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Pennsylvania Taxi Assoc., Inc.  
2301 Church St.  
Philadelphia, PA 19124

November 20, 2013

Hon. Silvan B. Lutkewitte, III, Chairman  
Independent Regulatory Review Commission  
333 Market St., 14<sup>th</sup> Floor  
Harrisburg, PA 17101

Re: Docket No and Agency/ID No. 126-6  
Proposed Rulemaking  
Philadelphia Taxicab and Limousine Regulations  
52 Pa. Code Part II  
Taxicab Medallion Sales

Dear Chairman Lutkewitte:

The following are comments regarding the Proposed Rulemaking Order of the Philadelphia Parking Authority's ("PPA") Taxicab and Limousine Regulations and the PPA's Proposed Regulations attached hereto as Exhibit "A". Pennsylvania Taxi Assoc., Inc. ("PTA"), a medallion lender, medallion loan broker and medallion sale broker for the owners of thousands of medallions in Philadelphia, respectfully requests that the Independent Regulatory Review Commission ("IRRC") take these comments into consideration and implement the requested changes before promulgating the Proposed Rulemaking as a Final-Form Regulation.

Proposed Regulations

§ 1013.32

The proposed bidder requirements are overly burdensome and set a standard that is higher than what the PPA requires of applicants for Certificates of Public Convenience as stated in 52 Pa. Code § 1027.1 et seq. The bidder qualifications for medallions sold by the PPA should be consistent with the PPA's current regulations for purposes of fairness, uniformity and simplicity.

§ 1013.33

The PPA has not provided justification for sale by sealed bid, nor has it provided reasons why the medallion sales should not take place via live auction, where anyone who is qualified can participate in-person or online. The proposed sealed bid process lacks transparency and creates questions of fairness. Additionally 53 Pa. C.S.A. § 57179(b) does not specify that sealed bidding should be used. How can the industry and the public ensure that the PPA is conducting sales with objectivity without an open and honest live auction?

In February 2000, a sealed bid auction conducted by the Pennsylvania Utility Commission for 160 Philadelphia taxicab medallions resulted in a lengthy investigation and accusations of fraud after convicted criminal Michael Etemad was permitted to purchase a majority of the medallions sold. In 2006, a closed bid auction in New York City resulted in a lengthy inquiry by the New York City Department of Investigation that led to the discovery of improprieties by bidders (see Exhibit "A"). We do not want to repeat such an event.

Additionally, if sealed bidding is permitted, it may result in someone underbidding<sup>1</sup> or overbidding significantly above market prices. An over-bidder will not be able to obtain financing in order to fund his medallion purchase because a bank will not recognize such a price as fair market value, thus the purpose of the auction will be derailed. Such a scenario is currently being played out in Chicago (see Exhibit "B").

To the contrary, in February 2012 an open public auction was conducted in Miami, which has a similar taxicab structure to Philadelphia. No problems or investigations resulted from this auction and the highest prices ever paid for taxicab rights in Miami were reached.

There is no advantage to sealed bidding, however, the potential concerns are countless. It would simply be a waste of public resources to hold a sealed bid auction when it is practically guaranteed that an investigation will ensue.

The remainder of the Proposed Regulations deal with the intricacies of bidding, which we naturally oppose because we oppose sealed bids as a medallion sale technique. The PPA has not provided any reasons as to why sealed bids are preferable to a live public auction. The PPA has also not provided any reasoning as to why it is not considering a live, open public auction.

A transparent, live auction is in the industry's and public's best interest. Please consider the above comments prior to issuing Final Regulations.

Respectfully,

Pennsylvania Taxi Assoc., Inc.

By: 

Inna Friedman, President

IF/df

cc: Hon. Keith Gillespie, Chairman, Urban Affairs Committee  
Hon. Nicholas A. Miccarelli, III  
Dennis Weldon, Esquire (*via email*)

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<sup>1</sup> §1013.34(5) states that there will be an upset price for each medallion but nowhere do the Proposed Regulations state how such an upset price is to be determined.

**EXHIBIT "A"**

<h2 style="margin: 0;">Regulatory Analysis Form</h2> <p style="margin: 0;">(Completed by Promulgating Agency)</p>		<p><b>INDEPENDENT REGULATORY REVIEW COMMISSION</b></p>		
<p><small>(All Comments submitted on this regulation will appear on IRRC's website)</small></p>				
<p>(1) Agency</p> <p>Philadelphia Parking Authority</p>				
<p>(2) Agency Number: 126</p> <p>Identification Number: 6</p>		<p>IRRC Number: <b>3039.</b></p>		
<p>(3) PA Code Cite: 52 Pa. Code Part II, Chapters 1013, Subchapter C.</p>				
<p>(4) Short Title: Taxicab Medallion Sales by the Authority</p>				
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Dennis Weldon, General Counsel, at PRM101@philapark.org, 215-683-9630 (FAX: 215-683-9619), 701 Market Street, Suite 5400, Philadelphia, PA 19106.</p> <p>Secondary Contact: James R. Ney, Director, Taxicab and Limousine Division at jney@philapark.org, 215-683-6417 (FAX: 215-683-9437), 2415 South Swanson Street, Philadelphia PA 19148.</p>				
<p>(6) Type of Rulemaking (check applicable box):</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> <input checked="" type="checkbox"/> Proposed Regulation  <input type="checkbox"/> Final Regulation  <input type="checkbox"/> Final Omitted Regulation                 </td> <td style="width: 50%; border: none;"> <input type="checkbox"/> Emergency Certification Regulation;  <input type="checkbox"/> Certification by the Governor  <input type="checkbox"/> Certification by the Attorney General                 </td> </tr> </table>			<input checked="" type="checkbox"/> Proposed Regulation <input type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation	<input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General
<input checked="" type="checkbox"/> Proposed Regulation <input type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation	<input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General			
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>The Authority has been authorized by the Legislature through the act of July 5, 2012, (P.L. 1022, No. 119) ("Act 119") to issue up to 150 new taxicab medallions over the next 10 years, including medallions designated only for use on wheelchair accessible vehicles. When the Authority assumed regulatory responsibility over all taxicabs and limousines in Philadelphia from the Pennsylvania Public Utility Commission ("PUC") in 2005, all statutorily authorized medallions had already been sold by the PUC. The Authority seeks to promulgate this regulation to provide procedures for the sale of medallions.</p>				
<p>(8) State the statutory authority for the regulation. Include specific statutory citation.</p> <p>Sections 13 and 17 of the act of July 16, 2004, (P.L. 758, No. 94), as amended, 53 Pa.C.S. §§5701 et seq., §§ 5722 and 5742; section 5505(d) of the Parking Authorities Act, act of June 19, 2001, (P.L. 287, No. 22), as amended, 53 Pa. C.S. §§ 5505(d)(17) (d)(23), (d)(24). The act of July 5, 2012, (P.L. 1022, No. 119) ("Act 119"), 53 Pa.C.S. §§ 5711(c)(2) and 5717(b).</p>				
<p>(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action. No.</p>				
<p>(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.</p>				

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The Authority has been authorized to sell 150 new medallions, but has no regulations in place to provide for such sales. The entire Philadelphia taxicab industry will benefit from having procedures related to the manner in which medallion bid sales will be conducted.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations. No.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

The regulations are substantially similar to those of other states, including New York City. This is a basic regulation related to the manner in which taxicab medallions will be sold through sealed public bids and is not anticipated to have any competitive impact upon the Commonwealth.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations. No.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

None to date. We anticipate comments and public hearing through this promulgation process.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The regulation will apply to those persons who wish to participate in the public sealed bid process for the sale of medallions. Those participants will be greatly benefited through the existence of clear procedures related to the manner in which the process will be conducted. Nearly every current taxicab medallion owner in Philadelphia is a small business, so those entities will derive the greatest benefit from the regulation. Act 119 permits only 15 new medallions to be sold each year, for 10 years.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

We incorporate our response to question No. 15. Because only 15 new medallions may be sold by the Authority each year the number of impacted parties is anticipated to be small; however, the presence of regulations governing the sale process will benefit all concerned.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

There are currently no regulations to address the medallion sale process by the Authority. The creation of these regulatory guidelines is not anticipated to have any fiscal impact on the taxicab industry. The Legislature opted to authorize the new medallions; this proposed regulation merely creates a process through which that authorization may be realized. We incorporate responses to question Nos. 15 and 16.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

We incorporate our responses to question Nos. 15, 16 and 17. Every party involved in the public bidding process will benefit from the existence of these procedures and guidelines.

