

MADISON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

PROCUREMENT POLICY  
(As amended and readopted March 24, 2022)

SECTION 1. PURPOSE AND AUTHORITY. The purpose of this Policy is to outline the procurement policy (the “Procurement Policy”) of Madison County 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: (i) purchases costing less than \$500; (ii) goods purchased from agencies for the blind or severely handicapped pursuant to Section 175-b of the State Finance Law; (iii) goods purchased from correctional institutions purchase to Section 186 of the Correction Law; (iv) purchases under State contracts pursuant to Section 104 of the General Municipal Law; (v) purchases under county contracts pursuant to Section 103(3) of the General Municipal Law; or (vi) purchases pursuant to Section 4 of this Policy.

SECTION 3. METHOD OF PURCHASE.

(A) General. The Executive Director of the Agency, as contracting officer for the Agency (the “Contracting Officer”), will use the following method of purchase when required by this Policy in order to achieve the highest savings:

<u>Estimated Amount of Purchase Contract</u>	<u>Method</u>
\$500-\$2,999	2 verbal quotations
\$3,000 and above	3 written/fax/email quotations or written requests for proposals
<u>Estimated Amount of Public Works Contract</u>	<u>Method</u>
\$500-\$2,999	2 verbal quotations
\$3,000-\$4,999	2 written/fax/email quotations
\$5,000 and above	3 written/fax/email quotations or written requests 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. (i) Documentation is required of each action taken in connection with each procurement.

(ii) When seeking bids or requests for proposals in situations where three (3) quotations or responses are required by this Policy, the Contracting Officer shall if practical include a requirement that the bidder or responder execute a non-collusive bidding certificate similar to the one required of state bidders pursuant to Section 139-D of the State Finance Law. If the solicitation document issued by the Agency requires execution of a non-collusive certificate by the bidders or responders to such document, and a particular bidder or responder fails to include such executed certificate as part of such the person's response to the Agency, the Agency may refuse to consider the response from such bidder or responder.

(iii) 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)(g), 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: (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 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.

(B) Emergency Purchases. An emergency condition is an unforeseen danger to life, safety, property, or a necessary service. The existence of such a condition creates an immediate and serious need for goods, services, or construction that cannot be met through normal procurement methods. An emergency procurement shall be limited to the procurement of those items necessary to avoid or mitigate serious danger to life, safety, property, or a necessary service. The procedure used shall assure that the required items are procured in time to meet the emergency. Given this constraint, such competition as is possible and practicable shall be obtained. The Contracting Officer of the Agency shall at the earliest practicable time make a written determination of the basis of the emergency and the basis of the selection of the contractor. Such written determination shall include a description of the process by which the Contracting Officer of the Agency made

such selection of the contractor. A copy of such written determination shall be provided to the members of the Agency at or prior to the next meeting of the members of the Agency.

(C) Purchases of Secondhand Goods. Purchases of surplus and second-hand goods from any source. It is 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.

(E) Sole Source Procurement. Sole source procurement shall be used only when there is only one source for the required good, service, or construction. In such case, the accepted price and terms and conditions shall be achieved through negotiation between the Agency and the vendor. Prior to entering into sole source negotiations, the Contracting Officer of the Agency shall make a written determination that there is only one source for the required good, service, or construction. Such written determination shall include a description of the process by which the Contracting Officer of the Agency made such determination. A copy of such written determination shall be provided to the members of the Agency at or prior to the next meeting of the members of the Agency.

**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:

(i) 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, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation; and

(ii) 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 subsection (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 5 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 5, 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. PROCUREMENT LOBBYING.** Pursuant to Sections 139-j and 139-k of the State Finance Law of the State of New York (the "Procurement Lobbying Act") (A) the Agency's Contracting Officer, as hereinafter defined, shall be responsible for reviewing or investigating any allegations of violations of Section 139-j(3) of the Procurement Lobbying Act. In conducting the review or investigation, the Contracting Officer shall consider the requirements and restrictions contained in the Procurement Lobbying Act.

(B) After a review or investigation, the Contracting Officer shall make a written determination regarding his or her findings of any violations of the Procurement Lobbying Act. Such written determination shall include a description of the process by which the Contracting Officer of the Agency made such determination. A copy of such written determination shall be provided to the members of the Agency at or prior to the next meeting of the members of the Agency.

(C) The members of the Agency, after reviewing the written determination prepared by the Contracting Officer, shall be responsible for imposing sanctions if any violations of the Procurement Lobbying Act are found to exist. In conducting their review of the written determination prepared by the Contracting Officer, the members of the Agency shall consider whether there has been past or present non-compliance with the Procurement Lobbying Act.

(D) Pursuant to Section 139-k(2) of the Procurement Lobbying Act, all solicitations of proposals or bid documents or specifications, or contract documents of the Agency shall require offerors to disclose findings of non-responsibility made within the previous four years by any governmental entity where such prior finding of non-responsibility was due to (1) a violation of Section 139-j of the Procurement Lobbying Act, or (2) the intentional provision of false or incomplete information to a governmental entity.

(E) The designated Contracting Officer and individual who may be contacted by any offerors relative to a procurement by the Agency is the Executive Director of the Agency.

**SECTION 7. POLICY REVIEW.** This Policy will be reviewed annually.