

PUBLIC AUTHORITIES
ACCOUNTABILITY ACT OF 2005

SECTION 1. PURPOSE AND SCOPE. The Public Authorities Accountability Act of 2005 (chapter 766 of the laws of 2005) (the "PAA Act") contains provisions imposing various requirements on industrial development agencies. The purpose of this Part is to set forth the policies and procedures adopted by the County of Delaware Industrial Development Agency (the "Agency") to implement the PAA Act.

SECTION 2. ORGANIZATION. This part is organized into two sections: administrative policies and administrative procedures.

SECTION 3. ADMINISTRATIVE POLICIES. (A) List of Policies. The administrative policies adopted by the Agency to comply with the PAA Act are described as follows:

- (1) Code of Ethics Policy;
- (2) Compensation Policy;
- (3) Retaliatory Action Policy
- (4) Travel Policy;
- (5) Real Property Acquisition Policy;
- (6) Real Property Disposition Policy;
- (7) Procurement Policy;
- (8) Investment Policy; and
- (9) Defense and Indemnification Policy.

(B) Review of Policies. The Governance Committee of the Agency shall, at least annually, review the administrative policies above and any other administrative policies of the Agency. The Governance Committee shall report to the members of the Agency on its review of such administrative policies and its recommendations on any modifications to such administrative policies at the annual meeting of the Agency.

(C) Copies of Policies. Copies of each of the administrative policies are attached as Schedule A attached.

SECTION 4. ADMINISTRATIVE PROCEDURES. (A) List of Administrative Procedures. The administrative procedures to be followed by the Agency to comply with the PAA Act are described as follows:

- (1) Create and maintain a web site;
- (2) Create, adopt and file an annual budget;
- (3) Prepare and file an annual report;
- (4) Review of annual independent audit by Audit Committee;

- (5) Review of Agency procedures by Governance Committee;
- (6) Board members must be independent and cannot hold certain positions;
- (7) Board members must attend training sessions;
- (8) Prepare and publish real property lists;
- (9) Create inventory controls;
- (10) Board members must follow County policy regarding the filing of annual financial disclosure forms; and
- (11) Prohibit insider loans.

(B) Review of Procedures. The Governance Committee of the Agency shall, at least annually, review the administrative procedures described above and any other administrative procedures of the Agency. The Governance Committee shall report to the members of the Agency on its review of such administrative procedures and its recommendations on any modifications to such administrative procedures at the annual meeting of the Agency.

SCHEDULE A
ADMINISTRATIVE POLICIES
--- SEE ATTACHED ---

SCHEDULE A-1

CODE OF ETHICS

1. Generally. This Code of Ethics applies to both the members and the employees of County of Delaware Industrial Development Agency (the "Agency"). The purpose of this Code of Ethics is to promote honest and ethical conduct and compliance with the law.

2. Definitions. For purposes of this section, unless the context specifically indicates otherwise:

(a) "Agency" shall mean the County of Delaware Industrial Development Agency.

(b) "employee" shall mean any employee of the County of Delaware Industrial Agency.

3. Rule With Respect to Conflicts of Interest. No member or employee of the Agency should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

4. Standards.

(a) No member or employee of the Agency should accept other employment which will impair his independence of judgment in the exercise of his official duties.

(b) No member or employee of the Agency should accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.

(c) No member or employee of the Agency should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.

(d) No member or employee of the Agency should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

(e) No member or employee of the Agency should engage in any transaction as representative or agent of the Agency with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.

(f) A member or employee of the Agency should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

(g) A member or employee of the Agency should abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.

(h) A member or employee of the Agency should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

(i) No member or employee of the Agency employed on a full-time basis nor any firm or association of which such an officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the Agency.

(j) If any officer or employee of the Agency shall have a financial interest, direct or indirect, having a value of ten thousand dollars or more in any activity which is subject to receiving benefits from the Agency, he should file with the members of the Agency a written statement that he has such a financial interest in such activity which statement shall be open to public inspection.

