

June 24, 2016

The Erie Tobacco Asset Securitization Corporation (“ETASC”) is soliciting proposals from certified public accounting firms to conduct the annual audit of ETASC. The request for proposals (RFP”) is enclosed.

Your proposal must address the original RFP and all items contained in this correspondence to be considered complete.

Written proposals must be received by 3 p.m. on July 15, 2016. Please forward ten (10) copies of each proposal to:

Bryan Bingel, CPA
Chairman, Audit Committee, Erie Tobacco Asset Securitization Corporation
c/o Erie County Division of Budget and Management
95 Franklin Street, Room 1600
Buffalo, New York 14202

Also, please provide one electronic copy of the proposal to Mr. Bingel at bbingel@fcsadministrators.com. For any questions concerning this RFP, please contact Mr. Bingel at bbingel@fcsadministrators.com.

Sincerely yours,

Erie Tobacco Asset Securitization Corporation

Enclosure

**ERIE TOBACCO ASSET SECURITIZATION CORPORATION
("ETASC")**

**C/O ERIE COUNTY DIVISION OF BUDGET AND MANAGEMENT
95 FRANKLIN STREET, ROOM 1600
BUFFALO, NEW YORK 14202**

REQUEST FOR PROPOSALS

EXTERNAL AUDIT OF ETASC

RFP # 1627

June 24, 2016

I. INTRODUCTION

The Erie Tobacco Asset Securitization Corporation (“ETASC”) is seeking proposals from professional accounting/auditing firms to conduct the annual audit of ETASC. The contract term will be for five (5) years and shall consist of the audit of ETASC’s 2016, 2017, 2018, 2019 and 2020 fiscal (calendar) years.

II. PROPOSAL PROCEDURES

A. ANTICIPATED SCHEDULE OF PROPOSAL

ISSUE RFP: June 24, 2016

PROPOSALS DUE: July 15, 2016

INTERVIEWS: To be scheduled if necessary

SELECTION MADE: August 26, 2016

CONTRACT SIGNED: Following all necessary approvals

B. REQUIREMENTS

If you choose to respond, please submit ten (10) copies of your proposal to Bryan Bingel, CPA, Chair, Audit Committee, Erie Tobacco Asset Securitization Corporation, c/o Erie County Division of Budget and Management, 95 Franklin Street, Room 1600, Buffalo, New York 14202 and one electronic copy to Mr. Bingel at bbingel@fcsadministrators.com. For any questions concerning this RFP, please contact ETASC Audit Committee Chairman Bryan Bingel at bbingel@fcsadministrators.com.

C. RIGHT OF REJECTION

Notwithstanding any other provisions of this RFP, ETASC reserves the right to award this contract to the firm that best meets the requirements of the RFP and not necessarily to the lowest proposer. Further, ETASC reserves the right to reject any or all proposals prior to execution of the contract for any or no reason and without penalty to ETASC.

D. AWARD OF CONTRACT

The firm selected by ETASC to be awarded this contract will be asked to enter into negotiations with ETASC, with the intention of awarding the contract. Neither the selection of a firm nor the issuance of a Notice of Award shall constitute ETASC’s acceptance of the proposal or a binding commitment on behalf of ETASC to enter into a services contract with the firm, as any binding arrangement must be set forth in definitive documentation signed by both parties and subject to all requisite approvals.

E. CONTRACT NEGOTIATIONS

After issuance of the Notice of Award, ETASC intends to enter into contract with the winning firm who shall be required to enter into a written agreement, in a form approved by ETASC legal counsel. The

winning respondent's proposal, or any part thereof, may be incorporated into and made a part of the final contract(s).

