

PART 5

PROCUREMENT POLICY

SECTION 501. PURPOSE AND AUTHORITY. The purpose of this Part is to outline the procurement policy of Yates County Industrial Development Agency (the "Agency") as set forth by the procurement policy resolution (the "Resolution") adopted by the Agency on May 15, 1995 pursuant to Section 858-a(2) of Title One of Article 18-A of the General Municipal Law (the "Act").

SECTION 502. SECURING GOODS AND SERVICES. All goods and services will be secured by use of written requests for proposals, written quotations, verbal quotations, or any other method that assures that goods will be purchased at the lowest price and that favoritism will be avoided, except in the following circumstances: purchases costing less than \$1,000; goods purchased from agencies for the blind or severely handicapped pursuant to Section 175-b of the State Finance Law; goods purchased from correctional institutions pursuant to Section 186 of the Correction Law; purchases under State contracts pursuant to Section 104 of the General Municipal Law; purchases under county contracts pursuant to Section 103(3) of the General Municipal Law; or purchases pursuant to Section 504 of this policy.

SECTION 503. METHOD OF PURCHASE.

(A) General. The following method of purchase will be used when required by this policy in order to achieve the highest savings:

<u>Estimated Amount of Purchase Contract</u>	<u>Method</u>
\$1,000-10,000	3 written/fax quotations
\$10,000 and above	written request for proposals

<u>Estimated Amount of Public Works Contract</u>	<u>Method</u>
\$1,000-10,000	3 written/fax quotations
\$10,000 and above	written request for proposals

(B) Number of Proposals or Quotations. A good faith effort shall be made to obtain the required number of proposals or quotations. If the purchaser is unable to obtain the required number of proposals or quotations, the purchaser will document the attempt made at obtaining the proposals. In no event shall the failure to obtain the proposals be a bar to the procurement.

(C) Documentation. (1) Documentation is required of each action taken in connection with each procurement.

(2) Documentation and an explanation is required whenever a contract is awarded to other than the lowest responsible offeror. This documentation will include an explanation of how the reward will achieve savings or how the offeror was not responsible. A determination that the offeror is not responsible shall be made by the purchaser and may not be challenged under any circumstances.

SECTION 504. CIRCUMSTANCES WHERE SOLICITATION OF ALTERNATIVE PROPOSALS AND QUOTATIONS NOT IN BEST INTEREST. Pursuant to General Municipal Law Section 104-b(2)(f), the procurement policy may contain circumstances when, or types of procurements for which, in the sole discretion of the members of the Agency, the solicitation of alternative proposals or quotations will not be in the best interest of the Agency. In the following circumstances, it may not be in the best interests of the Agency to solicit quotations or document the basis for not accepting the lowest bid:

(A) Professional Services. Professional services or services requiring special or technical skill, training or expertise. The individual, company or firm must be chosen based on accountability, reliability, responsibility, skill, knowledge, conflict of interests, reputation, education and training, judgement, integrity, continuity of service, experience, geographic location, and moral worth. Furthermore, certain professional services to be provided to the Agency, e. g., legal and accounting services, impact liability issues of the Agency and its members, including securities liability in circumstances where the Agency is issuing bonds. These qualifications and the concerns of the Agency regarding its liability and the liability of its members are not necessarily found or addressed in the individual, company or firm that offers the lowest price and the nature of these services are such that they do not readily lend themselves to competitive procurement procedures.

In determining whether a service fits into this category, the Agency shall take into consideration the following guidelines: (a) whether the services are subject to State licensing or testing requirements; (b) whether substantial formal education or training is a necessary prerequisite to the performance of the services; and (c) whether the services require a personal relationship between the individual and agency members. Professional or technical services shall include but not be limited to the following: services of an attorney (including bond counsel); services of a physician; technical services of an engineer engaged to prepare plans, maps and estimates; securing insurance coverage and/or services of an insurance broker; services of a certified public accountant; investment management services; printing services involving extensive writing, editing or art work; management of municipally owned property or property owned by the Agency; and computer software or programming services for customized programs, or services involved in substantial modification and customizing of pre-packaged software.

(C) Emergency Purchases. Emergency purchases pursuant to Section 103(4) of the General Municipal Law. Due to the nature of this exception, these goods or services must be purchased immediately and a delay in order to seek alternate proposals may threaten the life, health, safety or welfare of the public. This section does not preclude alternate proposals if time permits.