(19) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There will be no additional costs or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required. Participation in the medallion sale process is voluntary and the requirements associated with qualifying to be a medallion owner remain unchanged from the existing regulations.

(20) Provide a specific estimate of the costs and/or savings to the local governments associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived. None.

(21) Provide a specific estimate of the costs and/or savings to the state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The Authority will incur costs associated with organization and issuance of the medallions. However, the Authority already reviews approximately 140 medallion sales each year. The review of sales to 15 additional buyers will be born by the existing infrastructure without a recognizable impact. Act 119 permits the Authority to use revenue from the sale of medallions to cover any additional costs that may arise. Those costs will be included in the Authority's annual budget as provided in section 5707(a).

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The existing medallion sale process is intentionally invasive and requires the filing of several forms and documents to assure that prospective medallion owners are economically capable and otherwise competent to safely and legally operate a taxicab business. Except for the completion of a form identifying a bid price, the sale review procedure will be the same as that provided for in the regulations.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Local Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
State Government(PPA)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total Savings</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>COSTS:</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Regulated Community	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Local Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
State Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

<b>Total Costs</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>REVENUE LOSSES:</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Regulated Community</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Local Government</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>State Government</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total Revenue Losses</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

**(23a) Provide the past three year expenditure history for programs affected by the regulation.**

<b>Program</b>	<b>FY -3</b>	<b>FY -2</b>	<b>FY -1</b>	<b>Current FY</b>
N/A.	n/a	n/a	n/a	n/a

**(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:**

- (a) An identification and estimate of the number of small businesses subject to the regulation.  
N/A
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.  
N/A
- (c) A statement of probable effect on impacted small businesses.  
N/A
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.  
N/A

**(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.**

None.

**(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.**

No other alternative were considered.

**(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:**

- a) The establishment of less stringent compliance or reporting requirements for small businesses;  
N/A
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses; N/A
- c) The consolidation or simplification of compliance or reporting requirements for small

- businesses; N/A
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; N/A
  - e) The exemption of small businesses from all or any part of the requirements contained in the regulation. N/A. We incorporate our response to question No. 18.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data is not the basis for this proposed regulation.

- (29) Include a schedule for review of the regulation including:
- A. The date by which the agency must receive public comments: 30 days after publication in *Pa. B*
  - B. The date or dates on which public meetings or hearings will be held: N/A
  - C. The expected date of promulgation of the proposed regulation as a final-form regulation: January 15, 2014
  - D. The expected effective date of the final-form regulation: April 15, 2014
  - E. The date by which compliance with the final-form regulation will be required: Upon publication in *Pa. B*
  - F. The date by which required permits, licenses or other approvals must be obtained: N/A

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Authority will analyze information developed through medallion sales over the next 9 years to determine if alterations to the regulations are required.



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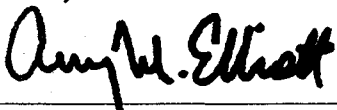
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**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU**

**(Pursuant to Commonwealth Documents Law)**

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General.

BY   
(DEPUTY ATTORNEY GENERAL)

OCT 21 2013

DATE OF APPROVAL

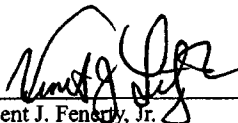
Check if applicable  
Copy not approved. Objections attached

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

Philadelphia Parking Authority  
(AGENCY)

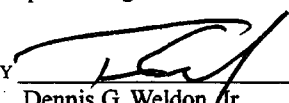
DOCUMENT/FISCAL NOTE NO. Pending with Office of Budget.

DATE OF ADOPTION September 25, 2013

BY   
Vincent J. Fenerty, Jr.

TITLE: Executive Director

Copy below is hereby approved as to form and legality. ~~Executive or~~ independent Agencies.

BY   
Dennis G. Weldon, Jr.  
General Counsel

Sept 25, 2013  
DATE OF APPROVAL

Check if applicable. No Attorney General approval or objection within 30 days after submission.

Proposed Rule Making No. 126-6  
Proposed Rulemaking  
Philadelphia Taxicab and Limousine Regulations  
52 Pa. Code Chapter 1013, Subchapter C

The Philadelphia Parking Authority on September 25, 2013, adopted a proposed rulemaking order which to provide for the sale of Philadelphia taxicab medallions by the Authority. The contact person is Dennis G. Weldon, Jr., General Counsel, 215-683-9630.

# THE PHILADELPHIA PARKING AUTHORITY

In Re: Proposed Rulemaking Order  
Philadelphia Taxicab and  
Limousine Regulations

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:  
: Docket No. 126-6  
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## PROPOSED RULEMAKING ORDER

### BY THE AUTHORITY:

In accordance with of the act of July 16, 2004, (P.L. 758, No. 94), *as amended*, 53 Pa.C.S. §§5701 *et seq.*, (the “act”),<sup>1</sup> the Authority formally commences its rulemaking process to promulgate regulations to provide regulations related to the sale of taxicab medallions by the Authority. The Authority seeks comments from all interested parties on these proposed regulations, which are found at Annex A to this Order.

#### A. Background and discussion.

Pursuant to Section 23 of the Act, the Authority initiated regulatory oversight of taxicab and limousine service providers in Philadelphia on April 10, 2005. The Authority’s regulations may be found at 52 Pa. Code Part II. The Authority has been authorized by the Legislature through the act of July 5, 2012, (P.L. 1022, No. 119) (“Act 119”) to issue up to 150 new taxicab medallions over the next 10 years<sup>2</sup>, including medallions designated only for use on wheelchair accessible vehicles.<sup>3</sup> When the Authority assumed regulatory responsibility over all taxicabs and limousines in Philadelphia from the Pennsylvania Public Utility Commission (“PUC”) in 2005, all statutorily authorized medallions had already been sold by the PUC. The Authority seeks to promulgate this regulation to provide procedures for the sale of medallions.<sup>4</sup>

#### B. The regulation.

### SUBCHAPTER C. MEDALLIONS SALES BY THE AUTHORITY.

We propose amending Chapter 1013 “Medallion Taxicabs” to add a new subchapter titled Medallion Sales by the Authority. When the Authority initiated regulation of taxicabs and limousines in 2005, all of the statutorily authorized taxicab medallions had already been issued by the PUC. The Authority’s regulations already provide extensive procedures related to the sale of medallions and other transferable rights between regulated parties, but contain no provisions related to the sale of medallions by the Authority. This regulation is intended to fill that void.

<sup>1</sup> See 53 Pa.C.S. §§ 5722 and 5742.

<sup>2</sup> See 53 Pa.C.S. § 5711(c)(2)

<sup>3</sup> See 53 Pa.C.S. § 5711(c)(2.1).

<sup>4</sup> The Authority may sell medallions by bid or public auction. 53 Pa.C.S. § 5717(b)(1).

§ 1013.31. *Purpose and definitions.*

We propose adding this section to identify the purpose of the proposed subchapter and to provide certain definitions.

The term "bidder" identifies those who may purchase a medallion from the Authority through the submission of a bid. The term is restricted to existing medallion owners and those who have submitted an application to become a medallion owner as provided in § 1013.32 (relating to bidder qualifications). We believe that existing medallion owners and those who have been prequalified, or at least previewed, before the bidding date will have a higher likelihood of successfully completing the sale process and otherwise comply with the requirements of the act and the regulations.

Most medallion owners are small corporations and many of those corporations are controlled through stock or other forms of ownership by only a few individuals. For purposes of transparency the term "bidder" includes a person with a controlling interest in an entity that is a bidder. The term person with a controlling interest is defined in § 1011.2 (relating to definitions) and used here as anticipated in Section 5717(b)(5)(ii) of the act.