5. Violations. In addition to any penalty contained in any other provision of law any such member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law.

SCHEDULE A-2

COMPENSATION POLICY

1. Generally. Members of the County of Delaware Industrial Development Agency shall serve without compensation.

2. Compensation Defined. For purposes of this policy, the term compensation is defined to include health insurance benefits, membership dues, professional licensing fees, and reimbursement of unsubstantiated business expenses.

3. Reimbursement. Members may be allowed reasonable advancement or reimbursement of expenses incurred in the performance of their regular duties as specified in Section 858 of the Act. Members may not be compensated for rendering services to the Agency in any capacity other than member unless such other compensation is reasonable and is allowable under the provisions of Section 858 of the Act.

SCHEDULE A-3

RETALIATORY ACTION POLICY

1. Definitions. For purposes of this section, unless the context specifically indicates otherwise:

(a) “Employee” means an individual who performs services for and under the control and direction of an employer for wages or other remuneration.

(b) “Employer” means any person, firm, partnership, institution, corporation, or association that employs one or more employees.

(c) “Law, rule or regulation” includes any duly enacted statute or ordinance or any rule or regulation promulgated pursuant to any federal, state or local statute or ordinance.

(d) “Public body” includes the following:

(i) the United States Congress, any state legislature, or any popularly-elected local governmental body, or any member or employee thereof;

(ii) any federal, state, or local judiciary, or any member or employee thereof; or any grand or petit jury;

(iii) any federal, state, or local regulatory, administrative, or public agency or authority, or instrumentality thereof;

or

(iv) any federal, state, or local law enforcement agency, prosecutorial office, or police or peace officer.

(e) “Retaliatory personnel action” means the discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

(f) “Supervisor” means any individual with an employer’s organization who has the authority to direct and control the work performance of the affected employee; or who has managerial authority to take corrective action regarding the violation of the law, rule or regulation of which the employee complains.

2. Prohibitions. An employer shall not take any retaliatory personnel action against an employee because such employee does any of the following:

(a) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety;

(b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such employer; or

(c) objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.

3. Application. The protection against retaliatory personnel action provided by paragraph (a) of subdivision two of this section pertaining to disclosure to a public body shall not apply to an employee who makes such disclosure to a public body unless the employee has brought the activity, policy or practice in violation of law, rule or regulation to the attention of a supervisor of the employer and has afforded such employer a reasonable opportunity to correct such activity, policy or practice.

4. Violation; Remedy.

(a) An employee who has been the subject of a retaliatory personnel action in violation of this section may institute a civil action in a court of competent jurisdiction for relief as set forth in subdivision five of this section within one year after the alleged retaliatory personnel action was taken.

(b) Any action authorized by this section may be brought in the county in which the alleged retaliatory personnel action occurred, in the county in which the complainant resides, or in the county in which the employer has its principal place of business.

(c) It shall be a defense to any action brought pursuant to this section that the personnel action was predicated upon grounds other than the employee's exercise of any rights protected by this section. It shall also be a defense that the individual was an independent contractor.

(d) Notwithstanding the provisions of paragraphs (a) and (c) of this subdivision, a health care employee who has been the subject of a retaliatory action by a health care employer in violation of section seven hundred forty-one of this article may institute a civil action in a court of competent jurisdiction for relief as set forth in subdivision five of this section within two years after the alleged retaliatory personnel action was taken. In addition to the relief set forth in that subdivision, the court, in its discretion, based upon a finding that the employer acted in bad faith in the retaliatory action, may assess the employer a civil penalty of an amount not to exceed ten thousand dollars, to be paid to the improving quality of patient care fund. established pursuant to section ninety-seven-aaaa of the state finance law.