III. STATEMENT OF RIGHTS

UNDERSTANDINGS

Please take notice, by submission of a proposal in response to this request for proposals, the proposer agrees to and understands:

- that any proposal, attachments, additional information, etc. submitted pursuant to this RFP constitute merely a suggestion to negotiate with ETASC and is not a bid under Section 103 of the New York State General Municipal Law;
- submission of a proposal, attachments, and additional information shall not entitle the proposer to enter into an agreement with ETASC for the required services;
- by submitting a proposal, the proposer agrees and understands that ETASC is not obligated to respond to the proposal, nor is it legally bound in any manner by submission of same;
- that any and all counter-proposals, negotiations or communications received by a proposing entity, its officers, employees or agents from ETASC, its officials, officers, employees or agents, shall not be binding against ETASC, its officials, officers, employees or agents unless and until a formal written agreement for the services sought by this RFP is duly executed by both parties and approved.

In addition to the foregoing, by submitting a proposal, the proposer also understands and agrees that ETASC reserves the right, and may at its sole discretion exercise, the following rights and options with respect to this RFP:

- To reject any or all proposals;
- To issue amendments to this RFP;
- To issue additional solicitations for proposals;
- To waive any irregularities in proposals received after notification to proposers affected;
- To select any proposal as the basis for negotiations of a contract, and to negotiate with one or more of the proposers for amendments or other modifications to their proposals;
- To conduct investigations with respect to the qualifications of each proposer;
- To exercise its discretion and apply its judgment with respect to any aspect of this RFP, the evaluations of proposals, and the negotiations and award of any contract;
- To enter into an agreement for only portions (or not to enter into an agreement for any) of the services contemplated by the proposals with one or more of the proposers;
- To select the proposal that best satisfies the interests of ETASC and not necessarily on the basis of price or any other single factor;
- To interview the proposer(s);
- To request or obtain additional information ETASC deems necessary to determine the ability of the proposer;
- To modify dates;
- All proposals prepared in response to this RFP are at the sole expense of the proposer, and with the express understanding that there will be no claim for reimbursement from ETASC for the expenses of preparation. ETASC assumes no responsibility or liability of any kind of costs incurred in the preparation or submission of any proposal;

- While this is a RFP and not a bid, ETASC reserves the right to apply the case law under General Municipal Law Section 103 regarding bidder responsibility in determining whether a proposer is a responsible vendor for the purpose of this RFP process;
- ETASC is not responsible for any internal or external delivery delays which may cause a proposal to arrive beyond the stated deadline. To be considered, proposals MUST arrive at the place specified herein and be time stamped prior to the deadline.

EVALUATION

The following criteria, not necessarily listed in order of importance, will be used to review the proposals. ETASC reserves the right to weigh its evaluation criteria in any manner it deems appropriate:

- Proposer's demonstrated capability to provide the services.
- Evaluation of the professional qualifications, personal background and resume(s) of individuals involved in providing the services.
- Proposer's experience in performing the proposed services.
- Evaluation of the proposer's fee submission.
- A determination that the proposer has submitted a complete and responsive proposal as required by this RFP.
- Proposer's projected approach and plans to meet the requirements of this RFP.
- Proposer's presentation at and the overall results of any interview conducted with the proposer.
- Proposers may be requested to give an oral presentation of their proposal.
- No contract or agreement will be awarded to any proposer that is in arrears upon any debt or in default of any obligation owed to ETASC or the County of Erie.

CONTRACT

After selection of the successful proposer, a formal written contract will be prepared by ETASC and will not be binding until signed by both parties. No rights shall accrue to any proposer by the fact that a proposal has been selected by ETASC for submission to the ETASC Board of Directors for approval.

INDEMNIFICATION AND INSURANCE

The proposer accepts and agrees that language in the following form will be included in the contract between the proposer and ETASC:

"In addition to, and not in limitation of the insurance requirements contained herein the consultant agrees:

- (a.) That except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of ETASC, the consultant shall indemnify and hold harmless ETASC, its officers, employees and agents, and the County of Erie from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorneys' fees or loss arising directly or indirectly out of the acts or omissions hereunder by the consultant or third parties under the direction or control of the consultant; and
- (b.) To provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this agreement and to bear all other costs and expenses related hereto.

Upon execution of any contract between the proposer and ETASC, the proposer will be required to provide proof of the insurance coverage. Insurance coverage in amount and form shall not be deemed acceptable until approved by ETASC's legal counsel.