The term "closing deadline" identifies the date that the sale of a medallion through the bid process must be completed. The purpose of setting a deadline is to hasten the deployment of the medallions into service following the bid date. The closing deadline will be identified in the notice of the bidding date, which will be published in the *Pennsylvania Bulletin*.

The term "special restrictions" identifies requirements that may be placed on a medallion prior to sale, such as a requirement that the medallion only be attached to a wheelchair accessible vehicle. Special restrictions related to a given medallion will be included in the notice of the bidding date related to the respective medallion.

The term "upset price" identifies the minimum bid that will be accepted for a medallion.

§ 1031.32. *Bidder qualifications.*

We propose adding this section to establish bidder threshold requirements. In order to participate in a public bid for a medallion, the bidder must be an existing medallion owner or have already submitted an application for that certification. We believe that existing medallion owners and those who have been prequalified, or at least previewed, before the bidding date will have a higher likelihood of successfully completing the sale process and otherwise comply with the requirements of the act and the regulations. The bidder must be in good standing with the Authority, meaning they are otherwise eligible to obtain or renew a medallion certificate of public convenience. Bids submitted by unqualified bidders will be considered non-responsive.

*§ 1013.33. General Provisions.*

We propose adding this section to clarify that Authority sales of medallions will be through sealed public bids and that medallions may be sold with special restrictions, such as the need to be attached to a wheelchair accessible vehicle as anticipated in Section 5717(c)(1) of the act.

*§ 1013.34. Notice of medallion sale by the Authority.*

We propose adding this section to identify the minimum information that will be provided in a notice of a medallion sale. The notice is required by section 5717(b)(1) and must be published in the *Pennsylvania Bulletin* at least 60 days before bids are due.

*§ 1013.35. Procedures for Bidding.*

We propose adding this section to identify bidding procedures. The regulation is specific as to the manner in which the sealed bid must be submitted and what must be enclosed with the bid, including a non-refundable \$5,000 deposit charged to the highest conforming bidder and which will be applied to the successful bidder's purchase price. The regulation also specifically identifies criteria for the immediate identification of a bid as "non-responsive".

*§ 1013.36. Bid Opening.*

We propose adding this section to provide procedures related the opening of sealed bids. Bids will be opened at the time and location designated in the notice required by § 1013.34. The procedure for dealing with high bids is also provided. All bidders or a qualified representative of the bidder must be present at the bid opening. Successful bidders will be specifically identified in a list published on the Authority's website. Unsuccessful bidders will also be identified in descending order from highest bid.

*§ 1013.37. Medallion bid approval process and closing on sale.*

We propose adding this section to identify the process through which successful bidders will be vetted for final approval of the medallion sale. The review process will proceed in a substantially similar manner to that applied to any buyer of a medallion (from a third party) as provided in this part. The proposed sale will be published in the *Pennsylvania Bulletin*, subject to protest and require Board approval before closing may be scheduled. Medallions will be sold with the anticipation that the buyers intend to use them as required by law and these regulations. Rapid turn around sales or "flipping" are discouraged. The proposed regulation is intended to discourage this behavior through graduated fee transfer disincentives during the first 3 years after purchase, with certain specified exemptions to address cases in which the sale is at no fault or design of the owner.

## CONCLUSION

The Authority, therefore, formally commences its rulemaking process to promulgate this regulation to become part of 52 Pa. Code Part II in a manner consistent with Annex A to this Order. The Authority seeks comments from all interested parties on this proposed body of regulations, which are found at Annex A to this Order. The Authority hereby advises that all comments submitted in response to this Order will be posted, without redaction of name, address, or other personal information or comment provided, on the website of the Independent Regulatory Review Commission, which may be reached at 717-783-5417.

Accordingly, under sections 13 and 17 of the Act, 53 Pa.C.S. §§ 5722 and 5742; section 5505(d) of the Parking Authorities Act, act of June 19, 2001, (P.L. 287, No. 22), *as amended*, 53 Pa. C.S. §§ 5505(d)(17), (d)(23), (d)(24); sections 201 and 202 of the Act of July 31, 1968, P.L. 769 No. 240, 45 P.S. §§ 1201-1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; section 204(b) of the Commonwealth Attorneys Act, 71 P.S. 732.204(b); section 745.5 of the Regulatory Review Act, 71 P.S. § 745.5, and Section 612 of the Administrative Code of 1929, 71 P.S. § 232, and the regulations promulgated at 4 Pa. Code §§ 7.231-7.234 the Authority proposes adoption of the regulations set forth in Annex A, attached hereto;

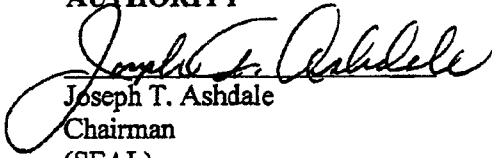
**THEREFORE,**

### IT IS ORDERED:

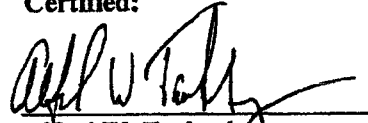
1. That a proposed rulemaking be opened to consider the regulation set forth in Annex A.
2. That the Executive Director shall submit this proposed rulemaking Order and Annex A to the Office of Attorney General for review as to form and legality.
3. That the Executive Director shall submit this proposed rulemaking Order and Annex A for review and comments to the Independent Regulatory Review Commission and the Legislative Standing Committees.
4. That the Secretary of the Board shall certify this proposed rulemaking Order and Annex A and that the Executive Director shall deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.
5. That an original and 15 copies of any written comments referencing the docket number of the proposed regulation be submitted within 30 days of publication in the *Pennsylvania Bulletin* to the Philadelphia Parking Authority, Attn: General Counsel, 701 Market Street, Suite 5400, Philadelphia, PA 19106.
6. That a copy of this proposed rulemaking Order and Annex A shall be served on the City of the First Class Taxicab and Limousine Advisory Committee and a copy shall be posted on the Authority's website at [www.philapark.org/tld](http://www.philapark.org/tld).

7. That the contact person for this proposed rulemaking is James R. Ney, Director, Taxicab and Limousine Division, (215)-683-9417.

**THE PHILADELPHIA PARKING  
AUTHORITY**

  
Joseph T. Ashdale  
Chairman  
(SEAL)

**Certified:**

  
Alfred W. Taubenberger  
Vice-Chairman/Secretary  
(SEAL)

ORDER ADOPTED: September 25, 2013  
ORDER ENTERED: September 25, 2013

# ANNEX "A"

## SUBCHAPTER C. MEDALLION SALES BY THE AUTHORITY

### § 1013.31. Purpose and definitions.

(a) This subchapter establishes the public bidding process through which the Authority will sell taxicab medallions as authorized by the act.

(b) The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

*Bidder*—A person qualified pursuant to § 1013.32 (relating to bidder qualifications) to submit a sealed bid for a taxicab medallion sold by the Authority. The term includes any person with a controlling interest in an entity that submits a bid for one or more medallions.

*Closing Deadline*—The date by which a successful bidder must complete the approval process and the closing on the sale of a medallion.

*Special restriction*—Limitations placed upon a medallion by the Authority in addition to restrictions provided for in the act, this part or an order of the Authority. For example, a medallion sold by the Authority may include a restriction that the medallion only be attached to a wheelchair accessible vehicle.

*Upset price*—The dollar amount below which a medallion will not to be sold.

### § 1013.32. Bidder qualifications.

(a) To participate as a bidder, a person must be a medallion taxicab certificate holder or person authorized as provided in subsection (b) and a person in good standing with the Authority. For the purposes of this section, "a person in good standing with the Authority" is a person that meets the following criteria:

(1) Is qualified to buy transferable rights as provided in Chapter 1027 (relating to sale of rights).

(2) Is qualified to renew a transferable right as provided in § 1011.3 (related to annual rights renewal process).

(3) Has not sold a medallion in the most recent 365 days.

(4) Does not currently own and is not a person having a controlling interest in an entity that owns a medallion that is in a suspended status as provided in § 1011.14 (relating to voluntary suspension of certificate).