5. Relief in any action brought pursuant to subdivision four of this section, the court may order relief as follows:

(a) an injunction to restrain continued violation of this section;

(b) the reinstatement of the employee to the same position held before the retaliatory personnel action, or to an equivalent position;

(c) the reinstatement of full fringe benefits and seniority rights;

(d) the compensation for lost wages, benefits and other remuneration; and

(e) the payment by the employer of reasonable costs, disbursements, and attorney's fees.

6. Employer Relief. A court, in its discretion, may also order that reasonable attorneys' fees and court costs and disbursements be awarded to an employer if the court determines that an action brought by an employee under this section was without basis in law or in fact.

7. Existing Rights. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any other law or regulation or under any collective bargaining agreement or employment contract; except that the institution of an action in accordance with this section shall be deemed a waiver of the rights and remedies available under any other contract, collective bargaining agreement, law, rule or regulation or under the common law.

SCHEDULE A-4

POLICY FOR TRAVEL OF AGENCY MEMBERS

1. Generally. It is the policy of the Agency that uniform procedures be followed for the authorization and expenditure of funds for travel associated with Agency's business.

2. Policy Statement. The Agency will reimburse members, employees and approved non-employees for necessary and reasonable travel expenses incurred in furtherance of the Agency's business ("Qualified Expenses").

3. Pre-Approved Travel and Travel Related Expenses. Qualified Expenses incurred by Agency members, employees or approved non-employees to be reimbursed by the Agency, using Agency funds that have been set aside for such purposes or that the Agency has available for reimbursement of travel expenses (the "Travel Budget"), must be approved in advance by the Executive Director of the Agency. The Executive Director will advise the Chief Financial Officer of all approved requests.

(a) The Chief Financial Officer shall continue to inform the Executive Director of the status of the Travel Budget throughout the year, so that the Executive Director is able to approve and/or deny travel expenses accordingly.

(b) The Executive Director or his/her designee will assist the member, employee or approved non-employee, if desired, with arrangements for travel and the accompanying reimbursement procedures.

(c) Reimbursement of Qualified Expenses are subject to the substantiation and approval provisions contained within Section 7 hereof.

4. Unapproved Travel and Travel Related Expenses. Qualified Expenses that are incurred by Agency members, employees, and approved non-employees who have not received prior approval from the Executive Director, may be submitted for reimbursement. However, if the Travel Budget does not contain adequate funds to cover the entire amount of such travel expense, full reimbursement is subject to an amendment of the Travel Budget by the Agency members.

5. Specific Travel Expenses:

(a) Travel by Car/Mileage Expenses: Mileage shall ordinarily be computed between the Agency Office and the destination. However, in the interest of convenience, mileage may be calculated from the traveler's residence and the destination, so long as the traveler resides within the county in which the Agency is located.

(i) Standard Mileage Reimbursement Rate: The standard mileage reimbursement rate is 48.5 cents per mile, which takes into account all actual automobile expenses such as fuel and lubrication, towing charges, repairs, replacements, tires, depreciation, insurance, etc.

(b) Travel by Air/Rail/Rental Car: Coach class or any discounted fare shall be used in the interest of economy. The use of business or first-class or other higher cost services may be authorized only in extenuating circumstances, which extenuating circumstances shall be presented to the Agency members in writing and approved by a majority of said members.

(c) Subsistence Expense: Subsistence expenses incurred while traveling consists of charges for lodging, meals and incidental expenses. For trips lasting 12 hours or less, expenses for lodging, meals and incidental expenses will not be reimbursed. An exception to such prohibition will be allowed for meal expenses if the meal is an integral part of a business meeting. For trips lasting greater than 12 hours, but less than 24 hours, expenses incurred for lodging, meals and incidentals will be fully reimbursed if reasonable and if approved pursuant to Sections 3, 4 or 5 of this policy.

7. Reimbursement Procedure: A travel expense voucher reporting all Qualified Expenses pertaining to a particular trip must be submitted to the Chief Financial Officer of the Agency within 45 days of the end of the trip.

