

ERIENET LOCAL DEVELOPMENT CORPORATION

Special Meeting of the Board of Directors

Department of Environmental Planning, 10th Floor Conference Room

95 Franklin Street

Buffalo, New York 14202

Wednesday, May 31, 2023, 2:00 p.m.

Agenda

1. Roll call and declaration of quorum
2. Unfinished Business - No unfinished business.
3. Resolutions
2023-10 - RESOLUTION OF THE ERIENET LOCAL DEVELOPMENT CORPORATION ("ENLDC") AUTHORIZING THE NEGOTIATION AND EXECUTION OF AN AGREEMENT TO ENGAGE CLW CABLE CONSTRUCTION INC. ("CLW" OR "CONTRACTOR") TO PROVIDE FIBER OPTIC INFRASTRUCTURE CONSTRUCTION SERVICES
2023-11 - A RESOLUTION OF ERIENET LOCAL DEVELOPMENT CORPORATION AUTHORIZING THE EXECUTIVE DIRECTOR OF THE CORPORATION TO ENTER INTO A CONTRACT WITH USI INSURANCE FOR GENERAL LIABILITY INSURANCE
4. Adjournment – (Next board meeting: June 20, 2023)

**ERIENET LOCAL DEVELOPMENT CORPORATION
RESOLUTION 23-10**

A special meeting of the ErieNet Local Development Corporation was convened on May 31, 2023 at 2:00 p.m.

The following resolution was duly offered and seconded, to wit:

RESOLUTION OF THE ERIENET LOCAL DEVELOPMENT CORPORATION (“ENLDC”) AUTHORIZING THE NEGOTIATION AND EXECUTION OF AN AGREEMENT TO ENGAGE CLW CABLE CONSTRUCTION INC. (“CLW” OR “CONTRACTOR”) TO PROVIDE FIBER OPTIC INFRASTRUCTURE CONSTRUCTION SERVICES

WHEREAS, the ENLDC is authorized and empowered by Section 1411 of the Not-for-Profit Corporation Law of the State of New York, as amended, to relieve and reduce unemployment, promote and provide for additional and maximum employment, better and maintain job opportunities in Erie County and to lessen the burdens of government and act in the public interest; and

WHEREAS, ENLDC was specifically created and empowered by the County of Erie (the “County”) to study, design, and engineer an Open Access Network and to ultimately install internet services within and throughout the County to ensure growth, equity and prosperity for the County (the “Project”); and

WHEREAS, the Project requires the construction/installation of approximately 362 miles of fiber optic cable including the construction/installation of approximately 338 miles of aerial fiber optic cable, with approximately 24 miles of fiber optic cable to be installed within underground conduits and related thereto, it is necessary to procure labor, certain equipment, (except fiber cable and cross-connect boxes) tools, materials, project management, and other services or components to accomplish the foregoing (collectively, the “Fiber Optic Infrastructure Installation Project”, being a component part of the Project); and

WHEREAS, on March 16, 2023, ENLDC, in compliance with its Procurement Policy, issued a Request for Proposals (the “RFP”) with respect to the Fiber Optic Infrastructure Installation Project as a component piece of the Project; and

WHEREAS, the winning RFP respondent will be responsible for construction/installation services and all component parts of the Fiber Optic Infrastructure Installation Project; and

WHEREAS, CLW Cable Construction, Inc. ("CLW") was the only respondent to the RFP; and

WHEREAS, ENLDC Project consultant, ECC Technologies Inc. (ECC), followed up with companies that had originally indicated an interest in responding to the RFP to determine why no such response was provided, and the companies variously cited to price volatility concerns, prevailing wage requirements, five-year maintenance agreement requirements, and existing workload challenges as to why a response was not provided; and

WHEREAS, as directed by the ENLDC Chair, ECC has determined that CLW's unit price schedule is approximately 15% lower than the Project's Business Plan, that CLW has satisfactorily performed on other similar type projects with which ECC was itself directly involved with, that within the last three years CLW has completed over 400 miles of fiber optic construction in New York, Florida, and Bermuda, that CLW has confirmed it has the staff and resources available to timely meet the Project's schedule, that CLW is a certified New York State MWBE firm, and that to minimize risks CLW has agreed that ENLDC can hold CLW to a 10% retainage and that CLW is amendable to purchasing materials in advance to further minimize risks of performance; and

WHEREAS, all work associated with the Fiber Optic Infrastructure Installation Project shall meet or exceed appropriate local, city, county, state, or federal codes and regulations, including, but is not limited to, OSHA, NEC, and EPA and SEQRA requirements, and CLW shall work with ENLDC and its Project Engineers, Construction Manager, Contract Administrators, and other designees to secure all required inspections, permits, and/or approvals, including any electrical, traffic and safety permits required; and

WHEREAS, the ENLDC Selection Committee, consisting of ENLDC board members (Thomas E. Baines, Dan Castle, and Jason Keding) and representatives from ECC, have reviewed the CLW RFP response and considered ECC's findings as heretofore described with respect to the ability and capability of CLW to successfully undertake the Fiber Optic Infrastructure Installation Project, and recommends that CLW be retained to undertake the Fiber Optic Infrastructure Installation Project.