(b) A person that is not a medallion taxicab certificate holder may submit a bid for a medallion if the person has requested a new medallion taxicab certificate through the filing of an SA-1 application as provided in §1027.6 (relating to application for sale of transferable rights) and the request has not been denied by the Authority prior to the date bids are due. In order to qualify to



bid as a pending medallion taxicab certificate holder, the SA-1 must be filed 45 days or more before the date bids are due. Participation in the bidding process will not guarantee the issuance of the medallion taxicab certificate by the Authority.

(c) Bids submitted in violation of this subsection will be considered non-responsive.

**§ 1013.33. General Provisions.**

(a) Sale by Sealed Bid. The Authority will sell taxicab medallions by sealed bid.

(b) Restriction of medallion rights. A medallion offered for sale by the Authority may have restrictions attached to it that will run with the medallion in perpetuity or for a shorter expressed period. The Authority will issue all restrictions by order and identify any medallion to which any restriction will apply in the notice of the sale as provided in section 5717(b)(1) of the act (relating to additional certificates and medallions).

(c) Separate Public Sales. Separate sales may be conducted for each medallion to be sold by the Authority.

**§ 1013.34. Notice of medallion sale by the Authority.**

Notice of a proposed sale of a medallion by the Authority will be published in the *Pennsylvania Bulletin* 60 days or more before the sealed bids will be due from bidders. The notice will include the following:

(1) The date and time on which bids are due.

(2) The location where bids are due.

(3) The number of medallions to be sold.

(4) Special restrictions that have been attached to any medallion. Restrictions will be identified and linked to the medallion number identified in the public notice.

(5) The upset price for each medallion.

(6) The maximum number of medallions a bidder may purchase at each public bidding session.

(7) The mandatory closing date.

(8) Other terms of sale.

**§ 1013.35. Procedures for Bidding.**

(a) Bid submissions. Each Bidder must do the following:

(1) Submit the bid in a 9" x 12" sealed envelope. The exterior of the sealed envelope shall identify, in the English language and with Arabic numerals, the medallion number for which the bid is intended and any additional information identified in the notice provided pursuant to § 1013.33 (relating to notice of medallion sale by the Authority). All information required by this paragraph shall be in black ink with characters no smaller than 1 inch high and 1/2 inch wide. For example, a sealed bid for medallion 9999 must display the following on the outside of the sealed envelope: "Bid for medallion 9999".

(2) Submit only one bid, rounded to the nearest dollar increment, for one medallion per envelope.

(3) Submit the bid amount on a completed Form No. MA-2 "Bid Cover" in the sealed and marked envelope. The MA-2 is available at [www.philapark.org/tld](http://www.philapark.org/tld).

(4) Include with each bid inside the sealed envelope, the following:

(i) A deposit of \$5,000 in a certified check, bank check or money order drawn on a Federally- or State-insured bank payable to the "Philadelphia Parking Authority". The deposit will be non-refundable as to the highest conforming bidder and credited toward the sale price if the sale is approved.

(ii) A bank statement in the name of the bidder evidencing sufficient funds to purchase the medallion or a letter of commitment for no less than eighty percent of the bid amount, issued by a bank, credit union or other lender licensed to do business in the Commonwealth of Pennsylvania.

(5) Submit each sealed bid by hand delivery at the time and place designated in the sale notice as provided in § 1013.34 (relating to notice of medallion sale by the Authority).

(b) Late Bids. Any bid presented to the Authority after the time designated or to a location other than that designated in the sale notice as provided in § 1013.34 will not be accepted.

(c) Required Certifications. The MA-2 will include provisions through which each bidder must provide the following information with an accompanying verification:

(1) The bidder has not relied on any statements or representations from the Authority in determining the amount of the bid.

(2) The bidder has not colluded, consulted, communicated, or agreed in any way with any other bidder or prospective bidder for the purpose of restricting competition or of inducing any other prospective bidder to submit or not to submit a bid for the purpose of restricting competition.

(3) The bidder has not disclosed any bid price, directly or indirectly, to any other bidder for the purpose of restricting competition or of inducing any other prospective bidder to submit or not to submit a bid for the purpose of restricting competition.

(4) The bidder is not an owner, partner, member, shareholder, key employee of any other bidder and that the bidder is not a person with a controlling influence over any other bidder.

(d) Non-Responsive Bids. The following will be considered "non-responsive" bids and will be rejected:

(1) Bids that do not comply with the requirements of this section.

(2) Bid packages containing bids for more than one medallion.

(3) Bids that are non-responsive or non-conforming in any other respect.

(4) Bids below the upset price.

(e) All Bids Final. All bids are considered final and no bidder will be allowed to correct any bid after submission.

#### **§ 1013.36. Bid Opening.**

(a) The sealed bids will be opened in public and not before the time designated in the notice of a proposed sale provided pursuant to this subchapter.

(1) Each bidder, or an individual authorized as the bidder's representative as provided in § 1001.28 (relating to power of attorney), must be present at the bid opening in order to address any issues that may arise during the bidding process, including the event of a tie bid.

(2) The winning bid for each medallion will be the highest bid for that medallion that is complete and responsive.

(3) Tie bids will be decided through subsequent sealed bids between only the tied bidders. The sealed bids to break the tie shall be submitted on the same day as the bid opening pursuant to the instructions of the Director. This process will also be used to determine tie bids for placement on the list as provided in subsection (b).

(4) The winning bids will be announced at the public sale, posted in the lobby of the TLD's Headquarters, and listed on the Authority's website at [www.philapark.org/tld](http://www.philapark.org/tld).

(5) The winning bidder will be notified by the Authority of its winning bidder status as provided in § 1001.51(b)(3)(relating to service by the Authority).

(6) The winning bidder must appear before the Director or his designee at TLD Headquarters within 5 business days of notice of the winning bid to acknowledge acceptance of the medallion and to confirm that all sale documentation has been properly completed and filed as provided in Chapter 1027 (relating to sale of rights).

(b) Non successful bid review.

(1) A list of all responsive, non-successful bids in the order from the highest bid amount will be produced and maintained by the Authority for each medallion subject to sale by the Authority.

(2) If the successful bidder is not approved by the Authority or fails to close on the sale of the medallion by the date designated in § 1013.34 (relating to notice of medallion sale by the Authority) the Director may notify the highest non-successful bidder as provided in § 1001.51(b)(3) and allow the bidder the opportunity to be a successful bidder and complete the sale process as provided in this subchapter.

(3) The highest non-successful bidder shall notify the Director of its decision to become a successful bidder within 5 business days of notice. In the event the noticed non-successful bidder elects not to become a successful bidder, the Director may proceed to notify non-successful bidders in order of highest to lowest bid until a successful bidder is obtained.

(4) The Director may amend the mandatory closing date by a period no greater than the time between the bid date and the date the next highest ranking bidder accepts the Director's invitation to become a successful bidder.

(5) The Director may, in his discretion, request authorization from the Board to re-advertise the bid process for any medallion after the sale of the medallion to the original successful bidder fails to close by the date designated in § 1013.34.

(c) *Assignment of the Winning Bid.* A winning bidder may not assign its rights to the winning bid status; any such assignment is void.

**§ 1013.37. Medallion bid approval process and closing on sale.**

(a) The sale of a medallion to a successful bidder will be prohibited if that bidder is not qualified to be a medallion certificate holder pursuant to the act and this part.

(b) For purposes of reviewing the potential sale of a medallion, the Authority will consider the successful bidder to be the proposed buyer as provided in this part.

(c) If the Director determines that the successful bidder is qualified as provided in the act, this part or an order of the Authority, a recommendation to approve the sale will be presented to the Board for approval at its next regularly scheduled meeting.

(d) Upon approval of the sale by the Authority, the Director will schedule the parties to meet at a time and location where an Authority staff member will witness the closing of the transaction.

(e) An Authority staff member shall witness the execution of each document by the proposed buyer, or its designated agent. Any closing not witnessed by Authority staff is void as provided in sections 5711(c)(5) and 5718 of the act (relating to power of authority to issue certificates of public convenience; and restrictions).

(f) The Authority will issue a new medallion taxicab certificate to the new medallion owner after the closing process if requested by the proposed buyer as provided in § 1013.32(b) (relating to bidder qualifications.)

