

## **Food Desert Relief Tax Credit Auction Process**

### **Overview**

As authorized by the Food Desert Relief Act, N.J.S.A. 34:1B-303, et seq., the NJEDA will raise capital for programs to increase food security in New Jersey by auctioning tax credits in calendar year 2023 to New Jersey Corporate Business Tax and Insurance Premium Tax taxpayers. Auction bids will be evaluated for eligibility and ranked by price. The amount of tax credits to be auctioned is to be determined. The NJEDA Board approved the sale of up to \$50 million in tax credits in 2023, with delegated authority to the NJEDA CEO to set a lower amount based on economic and market conditions.

The following provides an overview of the eligibility requirements and the process for the the auction bid period, bid review, award amount calculation, and closing.

### **Tax Credit Purchaser Requirements**

To be awarded a tax credit under the proposed sale, a potential purchaser must meet the following criteria:

- The bidder must be a New Jersey Corporate Business Tax or Insurance Premiums Tax filer;
- The amount of tax credits the bidder proposes to purchase shall not be less than \$500,000;
- The percentage amount of the face value of the tax credits the bidder proposes paying (purchase offer price) shall not be less than 85 percent of the face value of credits;
- The bidder must provide a refundable deposit for 10% of the tax credit purchase offer, not to exceed \$500,000, at the time of bid (which will be applied to the final amount paid); and
- The bidder must be in good standing with the New Jersey Department of the Treasury Division of Taxation and Departments of Labor and Workforce Development and Environmental Protection.

### **Deposit**

At the time of auction, a 10% deposit up to \$500,000 must be paid by bidders at the time of bid. This deposit will serve as a qualifier to ensure corporate bidders maintain sufficient capital to participate in the auction and to affirm the seriousness of their bid. If awarded, the deposit will be attributed to the final award payment. If a bid is declined (either for missing documentation, ineligibility, or an offer price below the clearing price), the deposit amount will be refunded to the auction participant.

### **Purchase Amount Calculation**

The purchase offer is comprised of two components: the amount offered per dollar of tax credit (with a minimum of 85 percent of face value), and the volume of request (with a minimum of \$500,000). This price floor is mandated in statute and helps to ensure strong purchase offers. The FDRA sale price floor is higher than the minimum price floor that applies for purchases in the New Jersey Innovation Evergreen Tax Credit Sale and is closely aligned with the minimum transfer prices utilized in other ERA tax credit incentive programs.

The bidder must submit a refundable deposit of 10% of the purchase offer at the time of bid. The deposit will be applied to the final amount paid. The deposit becomes non-refundable on the effective date of the tax credit purchaser contract. If the approved bidder does not execute the contract, the 10% deposit will be returned. An approved bidder that fails to execute the contract, or a bidder that executes the contract

but fails to pay the remainder of the purchase offer within 30 days of approval, shall not be eligible to participate in an NJEDA tax credit auction for one year.

An example of a purchase offer is below:

<b>Purchase Offer Elements</b>	<b>Example</b>
Amount of Tax Credits Requested (face value)	\$10,000,000
Purchase Offer Price (per dollar of tax credits)	\$0.85
Total Purchase Offer	\$8,500,000
Refundable Deposit Due at Bid Submission (10% of total purchase offer, but no more than \$500,000)	\$500,000

### **Auction Process**

The auction will be run as a competitive process. Bid submissions will be reviewed by EDA staff for eligibility and price. All eligibility criteria (listed in the memorandum) will be communicated to the market in advance of the auction. Thirty days in advance of the auction opening, the following will be made available on the NJEDA website:

- A sample bid form
- Detailed information on the auction process
- A sample template tax credit purchase agreement
- Information on how to submit questions and comments to NJEDA

Questions may be submitted to [FDRTCAuction@njeda.gov](mailto:FDRTCAuction@njeda.gov) up until 14 days before the auction opens. Answers to submitted questions will be posted on the NJEDA website on a rolling basis, with all answers posted by 7 days before the auction opens. Any changes to the above-mentioned documents, based on the questions and comments submitted, will be publicly posted prior to the auction opening. No changes will be made after the auction opens.