(a) Substantiation: The travel expense voucher should include:

- (i) Date and time of departure from and return to the Agency or traveler's residence;
- (ii) Purpose of the travel or the nature of the business benefit derived as a result of the travel;
- (iii) Whether or not the expenses incurred during the travel were pre-approved;
- and
- (iv) The amount of each expenditure, listed by date and location.

(b) Receipts: The original of the following receipts must be submitted along with the travel expense voucher:

- (i) All travel tickets (i.e. airline tickets, train tickets, rental car agreement)
- (ii) All meal receipts (i.e. signed credit card slips or payment stubs); and
- (iii) All lodging receipts (i.e. hotel, motel receipts).

(c) Final Approval: The Chief Financial Officer shall review each travel expense voucher in order to ensure that the traveler has provided adequate substantiation and to determine whether the expenses listed therein are reasonable. The Chief Financial Officer may require a traveler to submit additional substantiation and, if the Chief Financial Officer finds a particular expense to be unreasonable (either as to amount or purpose), the Chief Financial Officer may deny reimbursement of the expense or reduce the amount of the reimbursement for such expense.

SCHEDULE A-5

REAL PROPERTY ACQUISITION POLICY

SECTION 1. DEFINITIONS.

1. “Acquire” or “acquisition” shall mean acquisition of title or any other beneficial interest in personal or real property in accordance with the applicable provisions of Article 18-A of the New York State General Municipal Law.

2. “Contracting officer” shall mean the officer or employee of the County of Delaware Industrial Development Agency (hereinafter, the “Agency”) who shall be appointed by resolution to be responsible for the acquisition of property.

3. “Property” shall mean personal property in excess of five thousand dollars (\$5,000.00) in value, and real property, and any inchoate or other interest in such property, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party.

SECTION 2. DUTIES.

1. The Agency shall maintain adequate inventory controls and accountability systems for all property owned by the Agency and under its control

2. The Agency shall prepare, not less frequently than annually, a report listing all real property owned in fee by the Agency. Such report shall consist of a list and full description of all real and personal property acquired of during such period. The report shall contain the price paid by the Agency and the name of the seller for all such property acquired by the Agency during such period

SECTION 3. ACQUISITION OF PROPERTY.

1. Supervision and Direction. Except as otherwise provided herein, the duly appointed contracting officer (the “Contracting Officer”) shall have supervision and direction over the acquisition of property of the Agency. The Agency shall have the right to acquire its property for any valid corporate purpose.

2. Appraisal Report. An independent appraiser shall be hired to provide an opinion of fair market value before the Agency shall make an offer with respect to the acquisition of the property. The appraiser should have a professional affiliation with a national appraisal organization and must not have an interest in the property (or be retained as an agent to sell the property). The appraisal report shall be in form and substance satisfactory to the Agency and shall be included in the record of the transaction.

Notwithstanding the foregoing, the preparation of an appraisal report shall not be required where the Agency is acquiring the property pursuant to a donation, or if the valuation of the property is uncomplicated and the fair market value is determined to be less than \$10,000.

3. Method of Acquisition.

(a) **Voluntary Acquisition:** Unless otherwise permitted by applicable law, the Agency shall acquire property for not more than its fair market value by sale, exchange, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the Agency and/or contracting officer deems proper. The Agency may execute such documents for the acquisition of title or other interest in property and take such other action as it deems necessary or proper to acquire such property under the provisions of this section. Provided, however, the Agency may acquire property for more than its fair market value, as described in an appraisal report reviewed by the Agency, upon a finding by the Agency pursuant to resolution of the Agency that the acquisition of such property at such price is necessary for the Agency to (x) further its corporate purpose, and/or (y) avoid the expense and delay of condemnation.