(g) Except as provided in subsection (h), a medallion subject to a completed closing after sale by the Authority may not be transferred or sold for a period of 3 years from the date of closing, except as follows:

(1) A medallion sold within one year of closing will be subject to a transfer fee 15 times greater than that provided in the Authority's fee schedule as provided in section 5710(a) of the act (relating to fees).

(2) A medallion sold within two years of closing will be subject to a transfer fee 12 times greater than that provided in the Authority's fee schedule as provided in section 5710(a) of the act.

(3) A medallion sold within three years of closing will be subject to a transfer fee 10 times greater than that provided in the Authority's fee schedule as provided in section 5710(a) of the act.

(h) Subsection (g) shall not apply to the sale of a medallion in the following circumstances:

(1) When each person that owns securities of the corporation, partnership, limited liability company or other form of legal entity that owns a medallion sold pursuant to this subchapter has died or is declared incapacitated.

(2) When a person that owns securities of the corporation, partnership, limited liability company or other form of legal entity that owns a medallion sold pursuant to this subchapter has died or is declared incapacitated and that person's securities are transferred to the medallion owning entity or another owner of securities in the entity that owns the medallion.



701 MARKET STREET  
SUITE 5400  
PHILADELPHIA, PA 19106  
215.683.9600

October 29, 2013

The Honorable Silvan B. Lutkewitte, III  
Chairman  
Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

Re: Docket No. and Agency/ID No. 126-6  
Proposed Rulemaking  
Philadelphia Taxicab & Limousine Regulations  
52 Pa. Code Part II  
Taxicab Medallion Sales

Dear Chairman Lutkewitte:


The Philadelphia Parking Authority ("Authority") hereby submits its proposed rulemaking and regulatory analysis form to the Independent Regulatory Review Commission for review pursuant to Section 5(a) of the Regulatory Review Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15). Also enclosed is the Authority's Proposed Rulemaking Order entered September 25, 2013 (preamble) and the "Face Sheet" required by 1 Pa. Code §13.12.

The proposed regulation will provide the regulatory framework for the sale of Philadelphia taxicab medallions.

The contact person is the undersigned and may be contacted at 215-683-9630.

The proposal has been deposited for publication with the Legislative Reference Bureau.

Very truly yours,  
The Philadelphia Parking Authority

By:   
Dennis G. Weldon, Jr.  
General Counsel

DGW/pdm  
Enclosures

cc: Vincent J. Fenerty, Jr., Executive Director  
James R. Ney, Director, TLD



TRANSMITTAL SHEET FOR REGULATIONS SUBJECT  
TO THE REGULATORY REVIEW ACT

ID Number: 126-6

Subject: Regulation to provide for the taxicab medallion sales

Philadelphia Parking Authority


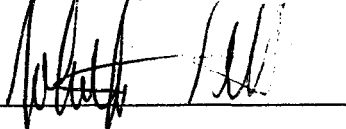
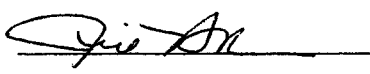
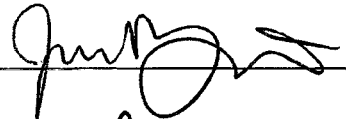
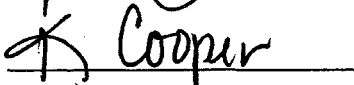

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted.
- Final Regulation
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

2013 OCT 29 PM 1:34

RECEIVED  
IRRC

FILING OF REPORT

<u>Date</u>	<u>Signature</u>	<u>Designation</u>
<u>10-29-13</u>		<u>HOUSE COMMITTEE</u> (Gillierpie) Urban Affairs
<u>10-29-13</u>		
<u>10-29-13</u>		<u>SENATE COMMITTEE</u> (Tomlinson) Consumer Protection and Professional Licensure
<u>10-29-13</u>		
<u>10/29/13</u>		Independent Regulatory Review Commission
		Attorney General
<u>10/29/13</u>		Legislative Reference Bureau

Room 281

**EXHIBIT "B"**





**NEW YORK CITY DEPARTMENT OF INVESTIGATION**

**TAXI AND LIMOUSINE COMMISSION  
MEDALLION AUCTION REPORT**

**ROSE GILL HEARN  
COMMISSIONER**

**JULIE BLOCK  
INSPECTOR GENERAL  
NYC TAXI AND LIMOUSINE COMMISSION**

**APRIL 2007**

## **INTRODUCTION**

On June 21, 2006, the Department of Investigation ("DOI") was asked by the New York City Law Department (the "Law Department") to look into whether identical bids made by three bidders at the June 16, 2006 public auction of 54 taxi medallions were the result of illegal collusion or violation of any other law, rule or regulation that governs these auctions. This request was made as a result of an observation by a representative of the New York City Office of Management and Budget ("OMB"), who determined that at a June 16, 2006 Taxi and Limousine Commission ("TLC") medallion auction, three bidders made multiple identical bids for medallions and thereby collectively won all 54 medallions that were auctioned. The three bidders, Evgeny Freidman, Vladimir Basin and Mamed Dzhaniyev, were known to the TLC as owners of taxi medallions and partners in taxi-related businesses.

In response to the Law Department's inquiry, DOI examined the facts and circumstances surrounding the June 16, 2006 auction, as well as a subsequent medallion auction held on June 22, 2006 and three prior auctions held in 2004. In each of these other auctions, the same bidders, Freidman, Basin and Dzhaniyev, along with others, made identical bids in a fashion similar to the identical bids they made in the June 16, 2006 auction. Pursuant to its investigation of this matter, DOI reviewed TLC records, interviewed people from the TLC and the public involved in the auctions, and consulted with the Law Department and lawyers employed by the TLC on matters of law and procedure affecting these auctions. The following is a summary of DOI's factual findings.

## **BACKGROUND**

Medallion auctions are the public sale by the City of newly issued taxi medallions. The issuance of taxi medallions is governed by New York State law. See *N.Y. Administrative Code § 19-502*. Through a delegation of authority to the local government, the City of New York (the "City") determines how many medallions will be issued, what types of medallions will be issued and the process by which the medallions will be issued. *N.Y. Administrative Code § 19-501*. The TLC is the City agency that carries out this function for the City of New York. *N.Y. City Charter, Chapter 65*.

The TLC has authorized the issuance of a number of different types of taxicab medallions. Included among these are "Independent" medallions, which are medallions that must be affixed to taxicabs that are personally driven by their owners for a minimum of 210 shifts per year. "Minifleet" medallions are medallions that must be owned by the owner of more than one taxicab license. "Alternative Fuel" medallions ("Alt-fuel") are medallions that are valid for use on vehicles powered by compressed natural gas or hybrid electric vehicles. "Wheelchair Accessible" medallions ("Accessible") are medallions that can only be used on vehicles that are accessible to passengers using wheelchairs. "Unrestricted Corporate" medallions have no restrictions as to their use, unlike Independent, Alt-fuel and Accessible medallions.

State and local legislation in 2003 gave the TLC the authority to hold multiple auctions in 2004, at which almost 600 new taxi medallions of various types were to be auctioned. *N.Y. City Charter, Chapter 65, § 2300*. Historically,

medallion auctions have not been a frequent occurrence. Prior to the 2004 auctions, it had been eight years since the last auction, with 266 medallions sold in auctions in 1996 and 134 medallions sold in auctions held in 1997.

The rules governing the TLC are found in Title 35 of the Rules of the City of New York (the "TLC Rules"). In 2003, the TLC passed rules that dictated how medallions auctions were to be conducted, entitled *Rules Governing Issuance and Public Sale of Taxicab Licenses*. 35 RCNY Chapter 13. The TLC Rules related to auctions were updated on May 17, 2006 just prior to the 2006 auctions. (A copy of the updated auction rules found at 35 RCNY Chapter 13, is annexed as Exhibit 1.) The TLC Rules call for "closed bid" auctions, meaning that sealed bids are accepted for a period of time prior to the auction date and are not to be opened or revealed until the date of the auction.