Once the auction launches (Day 1 noted below), potential purchasers will have at least 30 days to submit their bid. Bids are due when the auction application closes, along with a refundable deposit equal to 10% of the purchase price. Payment of the deposit must be initiated by the auction close, and evidence of such payment must be provided with the bid.

NJEDA staff will review the submitted bid materials for completeness. Required information will include, without limitation: company identification information, primary contact information, purchase offer (including requested amount of tax credits, bid price, total value), New Jersey tax clearance certificate, and legal questionnaire. All bidders must be in good standing with the New Jersey Department of Labor and Workforce Development and with the New Jersey Department of Environmental Protection.

Following submission, EDA staff will inform the potential purchaser's primary contact if there is a discrepancy in the bid information or if any required information is missing. Only complete bids will be eligible for consideration. Missing documents must be submitted during the 10 business-day period following notification by staff. If required documents are not received during this period, bids will be considered incomplete.

<b>Estimated Auction Timeline</b>	
• Example bid form and agreement template posted to website	Day -30
• Q&A period opens, with questions answered on a rolling basis and posted to website	
• Q&A period closes	Day -14

• Answers posted	Day -7
• Online auction launches	Day 1
• All bids due, including initiation of refundable 10% deposit	Day 30
• NJEDA staff review bids for completeness and notify bidders of any missing documents	Day 45
• Best and final offer notification sent to bidders if auction is over-subscribed	Day 55
• Final bids due	Day 70
• Bid ranking and award amount calculation completed	Day 75
• Bidders notified of approval and provided with purchase agreement, or notified of declinations (with a right to appeal within 5 business days after written notice of a decision)	Day 80
• Bid contracts executed and Purchaser wires remaining amount due (final purchase offer less the deposit made at auction close).	Day 110
• NJEDA staff notifies Taxation of receipt of funds and requests issuance of tax credit	Day 115

### **Oversubscription**

In the event the final requested amount of tax credits exceeds the amount of credits available in the auction, best and final offers will be requested. If a best and final offer is requested, Staff will communicate the bid spread to the purchasers. At that time, bidders will be permitted to increase and resubmit their purchase price to remain competitive. Purchase prices may not be lowered, and bids may not be rescinded. The final purchase price will determine the rank order of bids for the purpose of determining award amounts. If the auction is oversubscribed with eligible bids, not all bidders will receive the full amount of tax credits that they requested.

After best and final offers are received, all qualified bids will be ranked in sequential order from the highest purchase offer price (that is, the amount per dollar of tax credit) to the lowest purchase offer price. Then the clearing price will be determined. The clearing price is defined as the highest price at which the amount of tax credits requested at or above that price equals or exceeds the total amount available for purchase. Bidders offering a purchase offer price below the clearing price will be declined. If the amount requested at the clearing price exceeds the amount remaining after bids above the clearing price are accounted for, bidders offering a purchase offer price equal to the clearing price will receive a prorated amount based on the amount requested at the clearing price. There is no minimum tax credit award, and such proration could result in tax credit awards below the minimum tax credit request of \$500,000.

This example shows the methodology for how this process will work in a hypothetical auction with \$10 million of tax credits available and six bidders, requesting an aggregate total of \$20 million. The bidders are ranked from highest to lowest based on purchase offer price.