INTELLECTUAL PROPERTY RIGHTS

The proposer accepts and agrees that language in substantially the following form will be included in the contract between the proposer and ETASC:

All deliverables created under this Agreement by the Consultant are to be considered "works made for hire." If any of the deliverables do not qualify as "works made for hire," the Consultant hereby assigns to ETASC all right, title and interest (including ownership of copyright) in such deliverables and such assignment allows ETASC to obtain in its name copyrights, registrations and similar protections which may be available. The Consultant agrees to assist ETASC, if required, in perfecting these rights. The Consultant shall provide ETASC with at least one copy of each deliverable.

The Consultant agrees to indemnify and hold harmless ETASC for all damages, liabilities, losses and expenses arising out of any claim that a deliverable infringes upon an intellectual property right of a third party. If such a claim is made, or appears likely to be made, the Consultant agrees to enable ETASC's continued use of the deliverable, or to modify or replace it. If ETASC determines that none of these alternatives is reasonably available, the deliverable will be returned. All records compiled by the Consultant in completing the work described in this Agreement, including but not limited to written reports, source codes, studies, drawings, blueprints, negatives of photographs, computer printouts, graphs, charts, plans, specifications and all other similar recorded data, shall become and remain the property of ETASC. The Consultant may retain copies of such records for its own use.

NON-COLLUSION

The proposer, by signing the proposal, does hereby warrant and represent that any ensuing agreement has not been solicited, secured or prepared directly or indirectly, in a manner contrary to the laws of the State of New York and ETASC or the County of Erie, and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the agreement by any conduct, including the paying or the giving of any fee, commission, compensation, gift, gratuity or consideration of any kind, directly or indirectly, to any ETASC employee, officer or official.

CONFLICT OF INTEREST

All proposers must disclose with their proposals the name of any officer, director or agent who is also an employee of ETASC or the County of Erie. Further, all proposers must disclose the name of any ETASC or County employee who owns, directly or indirectly, an interest of ten percent or more in the firm or any of its subsidiaries or affiliates. There shall be no conflicts in existence during the term of any contract with ETASC. The existence of a conflict shall be grounds for termination of a contract.

COMPLIANCE WITH LAWS

By submitting a proposal, the proposer represents and warrants that it is familiar with all federal, state and local laws and regulations and will conform to said laws and regulations. The preparation of

proposals, selection of proposers and the award of contracts are subject to provisions of all federal, state and County laws, rules and regulations.

EFFECTIVE PERIOD OF PROPOSALS

All proposals must state the period for which the proposal shall remain in effect (i.e. how much time does ETASC have to accept or reject the proposal under the terms proposed). Such period shall not be less than 180 days from the proposal date.

IV. BACKGROUND INFORMATION

ETASC is a special purpose local development corporation organized pursuant to Section 1411 of the Not-For-Profit Corporation Law of the State of New York and Erie County Local Law 3 of 2000 ("Local Law 3").

ETASC was incorporated on August 17, 2000, for the purpose of issuing tobacco settlement asset-backed bonds in order to provide funds to purchase from the County of Erie ("County") some or all of the County's right, title, and interest under the Master Settlement Agreement (MSA) entered into on November 23, 1998, among the attorneys general of 46 states (including New York), the District of Columbia, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, the Territory of the Northern Marianas and the four largest United States tobacco product manufacturers: Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Brown and Williamson Tobacco Company, and Lorillard Tobacco Company (collectively, the "Original Participating Manufacturers: or "OPMs") in settlement of certain smoking-related litigation and a Consent Decree and Final Judgment entered in New York State Supreme Court, including the County's right to receive certain initial and annual payments to be made by the OPMs under the MSA. The payments to be received by the County from the OPMs are collectively defined as the "Tobacco Assets."

The County has utilized and to the extent available will utilize the proceeds of the sale of its interest under the MSA for various County purposes consistent with Local Law 3.

ETASC sold bonds in 2000, 2005 and 2006, (collectively the "Bonds"), by pledging its payments from the OPMs pursuant to the MSA through 2060 to make principal and interest payments on the bonds.