The bid package submitted by each of the bidders in connection with the June 16, 2006, June 22, 2006 and the three 2004 auctions, included a TLC Official Bid Form (the "Bid Form") in which each bidder was required to certify the price he/she was bidding on the medallions. (A copy of the Bid Form is annexed as Exhibit 2.) In addition, in signing the Bid Form, each bidder was required to certify that, *inter alia*, "I have arrived at the above bid amount by my own free independent evaluation, & I have not entered into any agreement relating to this bid with any other competing bidder" (the "Non-Collusion Clause").

The TLC relies on the representations of bidders in these Bid Forms and has invalidated the Bid Forms on a number of occasions for being completed incorrectly or incompletely. There are no other TLC forms or any TLC Rules that

address pre-bid communications between bidders other than the Non-Collusion Clause contained in the Bid Form.

### **THE 2006 MEDALLION AUCTIONS**

On May 24, 2006, Mayor Michael R. Bloomberg, TLC Commissioner/Chairman Matthew W. Daus and the City Council announced new legislation designed to significantly increase the number of Accessible and Alternative fuel taxi cabs on the streets of the City. Intro. 339-A allowed for the sale of 254 new Alt-fuel taxi medallions and 54 new Accessible taxi medallions. The 254 Alt-fuel taxi medallions were divided into 124 Alt-fuel Minifleet medallions and 130 Alt-fuel Independent medallions. The new medallions were to be made available via three separate public auctions that were scheduled to be held in June 2006.

Among the changes to the TLC Rules implemented as part of the May 17, 2006 update, was a reduction of the amount of the deposit required to accompany a medallion bid. Previously, the TLC Rules mandated that bids were to be accompanied by an initial deposit of \$2,000 that was submitted with the bid package and a second deposit of \$25,000 to be submitted upon notification to the bidder of a winning bid, for a total deposit of \$27,000 per medallion for each winning bidder. Due to lobbying efforts by Evgeny Freidman, among others, the TLC Rules were amended on May 17, 2006 to eliminate the second deposit of \$25,000, leaving only the initial deposit of \$2,000 to be paid by every bidder. Thus, for the June 16, 2006 and June 22, 2006 auctions, only a deposit of \$2,000 was required to be submitted with each medallion bid, with no second deposit of

\$25,000 required for the winning bidders. This is significant because the rules require that the deposit be forfeited should a winning bidder decide not to close on his or her winning bid.

Chapter 13 of the TLC Rules provides that, in connection with auctions of Alt-fuel or Accessible medallions, after the highest bids for the auctioned medallions are identified, the five next highest (non-winning) bids are to be placed in a "reserve status." 35 RCNY 13-03(f). If a winning bidder defaults, that is, fails to take the steps required to close on the medallions he/she won within the specified time period, or is unable to acquire a vehicle within the specified time period, the five reserve bids are transferred to winning bid status in place of the bids that did not close. Id.

On June 16, 2006, a sealed bid auction was held for 54 accessible medallions with a minimum bid price of \$275,000 per medallion. On June 22, 2006, two more sealed bid auctions were held, one for 130 Alt-fuel Independent medallions with a minimum bid price of \$320,000 per medallion, and the other for 124 Alt-fuel Minifleet medallions with a minimum bid price of \$375,000 per medallion. There were no allegations of collusion in connection with the June 22, 2006 auction for 130 Independent Alt-fuel medallions, and so DOI did not examine the auction of those 130 medallions. However, DOI did look at the June 22, 2006 auction of the 124 Alt-fuel medallions, because Freidman, Basin and Dzhaniyev participated in that auction and used the same bidding strategy of placing multiple identical bids which had previously been called into question by the OMB representative at the June 16, 2006 auction.

**1. The June 16, 2006 Auction of 54 Accessible Medallions**

The first of the 2006 medallion auctions was held on June 16, 2006, at which 54 Accessible medallions were auctioned. In that auction, the bid collection dates were June 13 through June 15, 2006. On June 16, 2006, in a public forum, the bids were taken out of "litigation" bags and were opened and checked for accuracy and completeness. The bids were then secured. Thereafter, TLC's legal department sent letters to the highest bidders who met the minimum requirements, informing them that they had made winning bids. Closing dates for the winning bids were then set by the TLC. Pursuant to the TLC Rules, the date for closing had to be set anytime within 60 days from the date of the bid opening, unless the 60 day period was extended by the TLC Chairperson for reasonable cause.

In the June 16, 2006 auction, Freidman, Basin and Dzhaniyev, each individually placed three sets of identical bids for 18 of the medallions and, in doing so, made the highest bids for what collectively totaled all of the 54 medallions. Specifically, Freidman, Basin and Dzhaniyev each bid \$477,666.50 per medallion for 18 medallions, as well as \$453,722 per medallion for 18 medallions and \$416,278 per medallion for 18 medallions. The \$477,668.50 per medallion bids turned out to be the winning bids, while the \$453,722 per medallion bids were the second highest bids. (A complete list of all of the June 16, 2006 auction bids is annexed as Exhibit 3.)

## **2. The June 22, 2006 Auction of 124 Alt-Fuel Minifleet Medallions**

Notwithstanding the concerns raised by OMB and the Law Department about the June 16, 2006 auction, on June 22, 2006, the TLC held two other auctions: one for the public sale of 124 Alt-fuel Minifleet taxi medallions and one for the public sale of 130 Independent Alt-fuel taxi medallions. The procedures in place for the June 22, 2006 auction were the same as had been in place for the June 16, 2006 auctions.

According to TLC records, Freidman, Basin and Dzhaniyev again submitted identical bids in the Alt-fuel Minifleet medallion auction, this time joined by four additional individuals: Maksim Kats, Alexandra Malatestinic, David Beier and Erine Papis (the "Freidman group"). Specifically, in the June 22<sup>nd</sup> Alt-fuel medallion auction, each of these individuals submitted bids of \$517,722 per medallion for varying numbers of medallions. Freidman, Basin and Dzhaniyev each bid this price for ten medallions, while Kats bid that price for four medallions and Malatestinic, Beier and Papis each bid that price for two medallions. Thus, the total medallions bid on by the Freidman group were 40 out of the 124 Independent Alt-fuel medallions auctioned.

DOI has determined that all of the individuals in the Freidman group know and/or are associated with Freidman in one way or another. Freidman, Basin and Dzhaniyev are principals of Victory Taxi Garage, a TLC licensed agent with 158 affiliated taxicabs. Erine Papis is the manager of Taxi Club Management, a company owned by Freidman; Maksim Kats is the son of Michael Kats, the manager of Woodside Management Inc., another company owned by Freidman;



David Beier is Freidman's business attorney; and Alexandra Malatestinic is the wife of Ethan Gerber, Freidman's lobbyist and insurance attorney. Freidman, alone, also placed bids for 20 more medallions at the higher price of \$527,666.50 per medallion.

All of the bids made by the Freidman group were winning bids, as were Freidman's higher separate bids for 20 additional medallions. Thus, out of the 124 Alt-fuel medallions up for auction, Freidman, Basin, Dzhaniyev, Kats, Malatestinic, Beier and Papis won a total of 60 medallions, or just under half the number of medallions being auctioned. Out of the 60 medallions won, Freidman himself won 20 medallions at a price of \$527,666.50 and 10 at a price of \$517,722, the price bid by the Freidman group. The remaining 64 medallions were won by 14 other bidders who bid varying amounts, between \$554,147.50 and \$500,500. (A complete list of all of the June 22, 2006 Alt-Fuel Minifleet medallion auction bids is annexed as Exhibit 4.)

#### **THE 2004 MEDALLION AUCTIONS**

Freidman, Basin and Dzhaniyev also made identical bids in the April 16, 2004 Unrestricted Corporate medallion auction, the October 15, 2004 Accessible medallion auction, and the October 15, 2004 Alt-fuel medallion auction. In all three 2004 auctions, Freidman, Basin and Dzhaniyev each made multiple tiered identical bids, in much the same fashion that they bid in the June 16, 2006 auction. Some of these bids were winning bids.

