

PART 22

PROJECT MONITORING AND ENFORCEMENT POLICY

SECTION 2201. PURPOSE AND AUTHORITY. The purpose of this Part is to outline the procedures utilized by Schoharie County Industrial Development Agency (the "Agency") pursuant to Section 905-a of Title 2 of Article 18-A of the General Municipal Law and Title 1 of Article 18-A the General Municipal Law (collectively, the "Act") to (A) monitor compliance with Agency requirements relating to the exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (the "Financial Assistance") provided for authorized projects and (B) review satisfaction of the Agency requirements relating to job creation, retention and reporting. Under the Act, the Agency was created in order to advance the job opportunities, health, general prosperity, and economic welfare of the residents of Schoharie County, New York (the "County") and the State of New York (the "State") and to improve their standard of living.

SECTION 2202. JOB CREATION, RETENTION, AND PUBLIC BENEFITS. When considering applications for Financial Assistance, the Agency will consider and review the job creation and retention information contained in the application completed by the applicant. Further, the applicant for each approved project must enter into a uniform agency project agreement with the Agency (the "Uniform Agency Project Agreement") where the applicant agrees (A) that the amount of Financial Assistance to be received shall be contingent upon, and shall bear a direct relationship to the success or lack of success of such project in delivering certain described public benefits (the "Public Benefits") and (B) the Agency will be entitled to recapture some or all of the Financial Assistance granted to the applicant if the project is unsuccessful in whole or in part in delivering the promised Public Benefits.

SECTION 2203. REQUIREMENTS OF THE APPLICANT.

(A) Background. Under the Act, the Agency is required to submit certain annual reports relating to Agency projects to the Office of the New York State Comptroller and to the New York State Authorities Budget Office. In order to satisfy its annual reporting requirements and other requirements under the Act, as well as policies of the Agency, the Agency will require applicants for Financial Assistance to satisfy the requirements described in Section 2203(B) below.

(B) Applicant Requirements. Each applicant for Financial Assistance from the Agency will agree to satisfy the following requirements as a condition to the receipt of such Financial Assistance:

(1) Except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the Project will be listed with the New York State Department of Labor Community Services Division (the "DOC") and with the administrative entity (collectively with the DOC, the "JTPA Entities") of the service delivery area created by the federal job training partnership act (Public Law 97-300) ("JTPA"), as replaced by the Workforce Investment Act of 1998 (Public Law 105-220), where the Project is located.

(2) Except as otherwise provided by collective bargaining agreements, where practicable, the applicant will first consider persons eligible to participate in the JTPA programs who shall be referred by the JTPA Entities for new employment opportunities created as a result of the project.

(3) The applicant agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified such information concerning the Applicant, its finances and other

topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation.

(4) Within sixty (60) days after the end of each calendar year, the applicant shall furnish to the Agency a certificate of an Authorized Representative of the applicant stating that no event of default under an installment sale agreement or a lease agreement (hereinafter collectively referred to as the "Project Agreement") has occurred or is continuing or, if any event of default exists, specifying the nature and period of existence thereof and what action the applicant has taken or proposes to take with respect thereto, and setting forth the unpaid principal balance of any bonds and accrued but unpaid interest thereon and that no defenses, offsets or counterclaims exist with respect to the indebtedness evidenced thereby.

(5) The applicant shall insure that all employees and applicants for employment with regard to the project are afforded equal employment opportunities without discrimination.

(6) Pursuant to the requirements of subsection one of Section 6 of Chapter 127 of the 1995 Laws of the State, the applicant agrees to file with the Agency, no later than sixty (60) days after the end of each calendar year, reports regarding the number of people employed at the project facility and certain other matters, the initial said report and subsequent reports to be in the forms approved by the Agency.

(7) Pursuant to Section 874(8) of the Act, the applicant agrees to annually file and cause any other directly appointed operator of the project facility to file annually, with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance ("Form ST-340"), a statement of the value of all sales and use tax exemptions claimed by the applicant and all contractors, subcontractors, consultants and other agents of the applicant under the authority granted to the applicant pursuant to an installment sale agreement and/or a lease agreement and/or a final inducement resolution and/or a sales tax exemption letter.