(C) Purchases of Secondhand Goods. Purchases of surplus and second-hand goods from any source. If alternate proposals are required, the Agency is precluded from purchasing surplus and second-hand goods at auctions or through specific advertised sources where the best prices are usually obtained. It is also difficult to try to compare prices of used goods and a lower price may indicate an older product.

(D) Goods or Services Under \$1,000. The time and documentation required to purchase through this policy may be more costly than the item itself and would therefore not be in the best interests of the taxpayer. In addition, it is not likely that such de minimis contracts would be awarded based on favoritism.

SECTION 505. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP

MEMBERS AND WOMEN. (A) All Agency documents soliciting bids or proposals for Agency contracts shall contain or make reference to the following provisions:

1. The Agency will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For purposes of this Section, affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation; and

2. The Agency shall state, in all solicitations or advertisements for employees, that, in the performance of the Agency contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(B) Any contract awarded by the Agency will include the provisions of Section 505(A) hereof in any subcontract, in such a manner that the provisions will be binding upon each subcontractor as to work in connection with the Agency contract.

(C) The provisions of this Section 505 shall not be binding upon contractors or subcontractors in the performance of work or the provision of services or any other activity that are unrelated, separate or distinct from the Agency contract as expressed by its terms.

(D) In the implementation of this Section 505, the Agency shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this Section. The Agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such law and if such duplication or conflict exists, the Agency shall waive the applicability of this Section 505 to the extent of such duplication or conflict.

(E) The Agency shall ensure that "certified businesses" (as defined in Section 310 of the Executive Law of the State of New York) shall be given the opportunity for meaningful participation in the performance of Agency contracts and to identify those Agency contracts for which certified businesses may best bid to actively and affirmatively promote and assist their participation in the performance of Agency contracts so as to facilitate the award of a fair share of Agency contracts to such businesses.

SECTION 506. POLICY REVIEW. This policy will be reviewed annually.

APPENDIX 5A

FORM OF PROCUREMENT POLICY RESOLUTION

A regular meeting of Yates County Industrial Development Agency (the "Agency") was convened in public session at the offices of the Agency located at in the _____ 9 - _____ County, New York on _____ 2002 at _____ o'clock - .m., local time.

The meeting was called to order by the (Vice) Chairman and, upon roll being called, the following members of the Agency were:

PRESENT:

ABSENT:

THE FOLLOWING PERSONS WERE ALSO PRESENT:

The following resolution was offered by seconded by to wit:

Resolution No. _____

RESOLUTION ESTABLISHING A PROCUREMENT POLICY APPLICABLE TO THE PROCUREMENT OF GOODS AND -SERVICES PAID FOR BY THE AGENCY FOR ITS OWN USE AND ACCOUNT

WHEREAS, Yates County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 113 of the 1975 Laws of New York, as amended, constituting Section 893-b of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, subsection (2) of Section 858-a of the Act, as added by Chapter 356 of the Laws of 1993 of the State of New York, provides that the provisions of Section 104-b of the General Municipal Law shall be applicable to the procurement of goods and services paid for by the Agency for its own use and account; and

WHEREAS, Section 104-b of the General Municipal Law requires that the governing board of every political subdivision subject to said provision shall adopt by resolution internal policies and procedures governing all procurements of goods and services which are subject to the provisions of such Section; and

WHEREAS, a tentative procurement policy, a copy of which is annexed hereto, (the "Procurement Policy") has been presented to the members of the Agency for their review;

NOW, THEREFORE, BE ' IT RESOLVED BY THE MEMBERS OF YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY, AS FOLLOWS:

Section 1. The Agency hereby finds and determines that it is desirable and in the public interest for the Agency to adopt the Procurement Policy.

Section 2. The form and substance of the Procurement Policy (in the form presented to this meeting) are hereby approved.

Section 3. Pursuant to subsection (2) of Section 858-a of the Act, the members of the Agency hereby adopt the Procurement Policy as the Agency's Procurement Policy applicable to the procurement of goods and services paid for by the Agency for its own use and account.

Section 4. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Procurement Policy, 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 resolution and to cause compliance by the Agency with all of the terms and provisions of the Procurement Policy.

Section 5. This resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Voting
Voting
Voting
Voting
Voting
Voting
Voting

The Resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
)SS.:
COUNTY OF YATES)

I the undersigned (Assistant) Secretary of Yates County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the annexed extract of the minutes of the meeting of the Agency, including the resolution contained therein, held on _____, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting, (B) said meeting was in all respects duly held, (C) pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and public notice of the time and place of said meeting was duly given in accordance with such Article 7, and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this _____ day of _____.

(Assistant) Secretary

(S E A L)