Freidman, Basin and Dzhaniyev also appear to have been joined by Igor Mikhlin and Mikhal Kats in making some of these 2004 tiered bids. Specifically,

in the April 16, 2004 auction of the 174 Unrestricted Corporate medallions, which was also a closed bid auction, Freidman bid for two medallions and Basin, Dzhaniev, Mikhlín and Kats each bid on one medallion at a price of \$683,244 per medallion. At the same auction Freidman also bid for two medallions, while Basin and Dzhaniev bid for one medallion, at the lower price of \$681,146. Those bids (both the high and low) were all successful winning bids. In addition to their successful bids, Freidman, Basin, and Dzhaniev each made bids for \$680,498, \$678,854 and \$676,756 per medallion that were ultimately losing bids. Mikhlín and Kats each made bids of \$680,498 and \$676,756, which were also losing bids.

On October 15, 2004, the TLC auctioned 27 Accessible and 19 Alt-fuel medallions. In the auction of 27 Accessible medallions, Freidman, Basin and Dzhaniev each bid and won two medallions at \$267,611 and two medallions at \$262,611. In addition to their winning bids, the three also unsuccessfully bid \$257,611 and \$252,611 per medallion. The remaining 15 medallions were won by 5 other bidders with varying bid amounts between \$347,000 and \$262,611.

In the auction of 19 Alt-fuel medallions on October 15, 2004, Freidman, Basin and Dzhaniev each bid and won two medallions at \$225,111; two medallions at \$222,611; and two medallions at \$220,111 representing 18 of 19 Alt-fuel medallions sold.<sup>1</sup> The last medallion was sold to an individual other than

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<sup>1</sup> Complications arose from the October 15, 2004 auction, resulting in litigation when Freidman, Basin and Dzhaniev were not able to close on their bids due to their inability to find an alternative fuel vehicle that met TLC standards. As litigation progressed, the City Council enacted legislation that forced the TLC to relax the standards for vehicle specifications and approve various alternative fuel vehicles. The City settled the action

Freidman, Basin and Dzhaniev with a high bid of \$225,111.20.<sup>2</sup> (A complete list of all of the bids for each of the three 2004 auctions is annexed as Exhibit 5.)

### **THE SUBJECT BIDDERS**

As noted above, according to TLC records, Freidman, Basin and Dzhaniev are all principals in Victory Taxi Garage, a TLC licensed agent. Freidman is also a principal in several other TLC licensed companies, including Woodside Management, Inc., 28 Street Management, Inc., and Taxi Club Management, Inc. Neither Basin nor Dzhaniev have any interest in these other entities.

Additionally, Freidman is a licensed TLC Broker. A TLC Broker is defined in Chapter 5-01 of the TLC Rules as:

an individual, partnership or corporation, who may hereinafter be referred to as "broker," who, for another and whether or not acting for a fee, commission or other valuable consideration, acts as an agent or intermediary in negotiating the transfer of a taxicab license (medallion) or of stock of or in a corporation which holds a taxi license (medallion), and/or negotiating a loan secured or be secured by an encumbrance upon or transfer of a taxicab license (medallion), or licensed vehicle.

(A copy of Chapter 5 of the TLC Rules, which deal with brokers, is annexed as Exhibit 6.) The TLC encourages the use of "brokers" in connection with the purchasing of taxi medallions as well as at public auctions.<sup>3</sup>

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with Freidman, Basin and Dzhaniev, who were ultimately able to close on their winning bids.

<sup>2</sup> On August 17, 2006, DOI interviewed this other winning bidder, Guerril Paul, regarding his winning bid of \$225,111.20 in the October 15, 2004 auction of Alt-fuel medallions, which was a mere 20 cents higher than some of the winning bids placed by Freidman, Basin and Dzhaniev. Upon investigation, it appears that Paul does not have any connection to Freidman, Basin and Dzhaniev.

Notwithstanding their business connections, in the June 16, 2006 auction, all the Bid Forms submitted by Freidman, Basin and Dzhaniyev were marked as being submitted by the respective bidders as "individuals" rather than as corporations and/or in association with one another. Moreover, in connection with the June 16, 2006 auction, Freidman, Basin and Dzhaniyev did not otherwise disclose any association or agreement among them in connection with their bids. Similarly, in the June 22, 2006 auction of 124 Alt-fuel Minifleet medallions, Freidman, Basin, Dzhaniyev, Kats, Malatestinic, Beier and Papis each submitted Bid Forms marked on behalf of themselves as individuals and did not disclose any connection or agreement among them.

### **THE TLC VIEW OF THE AUCTIONS**

DOI questioned certain officials from the TLC who played a role in the 2004 and or 2006 auctions about, among other things, the auction process, the Non-Collusion Clause in the TLC Bid Form, and the bids submitted by Freidman, Basin and Dzhaniyev. The following is a summary of the pertinent information obtained from those interviews.

#### **Charles Fraser**

Charles Fraser has been with the TLC as General Counsel since March 2005. He was not employed by the TLC during the medallion auctions of 2004. In connection with the 2006 auctions, he supervised the revision of the auction

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<sup>3</sup> On the TLC website, the TLC advises potential medallion owners that "A TLC-licensed taxicab broker may act as an agent or intermediary between medallion sellers and buyers. In the case of public medallion auctions, the City is the medallion seller and bidders are the potential medallion buyers. Some brokers offer additional services to clients including, but not limited to, assistance with purchase of a taxicab vehicle, or the required insurance." The TLC recommends that you consult with your own professional advisers, if you so choose, to obtain additional information." [www.nyc.gov/tlc](http://www.nyc.gov/tlc)

rules. In addition, he supervised Assistant General Counsel Chris Wilson, who was specifically assigned to provide legal advice to TLC Project Manager Eric Kim, who had direct responsibility for conducting the auction. Fraser stated that he was not personally familiar with all of the documents used by the TLC at the auctions or the legal context in which auctions are held. Rather, he relied on Eric Kim and Chris Wilson for many of the details regarding how the auctions were conducted. Fraser told DOI that prior to it being brought to his attention at the conclusion of the June 16, 2006 auction, he had not been aware of the Non-Collusion Clause contained in the Bid Form.

Fraser was asked about the bid results from the June 16, 2006 auction, which reflected three sets or tiers of identical bids from Freidman, Basin and Dzhaniyev, which appeared to be the result of pre-bid communication between these bidders. Fraser stated that, "at first glance [the June 16, 2006 bids] appeared to be a scam." But upon further reflection, he said that "[he] was satisfied that [the other two bidders] are [Freidman's] business partners" and therefore there was "nothing improper or illegal in terms of the TLC Rules and Regulations." When asked how he reconciled this view with the Non-Collusion Clause in the Bid Form, which appears on its face to preclude bidders from consulting with each other about their bid amounts, Fraser asserted that he believed that the Non-Collusion Clause only precludes consultation between competing bidders and that "Freidman and his two partners are not competing

bidders.”<sup>4</sup> Frasier stated that his view was not altered by the fact that Freidman, Basin and Dzhaniyev certified on the Bid Form that their respective bids were made individually rather than jointly or as a corporation. Frasier pointed out that there have been other instances, such as when husbands and wives have separately put in identical bids, where two bidders at the same auction have not been considered competing bidders.

Frasier repeated that, in his opinion, any possible violation of the Bid Form notwithstanding, there was no violation of a TLC rule or regulation and, therefore, the Freidman group's bids were valid. In probing his basis for that position, Frasier said that, to his knowledge, there was no law outside of the TLC's rules that applied to the conduct of auctions. He stated that the Law Department was the expert in that area, and that the TLC auction procedures and auction forms had been reviewed and approved by Law Department staff. However, Frasier further stated that he now believes that the Non-Collusion Clause on the TLC Bid Form should be clarified.

According to Frasier, once the tiered June 16<sup>th</sup> identical bidding pattern of Freidman, Basin and Dzhaniyev became known, Frasier and others at the TLC had discussions among themselves and with the Law Department regarding those bids. Frasier stated that once he saw that Freidman, Basin and Dzhaniyev had the winning bids as well as the second highest bids, he believed that they were going to attempt to “walk away from” (*i.e.*, default on) the high bids and

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<sup>4</sup> Frasier put emphasis on the word “competing” in the Non-Collusion Clause: “I have arrived at the above bid amount by my own free independent evaluation, & I have not entered into any agreement relating to this bid with any other *competing* bidder. (emphasis added).

close on the second highest bids, to save themselves a significant amount of money at a cost to the City. He said that Eric Kim assumed the same thing. Fraser stated that he understood that such a step would be permissible under applicable law and rules. (An e-mail between Fraser and Kim dated June 16, 2006 discussing this issue is attached hereto as Exhibit 7.)