(b) **Condemnation:** Unless otherwise prohibited by applicable law, the Agency may acquire property by condemnation. The Agency shall initiate any condemnation proceedings by resolution of the Agency and such resolution shall include findings and determinations made by the Agency in connection with the decision by the Agency to initiate such condemnation proceeding. Such findings and determinations may include the following: that the owner of the property has not responded to a reasonable offer for the acquisition of the property, that the Agency has negotiated for a reasonable amount of time with the owner of the property, and that the property is necessary to further the corporate purposes of the Agency.

4. Validity of Deed, Bill of Sale, Lease, or Other Instrument. A deed, bill of sale, lease, or other instrument executed by or on behalf of the seller of the property and accepted by the Agency, purporting to transfer title or any other interest in property of the seller to the Agency in accordance herewith shall be conclusive evidence of compliance with the provisions of these guidelines and all applicable law insofar as concerns title or other interest of any bona fide grantor or transferor who has received valuable consideration for such title or other interest and has not received actual or constructive notice of lack of such compliance prior to closing.

5. Insurance. The Agency must ensure that all insurable real and personal property under its control is insured against physical loss or damage.

SCHEDULE A-6
PROPERTY DISPOSITION POLICY

SECTION 1. DEFINITIONS.

1. "Contracting officer" shall mean the officer or employee of the County of Delaware Industrial Development Agency (hereinafter, the "Agency") who shall be appointed by resolution to be responsible for the disposition of property.

2. "Dispose" or "disposal" shall mean transfer of title or any other beneficial interest in personal or real property in accordance with section 2897 of the New York State Public Authorities Law.

3. "Property" shall mean personal property in excess of five thousand dollars (\$5,000.00) in value, and real property, and any inchoate or other interest in such property, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party.

SECTION 2. DUTIES.

1. The Agency shall:

- (a) maintain adequate inventory controls and accountability systems for all property owned by the Agency and under its control;
- (b) periodically inventory such property to determine which property shall be disposed of;
- (c) produce a written report of such property in accordance with subsection B herewith; and
- (d) transfer or dispose of such property as promptly and practicably as possible in accordance with Section 3 below.

2. The Agency shall:

- (a) publish, not less frequently than annually, a report listing all real property owned in fee by the Agency. Such report shall consist of a list and full description of all real and personal property disposed of during such period. The report shall contain the price received by the Agency and the name of the purchaser for all such property sold by the Agency during such period; and
- (b) shall deliver copies of such report to the Comptroller of the State of New York, the Director of the Budget of State of New York, the Commissioner of the New York State Office of General Services, and the New York State Legislature (via distribution to the Majority Leader of the Senate and the Speaker of the Assembly).

SECTION 3. TRANSFER OR DISPOSITION OF PROPERTY.

1. Supervision and Direction. Except as otherwise provided herein, the duly appointed contracting officer (the "Contracting Officer") shall have supervision and direction over the disposition and sale of property of the Agency. The Agency shall have the right to dispose of its property for any valid corporate purpose.

2. Custody and Control. The custody and control of Agency property, pending its disposition, and the disposal of such property, shall be performed by the Agency or by the Commissioner of General Services when so authorized under this section.

3. Method of Disposition. Unless otherwise permitted, the Agency shall dispose of property for not less than its fair market value by sale, exchange, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the Agency and/or contracting officer deems proper. The Agency may execute such documents for the transfer of title or other interest in property and take such other action as it deems necessary or proper to dispose of such property under the provisions of this section. Provided, however, except in compliance with all applicable law, no disposition of real property, any interest in real property, or any other property which because of its unique nature is not subject to fair market pricing shall be made unless an appraisal of the value of such property has been made by an independent appraiser and included in the record of the transaction.

4. Sales by the Commissioner of General Services (the "Commissioner"). When the Agency shall have deemed that transfer of property by the Commissioner will be advantageous to the State of New York, the Agency may enter into an agreement with the Commissioner pursuant to which the Commissioner may dispose of property of the Agency under terms and conditions agreed to by the Agency and the Commissioner. In disposing of any such property, the Commissioner shall be bound by the terms hereof and references to the contracting officer shall be deemed to refer to such Commissioner.