NOW, THEREFORE, BE IT RESOLVED BY THE ERIENET LOCAL DEVELOPMENT CORPORATION AS FOLLOWS:

Section 1. Based upon the foregoing, and in compliance with ENLDC's Procurement Policy, the ENLDC hereby selects CLW to undertake the Fiber Optic Infrastructure Installation Project, as a component piece of the Project, and hereby authorizes the Executive Director to negotiate and execute a contract with CLW, in consultation with the ENLDC's general counsel, to undertake the Fiber Optic Infrastructure Installation Project in an amount not to exceed \$11,180,573.

Section 2. In the event a change order exceeds \$11,180,573, the Executive Director, in consultation with the Chair, is hereby authorized to negotiate and execute any work order changes and amendments as he/she shall deem necessary, his/her signature being conclusive evidence that he/she did so deem said change(s) and amendment(s) to be necessary or desirable and in the best interest of the ENLDC.

Section 3. The officers, employees and agents of the ENLDC are hereby authorized and directed for and in the name and on behalf of the ENLDC to do all acts and things required and to negotiate, execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the ENLDC with all of the terms, covenants and provisions of the documents executed for and on behalf of the ENLDC as related thereto and hereto.

Section 4. Any and all actions heretofore taken or authorized by ENLDC and/or its officers, employees and agents with respect to this resolution are hereby ratified, approved and confirmed in all aspects.

Section 5. This resolution shall take effect immediately.

Dated: May 31, 2023

**ERIENET LOCAL DEVELOPMENT CORPORATION
RESOLUTION NO. 23-11**

A special meeting of the ErieNet Local Development Corporation was convened on May 31, 2023 at 2:00, p.m.

The following resolution was duly offered and seconded, to wit:

**RESOLUTION OF THE ERIENET LOCAL DEVELOPMENT
CORPORATION AUTHORIZING IT'S EXECUTIVE DIRECTOR
TO ENTER INTO A CONTRACT WITH USI INSURANCE FOR
GENERAL LIABILITY INSURANCE**

WHEREAS, ErieNet Local Development Corporation (the "Corporation") was established pursuant to and in accordance with Section 1411 of the New York Not-for-Profit Corporation Law ("N-PCL") as a charitable not-for-profit corporation of the State of New York with purposes and powers included and as set forth within N-PCL Section 1411 (hereinafter, the "Act"); and

WHEREAS, the Corporation was specifically created and empowered by the County of Erie (the "County") to study, design, and engineer an Open Access Network and to ultimately install internet services within and throughout the County to ensure growth, equity and prosperity for the County (the "Project"), and

WHEREAS, in accordance with the Corporation's Procurement Policy, the Corporation is required to obtain documented verbal quotations or written/fax/email quotations from at least three vendors with respect to obtaining goods or services in an amount between \$5,000 and \$20,000; and

WHEREAS, the Corporation desires to procure general liability insurance in accordance with the recommendation of ECC as so related to the Corporation's power, purposes, and mission and for purposes of undertaking the Project; and

WHEREAS, the Corporation directly contacted four insurance companies, and, in addition, the Corporation's insurance agent, Lawley, contacted an additional eleven insurance companies for purposes of obtaining quotations to provide the required general liability insurance; and

WHEREAS, only two general liability insurance proposals were ultimately received, in the amount of \$100,000 from Lawley, and a second proposal in the amount of \$19,600 from USI; and

NOW, THEREFORE, BE IT RESOLVED BY THE DIRECTORS OF ERIENET LOCAL DEVELOPMENT CORPORATION, AS FOLLOWS:

Section 1. The Corporation hereby authorizes the acquisition of general liability insurance from USI with Technology Errors & Omissions coverage up to \$1 million, Umbrella Coverage up to \$4 million, and General and Property Liability up to \$2 million for an aggregate total premium cost of not to exceed \$19,600.

Section 2. The Corporation hereby authorizes and directs the Executive Director to execute an insurance binder with USI and to do all acts and things necessary to effect the purposes of the foregoing resolution.

Section 3. Any and all actions heretofore taken or authorized by the Corporation's and/or its officers, employees and agents with respect to this resolution are hereby ratified, approved and confirmed in all aspects.

Section 4. This Resolution shall take effect immediately upon its adoption.

Dated: May 31, 2023