(8) The applicant agrees, if applicable, within sixty (60) days of the end of each calendar year, to furnish to the Agency a copy of each ST-340 submitted to the New York State Department of Taxation and Finance by the applicant pursuant to Section 874(8) of the Act.

(9) The applicant agrees, within sixty (60) days of the end of each calendar year until the project is terminated, to furnish to the Agency a copy of the NYS-45 – Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return – for the quarter ending December 31 (the "NYS-45"), and the US Dept. of Labor BLS 3020 Multiple Worksite report, if applicable.

(10) The applicant agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified such information concerning the participation of individuals from minority groups as employees or applicants for employment with regard to the project.

SECTION 2204. PROJECT MONITORING.

(A) Monitoring. Agency project monitoring shall include but not be limited to the following:

(1) requesting and reviewing the items outlined in Section 2203(B) and any and all items required to be submitted by an applicant pursuant to the following, including but not limited to: statute, Agency policy, a Project Agreement, or a Uniform Agency Project Agreement; and

(2) confirming with the applicable Assessor for each active Agency project the status of any unpaid payment in lieu of tax ("PILOT") payments; and

(3) providing for on-site visits of projects identified by the Agency in the calendar year.

(B) Annual Reports. Within seventy-five (75) days after the end of each calendar year, the staff of the Agency will provide the Agency with an annual report describing the compliance by applicants with the requirements described in Section 2203(B) above and the results of the project monitoring described in Section 2204(A), including the filing of annual reports, the amount of sales tax exemption received for a project, and the number of jobs created and retained by the applicant.

(C) Agency Review. The Agency will review the report prepared by the staff of the Agency at a regular meeting of the Agency. After the review of the report prepared by the staff of the Agency, the Agency will take such action as it deems necessary, including but not limited to, (1) scheduling meetings with applicants to review non-compliance and to discuss remedial actions, (2) considering enforcement action against applicants that fail to comply with the requirements described in Section 2203(B) above, as described in Section 2205 below, (3) considering enforcement action against applicants based on the results of the project monitoring described in Section 2204(A), as described in Section 2205 below, and (4) preparation of letters of commendation or other forms of congratulation to those applicants that have created and/or retained jobs consistent with (or in excess of) the estimates contained in the applicant's original application to the Agency.

(D) PILOT Agreements. (1) Prior to distribution of the PILOT payment bills, the staff of the Agency will confirm with the applicable Assessor for each active Agency project the payment amounts for such PILOT bills for the current fiscal year.

(2) The staff of the Agency will also confirm with the applicable Assessor for each active Agency project the status of new projects closed in the prior calendar year and the termination of projects whose PILOT term expired or project facility was reconveyed to the applicant.

(E) Reconveyance. (1) Annually the staff of the Agency will review the Project Agreements of all active Agency projects to determine if the Project Agreement has expired and the project facility should be reconveyed to the applicant and placed on the taxable roll of the applicable municipality.

(2) Annually the staff of the Agency will confirm with the applicable Assessor for the active Agency project that the particular project facility should be reconveyed to the applicant and placed on the taxable roll of the applicable municipality.

(3) Annually the staff of the Agency will also notify the applicant and work with the applicant and the Agency to file the appropriate documents to place the project on the taxable roll of the applicable municipality.

SECTION 2205. ENFORCEMENT.

(A) General. Upon completion of the report prepared by the staff of the Agency described in Section 2204(C) above and review of such report by the members of the Agency, the Agency may, after consultation with the staff of the Agency and counsel, initiate enforcement action against applicants as determined by the Agency.

(B) Enforcement Action. Enforcement action by the Agency may include, but not be limited to, the following:

- (1) Requesting the information and/or compliance by a final notice letter.
- (2) Forwarding an event of default notice to the involved parties, including the lender.
- (3) Notifying appropriate New York State agencies of (a) the applicant's failure to comply with the requirements of Section 2203(B) above or (b) the negative results of the project monitoring in Section 2204(A) above.
- (4) Terminating the Financial Assistance provided by the Agency.
- (5) Recapturing some or all of the Financial Assistance granted to the applicant pursuant to the Uniform Agency Project Agreement, if applicable.
- (6) In the event of any failure by an applicant to make any required PILOT payment, to coordinate with the applicable affected taxing jurisdictions in the recovery of such due payment.