5. Validity of Deed, Bill of Sale, Lease, or Other Instrument. A deed, bill of sale, lease, or other instrument executed by or on behalf of the Agency, purporting to transfer title or any other interest in property of the Agency in accordance herewith shall be conclusive evidence of compliance with the provisions of these guidelines and all applicable law insofar as concerns title or other interest of any bona fide grantee or transferee who has given valuable consideration for such title or other interest and has not received actual or constructive notice of lack of such compliance prior to closing.

6. Bids for Disposal; Advertising; Procedure; Disposal by Negotiation; Explanatory Statement.

- (a) Except as permitted by all applicable law, all disposals or contracts for disposal of property made or authorized by the Agency shall be made after publicly advertising for bids except as provided in subsection (c) of this Section 6.
- (b) Whenever public advertising for bids is required under subsection (i) of this Section F:
 - (i) the advertisement for bids shall be made in such a method and on such terms and conditions as shall permit full and free competition for disposal of the property proposed for disposition;
 - (ii) all bids shall be publicly disclosed at the time and place stated in the advertisement;

- (iii) ~~the persons shall determine with reasonable prudence the persons to whom to bid, will be most advantageous to the Agency, be rejected at their Agency's discretion.~~
- (c) Disposals and contracts for disposal of property may be negotiated or made by public auction without regard to subsections (a) and (b) of this Section 6 but subject to obtaining such competition as is feasible under the circumstances, if:
- (i) ~~the persons disposing of property under subsections (a) and (b) of this Section 6, would advise in advance the State of such property and propose satisfactory terms of disposal can be obtained by negotiation;~~
 - (ii) ~~the fair market value of the property does not exceed dollars (\$50,000.00);~~
 - (iii) ~~bid prices after advertising therefore are not reasonable, either as to all or some part of the property, or have not been independently advertised;~~
 - (iv) ~~the disposal of the property, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation;~~
 - (v) ~~the disposal of the property is not a disposal that is prohibited by public law or other law, the disposal of the property is in the interest of the State or a public utility, or the disposal of the property is in the interest of the public health, safety, the creation or retention of a substantial number of job opportunities, or the creation or retention of a substantial source of revenues, or where the authority's enabling legislation permits or other economic development initiatives), the purpose and the terms of such disposal are documented in writing and approved by resolution of the board of the Agency; or~~
 - (vi) such action is otherwise authorized by law.
- (d) An explanatory statement shall be prepared of the circumstances of each disposal by negotiation of:
- (i) ~~any personal property of the State valued at dollars (\$15,000.00);~~
 - (ii) ~~any real property that has an estimated value of dollars (\$100,000.00) except that any real property disposed of by lease for a term of five (5) years or less, if the estimated value of the property is in excess of such years.~~
 - (iii) ~~any real property disposed of by lease for a term of five (5) years or less, if the estimated value of the property is in excess of such years.~~
 - (iv) ~~any real property disposed of by lease for a term of five (5) years or less, if the estimated value of the property is in excess of one hundred thousand dollars (\$100,000.00);~~
or
 - (v) ~~any real property, regardless of value, if the disposal of the property is in the interest of the State or a public utility, or the disposal of the property is in the interest of the public health, safety, the creation or retention of a substantial number of job opportunities, or the creation or retention of a substantial source of revenues, or where the authority's enabling legislation permits or other economic development initiatives), the purpose and the terms of such disposal are documented in writing and approved by resolution of the board of the Agency; or~~
- (e) Each such statement shall be transmitted to the persons entitled to receive copies of the report required under all applicable law not less than ninety (90) days in

advance of such disposal, and a copy thereof shall be preserved in the files of the Agency making such disposal.

This Policy is subject to modification and amendment at the discretion of the Agency and shall be filed annually with all local and state agencies as required under all applicable law.