ETASC was formed and its activities are strictly limited to:

- Acquiring some or all of the Tobacco Assets from the County;
- Issuing bonds, the net proceeds of which are paid to the County for ETASC's purchase of some or all of its Tobacco Assets;
- Collecting receipts from the OPMs under the MSA and servicing its debt in connection with the issuance of its tobacco settlement asset-backed bonds; and
- Remaining in existence for the terms of its bonds and, if required by its outstanding bonds, providing annual reports to its bondholders.

V. WORK TO BE UNDERTAKEN BY THE PROPOSER

PREPARATION OF FINANCIAL STATEMENTS

The winning proposer will compile, prepare, duplicate and distribute the financial statements in the form of the Basic Financial Statements and Management's Discussion and Analysis. The firm will prepare separate opinion letters, as required, based on the type of report(s) produced.

Copies of past ETASC financial statements can be viewed at <http://www2.erie.gov/etasc/index.php?q=financial-information>.

Proposers are hereby informed that under New York state law governing public authorities, ETASC is required to have completed and issued its annual audited financial statements by April 1st annually. The audited financial statements are placed on the ETASC website and uploaded, as required, to the New York State Authorities Budget Office's PARIS system. Potential proposers understand and so certify that if awarded a contract, they will complete the annual audit in advance of the April 1st deadline, while allowing time to the ETASC board to review and approve of the audited financial statements.

This functionally means that the audit must be completed in less than 90 days.

Vi. REQUIRED INFORMATION FOR RFP RESPONSE

PROPOSED PRICE OF AUDIT

Each firm submitting a proposal is requested to provide a pricing proposal. 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 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.

Your proposal should also clearly provide the following information:

1. Qualifications and Experience of the Firm.

- a. The size of the firm (or local office assigned to perform the work) in full-time equivalents, rounded to the nearest ten persons.
- b. Experience with governmental auditing, including a list of prior engagements performed by the office expected to be performing the work.
- c. The firm's most current peer review.
- d. Any governmental client references.

2. Qualifications and experience of the firm's staff.

- a. Names and resumes, including the partners in charge, of personnel to be assigned to the engagement with ETASC. It is fully expected that the personnel indicated will be those assigned to the project. Please detail which of these personnel are "local", that is, which of these persons normally live and work in Western New York.
- b. Proposed or estimated staffing (in hours).
- b. Affirmation that all staff has met the continuing professional education requirements for government accounting.

3. Proposed Work Plan

- a. Present a draft Audit Work Plan, including levels of testing and field work.
- b. Estimate of hours by type of staff

4. Proposed Fee Structure

- a. Average hourly rate charged for the staff assigned to this engagement.
- b. Any other expected fees or expenses.
- c. Any "flat rate" or "not to exceed" price for this engagement.

5. An affirmation that no conflicts of interest exist between the firm and ETASC.

6. Evidence of malpractice or errors and omissions insurance with a minimum coverage of \$3 million.

7. A description of your firm's experience in performing financial audits and any other experience in assisting municipalities in the financing of governmental projects pursuant to New York State Local Finance Law.

8. Demonstrate that the proposer is a "responsible proposer" by attesting that the proposer:

- a. Complies with all laws prerequisite to doing business in New York.
- b. Complies with U.S. Equal Opportunity Employer provisions.
- c. The proposer has no Erie County outstanding tax liability.

ETASC reserves the right to award the contract to the low and responsible proposer it deems best suited and qualified to meet the needs of ETASC and its constituents. ETASC assumes responsibility for determining if a specific proposer is responsible. The judgment of ETASC is final.

All communications concerning this RFP shall be directed to Bryan Bingel, CPA, Chair, Audit Committee, Erie Tobacco Asset Securitization Corporation, c/o Erie County Division of Budget and Management, 95 Franklin Street, Room 1600, Buffalo, New York 14202. For any questions concerning this RFP, please contact Mr. Bingel at bbingel@fcsadministrators.com.

The RFP number (1627) should be included in any proposal.