York Job Development Authority (the "Authority") is being requested to cause to be created a new local development corporation ("LDC");

WHEREAS, the LDC's purpose will be, among other things, to issue obligations (including tax-exempt bonds or other federally tax-advantaged obligations) for the project described in the attached materials, and other eligible projects as may be appropriate;

NOW, THEREFORE, the Members of the Authority hereby adopt the following resolutions:

I. Creation of the LDC

RESOLVED, that pursuant to the powers granted to the Authority in Section 1804 of the New York Public Authorities Law and Section 1411 of the New York Not-For-Profit Corporation Law (the "NYNPCL"), the Members of the Authority authorize the creation of a local development corporation (the "LDC"), which may issue obligations for eligible projects as may be appropriate.

II. Certificate of Incorporation of the LDC

RESOLVED, that the Members of the Authority authorize the filing of the Certificate of Incorporation of the LDC with the New York Department of State in accordance with Section 402 of the NYNPCL.

III. Members of the LDC

RESOLVED, that the LDC shall have two members, each representing a separate class of membership, one of which shall be the Authority and one of which shall be the Governor.

IV. Authorization of Designees

RESOLVED, that pursuant to Section 603 of the NYNPCL, the LDC's bylaws shall permit each member to designate a person (either by name or *ex officio*) who shall be entitled to vote on behalf of such member on all matters upon which the member has voting rights (the "Voting Designee").

V. Initial Voting Designee of the Authority

RESOLVED, that the Authority's initial Voting Designee shall be the Chairman of the Authority.

VI. Directors of the LDC

RESOLVED, that the LDC's bylaws shall permit each class of members to elect up to three members to an LDC's board of directors with each class of members having the right to remove any directors elected by such class, with or without cause, upon 10 days' notice.

VII. Voting Agreement

RESOLVED, that the Authority, in its capacity as a member of the LDC, shall enter into a Voting Agreement with the Governor, in the Governor's capacity as a member of the LDC, in which the respective Authority, or its designee, shall agree to vote as instructed by the Governor, or the Governor's designee, in connection with the removal of any Authority appointed directors, with or without cause upon 10 days' notice, the execution and delivery of such Voting Agreement to be conclusive evidence that the same was authorized by this resolution.

VIII. Further Actions

RESOLVED, that the Chairman of the Authority, and as appropriate, the other officers of the Authority be, and each acting singly hereby is, authorized, empowered and directed for and on behalf of and in the name of the Authority to execute and deliver such further instruments, documents, certificates and filings, with such changes in the terms and provisions thereof as the officer executing the same shall deem necessary and appropriate, and to do and perform such acts and deeds as they or any of them deem necessary or appropriate in order to effectuate the purposes and intent of the foregoing resolutions and that any actions taken heretofore in furtherance of any matters related hereto, are hereby affirmed and ratified.

* * *