SCHEDULE A-7

PROCUREMENT POLICY

SECTION 1. PURPOSE AND AUTHORITY. The purpose of this Part is to outline the procurement policy (the "Procurement Policy") of County of Delaware Industrial Development Agency (the "Agency") pursuant to Section 858-a(2) of Title One of Article 18-A of the General Municipal Law (the "Act").

SECTION 2. 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 \$500; 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 3. 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>
\$500-\$4,999	2 verbal quotations
\$5,000-and above	3 written/fax quotations or written request for proposals
<u>Estimated Amount of Public Works Contract</u>	<u>Method</u>
\$500-\$4,999	2 verbal quotations
\$5,000-and above	3 written/fax quotations or 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 4. 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, conflict of interests, reputation, education and training, judgement, integrity, continuity of service 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: (1) whether the services are subject to State licensing or testing requirements; (2) whether substantial formal education or training is a necessary prerequisite to the performance of the services; and (3) 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; and computer software or programming services for customized programs, or services involved in substantial modification and customizing of pre-packaged software.

(B) 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 \$500. 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 5. 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 (A) of this Section 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 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, 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 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 6. POLICY REVIEW. This policy will be reviewed annually.

SCHEDULE A-8

POLICY REGARDING DEPOSITS AND INVESTMENTS OF AGENCY FUNDS

SECTION 1. PURPOSE AND AUTHORITY. (A) Agency Funds. The purpose of this Deposit and Investment Policy (the "Policy") is to implement Section 858-a(3) of Title One of Article 18-A of the General Municipal Law (the "Act"), which provides that the provisions of Sections 10 and 11 of the General Municipal Law shall be applicable to deposits and investments made by County of Delaware Industrial Development Agency (the "Agency") of funds for the use and account of the Agency ("Agency Funds").

(B) Non-Agency Funds. The provisions of this Policy shall not apply to funds derived from the sale of bonds, notes or other obligations issued to fund a particular project for the benefit of a particular applicant, or any other funds of the Agency which are not Agency Funds.

SECTION 2. DEPOSITS OF AGENCY FUNDS. (A) Designation of Depositories. The Agency shall by resolution or resolutions of the members of the Agency designate one or more banks or trust companies (each, a "Depository") for the deposit of Agency Funds received by the treasurer or any other officer of the Agency authorized by law or the by-laws of the Agency to make deposits. Such resolution or resolutions shall specify the maximum amount that may be kept on deposit at any time in each Depository. Such designations and amounts may be changed at any time by a further resolution of the members of the Agency.

(B) Security. All Agency Funds in excess of the amount insured under the provisions of the Federal Deposit Insurance Act as now or hereinafter amended shall be secured in accordance with the provisions of Section 10(3) of the General Municipal Law. Generally, Section 10(3) of the General Municipal Law provides that Agency Funds may be secured by (1) a pledge of "eligible securities" (as defined in Section 10(1) of the General Municipal Law), together with a security agreement and custodial agreement meeting the requirements of Section 10(3)(a) of the General Municipal Law, or (2) an "eligible surety bond" or an "eligible letter of credit" (as such quoted terms are defined in Section 10(1) of the General Municipal Law) securing 100% of such Agency Funds.

SECTION 3. INVESTMENTS OF AGENCY FUNDS. (A) Investment Policy. It is the general policy of the Agency that Agency Funds not required for immediate expenditure shall be invested as described in subsection (C) below. Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the safety of the principal as well as the probable income to be derived.

(B) Designation of Investment Officers. The treasurer and any other officer or employee of the Agency so authorized by the by-laws of the Agency or by resolution of the members of the Agency (each, an "Investment Officer") are authorized to temporarily invest Agency Funds not required for immediate expenditure. Any designation of an Investment Officer made by resolutions of the members of the Agency may be changed at any time by a further resolution of the members of the Agency.