<b>Bidder</b>	<b>Purchase Offer Price</b>	<b>Face Value</b>	<b>Total Purchase Offer</b>
A	\$0.95	\$3,000,000	\$2,850,000
B	\$0.95	\$1,000,000	\$950,000
C	\$0.93	\$3,000,000	\$2,790,000
D	\$0.90	\$2,800,000	\$2,520,000
E	\$0.90	\$3,200,000	\$2,880,000
F	\$0.85	\$7,000,000	\$5,950,000
<b>TOTAL</b>		<b>\$20,000,000</b>	<b>\$17,940,000</b>

Tax credits are allocated starting with the highest bidders. Bidders A through C receive the full amount of tax credits they requested, totaling to \$7 million at the purchase prices they offered. Bidders D and E offered \$0.90 per dollar and requested a total of \$6 million, bringing the cumulative total requested at or above \$0.90 per dollar to \$13 million, above the \$10 million of tax credits available. Therefore, the clearing price is \$0.90. Bidders D and E receive a tax credit award amount that is prorated based on the amount they requested and the amount of tax credits remaining after accounting for the higher bids. In this example, \$6 million was requested by Bidders D and E at the clearing price of \$0.90, while only \$3 million remains after filling the requests of Bidders A through C. The \$3 million available is 50% of the \$6 million requested, so Bidders D and E each receive a tax credit award equal to 50% of the amount they requested. Bidder H, whose offer price of \$0.85 falls below the clearing price, is declined and receives no tax credits. Bidders that are declined may appeal within 5 business days after written notice of a decision.

Clearing Price	\$0.90
Amount Requested Above Clearing Price	\$7,000,000
Amount Requested at Clearing Price	\$6,000,000
Amount Requested Below Clearing Price	\$7,000,000
Total Amount Available	\$10,000,000
Amount Awarded Above Clearing Price	\$7,000,000
Amount Available to Award at Clearing Price	\$3,000,000

The bids and awards in this example auction are shown below.

Bidder	Purchase Offer Price	Face Value	Tax Credits Awarded	Total Amount Due
A	\$0.95	\$3,000,000	\$3,000,000	\$2,850,000
B	\$0.95	\$1,000,000	\$1,000,000	\$950,000
C	\$0.93	\$3,000,000	\$3,000,000	\$2,790,000
D	\$0.90	\$2,800,000	\$1,400,000	\$1,260,000
E	\$0.90	\$3,200,000	\$1,600,000	\$1,440,000
F	\$0.85	\$7,000,000	\$0	\$0
<b>TOTAL</b>		<b>\$20,000,000</b>	<b>\$10,000,000</b>	<b>\$9,290,000</b>

### **Undersubscription**

In case of undersubscription to the auction, remaining tax credits will be made available to bidders who indicated interest in additional allocation at the time of the bid. Priority is assigned by purchase offer price with the credits offered at the lowest price bid. This mechanism offers an incentive to the highest bidder(s) and secures a strong bid from all parties.

If some of the tax credits allocated for the 2023 auction are not awarded, the remainder may be issued through the Food Desert Relief Tax Credit Program or carried over to future FDRA tax credit auctions.

### **Approval**

A written notice will be sent to all approved bidders indicating approval, with purchase agreements that the purchaser must execute and return to NJEDA along with the remaining amount due.

If a bidder does not wish to or is unable to follow through on their submitted bid, the credits can be offered by the Authority to other bidders, in order from highest bidder to lowest. This would occur without need of re-auction, for the same purchase price per tax credit dollar offered by these other bidders.

Failure by the purchaser to pay the amount agreed on time shall make the purchaser ineligible for any NJEDA tax credit auction participation in the next twelve months. With regard to the New Jersey Innovation Evergreen Fund tax credit auction (“Evergreen”), the Evergreen tax credit rules provides for such ineligibility for any entity that “was previously approved for the purchase of tax credits and failed to timely make the full payment required to receive the tax credits.” In such event, the Authority may offer the tax credits for purchase to other purchasers based on ranking, without re-auction, at the same or higher price as in the other purchaser’s tax credit purchase offer.

**Post-Approval Process**

After initial purchase, pursuant to the FDRA, the tax credit purchaser has the option to resell the tax credit for no less than 85 percent of the transferred credit amount. There are no additional resales.

NJEDA shall publish on its website information on each tax credit purchaser as well as information on any tax credits that are transferred, pledged, or otherwise sold.