(C) Types of Investments. Except as otherwise provided by resolution of the members of the Agency, an Investment Officer may invest Agency Funds in any obligation described in Section 11(2) and Section 11(3) of the General Municipal Law. Generally, Sections 11(2) and 11(3) of the General Municipal Law permit the following types of investments:

- (1) special time deposits in, or certificates of deposit issued by, any bank or trust company located and authorized to do business in the State of New York, provided that such deposit account or

certificate of deposit is secured in the same manner as is provided for securing deposits of Agency Funds by Section 10(3) of the General Municipal Law;

(2) obligations of, or obligations where the payment of principal and interest are guaranteed by, the United States of America;

(3) obligations of the State of New York; and

(4) with the approval of the State Comptroller, tax anticipation notes and revenue anticipation notes issued by any municipality or school district or district corporation organized under the laws of the State of New York.

(D) Custodians. The Agency may, by resolution of the members of the Agency, authorize the Investment Officers to turn over the physical safekeeping and evidences of the investments made pursuant to subsection (C) of this Section ("Agency Investments") to any entity authorized pursuant to Section 11(4) of the General Municipal Law to act as a custodian of Agency Investments, but only upon compliance with the requirements of Section 11(4) of the General Municipal Law. Generally, Section 11(4) of the General Municipal Law allows the following types of entities to act as custodians of Agency Investments:

(1) any bank or trust company incorporated in the State of New York;

(2) any national bank located in the State of New York; and

(3) any private banker duly authorized by the New York State Superintendent of Banks to engage in business in New York State which maintains a permanent capital of not less than one million dollars in New York State.

(E) Commingling. Any Agency Funds invested pursuant to this Section may be commingled for investment purposes upon compliance with the requirements of Section 11(6) of the General Municipal Law. Generally, Section 11(6) of the General Municipal Law allows commingling of Agency Investments so long as (1) such investment is payable or redeemable at the option of the Agency within such time as the proceeds are needed by the Agency, (2) the separate identity of such funds are maintained at all times, and (3) income received on such commingled monies is credited on a pro rata basis to the fund or account from which the monies were invested.

(F) Proper Records. The treasurer of the Agency shall maintain (or cause the Investment Officers to maintain) a proper record of all books, notes, securities or other evidences of indebtedness held by or for the Agency for purposes of investment. Such record shall at least (where applicable) (1) identify the security, (2) the fund for which held, (3) the place where kept, (4) the date of sale or other disposition, and (5) the amount received from such sale or other disposition.

(G) Sample Resolution. Attached hereto as Appendix A is a sample form of resolution naming Depositories and Investment Officers pursuant to this Part and restricting the types of investments in which an Investment Officer may invest Agency Funds.

SECTION 4. INTERNAL CONTROLS. (A) Periodic Reviews. To the maximum extent possible, the Executive Director of the Agency shall prepare and submit to the members of the Agency at each regular meeting of the Agency (but not more often than monthly), a summary showing the amount of Agency Funds on deposit in each Depository and the general nature of the investment of such Agency Funds.

(B) Annual Report. Within thirty (30) days of the end of each fiscal year, the Executive Director of the Agency shall prepare and submit to the members of the Agency an annual investment report (the “Annual Investment Report”) showing the deposits and investments of Agency Funds as of the beginning of such fiscal year, a summary of the changes in such amounts during such fiscal year, a summary of the earnings thereon during such fiscal year, and the balance thereof as of the end of such fiscal year.

(C) Annual Audit. The Annual Investment Report shall be audited by the Agency’s independent certified public accountant as part of the Agency’s annual general audit required pursuant to Section 859 of the Act.

(D) Annual Review. The members of the Agency shall review the Annual Investment Report and the annual audit and this Part, and shall make any amendments to this Part necessary to achieve the purposes of this Part.

SCHEDULE A-9

DEFENSE AND INDEMNIFICATION POLICY

--- PROVIDED FOR IN ARTICLE IX OF THE AGENCY'S BY-LAWS ---