However, after examining the TLC Rules, Fraser stated that he was of the opinion, that rather than being able to walk away from their high bids on all 54 medallions, Freidman, Basin and Dzhaniyev could only default on a maximum total of 5 Minifleet bids (which is 10 medallions). Fraser stated that, upon analyzing Freidman, Basin and Dzhaniyev's tiered bidding pattern, it became apparent to him why Freidman had lobbied so hard to reduce the deposit amount. Under the old rules, the non-refundable deposit per medallion was \$27,000, which would have resulted in a \$250,000 loss to the bidders had they walked away from five of their top bids (reflecting 10 medallions). However, under the revised 2006 rules, if Freidman Basin and Dzhaniyev had walked away from 5 of their top bids, they would have only lost their \$2,000 deposit per medallion, for a total loss of only \$20,000.

Similarly, under the revised rules, if Freidman, Basin and Dzhaniyev had tried to default on all of the first 54 bids of \$477,666.50 and use the second 54 bids of \$453,722, rather than default on just 5 bids, as Fraser suggested was all that was allowed under the TLC's rules, Freidman and his associates would have lost their \$2,000 deposits per bid on all 54 bids for a total of \$108,000. However, at the same time, if they had successfully walked away from all 54 of their top

bids, they would have saved \$1,292,976 on the purchase price minus the \$108,000 deposits, for a total savings of \$1,184,976 to these three bidders and a commensurate loss to the City.

**Eric Kim**

Eric Kim was the TLC Project Manager for the June 2006 medallion auctions. His duties involved coordinating the different aspects of the auctions, including public education and outreach for all of the 2006 auctions, planning for bid collections, handling the bid packages that include the Bid Form, and conducting the auction day events.

Kim, who is not a lawyer, stated that he had seen the Bid Form prior to June 16, 2006, but that he had not previously focused on the Non-Collusion Clause. When he received a call from OMB about the fact that three people bidding separately each bid the exact same amount, his reaction was that it was "weird." Kim stated that he consulted with various officials at the TLC about the identical bids and the Non-Collusion Clause, and they were of the opinion that no TLC rule violations had occurred, and therefore, there was no problem with the apparent collaboration by the three bidders. Kim stated that, in his view, the spirit of the language in the Bid Form had been violated by the apparent consultation between the subject bidders with regard to the amounts they had bid.



## **Ira Goldstein**

Ira Goldstein, Chief of Staff for the TLC, had no specific responsibilities in the planning or execution of the medallion auctions. However, given his overall responsibility for the TLC in his role as Chief of Staff, DOI questioned Goldstein about the auction process. Similar to Fraser, Goldstein stated that, in his view, because the TLC Rules do not contain a non-collusion provision, the Non-Collusion Clause of the Bid Form was essentially superfluous. Therefore, according to Goldstein, any violation of that clause would be inconsequential, because only a violation of a TLC rule could constitute a violation of auction procedures.

## **INTERVIEWS OF SELECTED BIDDERS**

### **Evgeny Freidman**

On July 14, 2006, Freidman was interviewed under oath regarding the June 16, 2006 auction. Freidman was represented by Jeffery Hoffman, Esq.<sup>5</sup> Freidman, a former lawyer who is a prominent figure in the taxi industry, is a licensed TLC Broker and a licensed TLC Agent, who is now in the business of owning, operating, insuring and managing taxi medallions. Freidman's father was also in the taxi business.

Freidman explained that the identical bids he submitted along with the other bidders were the result of the fact that he was both a bidder for himself as

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<sup>5</sup> When DOI contacted Freidman to set up an interview, DOI was informed that Freidman, Basin and Dzhaniyev would be represented by David Beier, Esq. However, because David Beier, Esq. was a bidder in the June 22, 2006 Alt-fuel Minifleet auction, DOI declined to allow Freidman, Basin and Dzhaniyev to be interviewed with Beier as their counsel. Freidman, Basin and Dzhaniyev subsequently obtained separate counsel for their interviews with DOI.

well as a "broker" for others in the 2004 and 2006 auctions. Freidman described himself as a "quasi-expert" in the area of Accessible and Alt-fuel taxis for a number of reasons, including the fact that he owns the only corporation that operates multiple Accessible taxis. In his capacity as a "broker" for Basin, Dzhaniyev and the others in the auctions, Freidman stated that he did not receive a fee, but rather gave these clients free advice about the bid process, including recommending amounts to bid, as well as advice about financing and insurance. Freidman stated that his company, Taxi Club Management, Inc., prepared the bid packages for his clients, including the Bid Forms. TLC records reflect that the checks used to pay the deposits for his clients' bids were issued from a Taxi Club Management, Inc. checking account.

In his interview, Freidman alleged that he worked with each client individually and he never discussed the bids with multiple clients at the same time. He stated that he believes in confidentiality between himself and his clients and asserted that he has never discussed one client's business with another client. Freidman claimed that he arrived at the three bid amounts for the June 16, 2006 auction himself and then discussed those bid amounts separately with each individual client. Freidman specifically asserted that he and Basin and Dzhaniyev, his two partners in Victory Taxi Garage, never discussed their identical bid amounts together.

When asked about why, in the June 16, 2006 auction, he and Basin and Dzhaniyev each made three sets of bids, Freidman claimed that he recommended that they do this because he was "paranoid" because of the

extensive litigation that ensued after the 2004 auctions. He said that he reasoned that by bidding at three different amounts, he and the other bidders would ensure that at least one of the bids survived in the event that one or more of the other bids was thrown out or invalidated due to TLC's rigid bidding rules.

Freidman stated that, for the most part, he acted as a broker only for his close friends and business partners. He explained that he acted in this capacity with the hope, if not an understanding, that the clients who bid successfully would employ his services by purchasing insurance with his company, using the car dealer he recommends to purchase the vehicles, and possibly have their medallions managed by one of his management companies. However, he asserted that notwithstanding his joint ownership in Victory Taxi Garage with Basin and Dzhaniyev, and his affiliation with his other clients, they were free to use the insurance and management services of anyone they chose.

Freidman was asked why the 2004 Bid Forms submitted by Freidman, Basin and Dzhaniyev had each bidder identified as a "corporation," while the Bid Forms submitted for the 2006 auctions had each bidder identified as an "individual." Freidman responded that he made a mistake in having his clients check off "corporation" on the 2004 Bid Forms. He explained that, in all likelihood, they indicated "corporation" as an indication of the type of medallion they were bidding for (which required corporate ownership), rather than the entity they were bidding as. He stated that the 2004 auctions were for Minifleet medallions, which are often referred to in the business as "corporations",

because the TLC requires that Minifleet medallions be held by a corporate owner. Freidman said it was a "simple mistake."

Freidman further testified that he acted as a bidder and broker in the June 22, 2006 auction for Alt-fuel Minifleet medallions, just as he had in the June 16, 2006 auction. In the June 22, 2006 auction, as in all the previous auctions, Freidman submitted bids in identical amounts for himself and for his clients. However, in the June 22, 2006 auction, Freidman also submitted additional bids on his own behalf for 20 Alt-fuel medallions in a higher amount than the bids he advised his clients to submit and at a higher price than he himself bid for 10 medallions. Freidman explained that this was because he believed that it was important for his business to obtain a certain number of Alt-fuel medallions and he, therefore, placed higher bids than he advised his clients to place, in order to ensure that he would be in a better position to win at least 20 of the Alt-fuel medallions. He admitted he knew his clients' bid amounts when deciding what to bid for the 20 Alt-fuel medallions he wanted to win. He claimed that he personally informed his clients that he was going to out-bid them in connection with 20 of the medallions. (As is noted below, Basin confirmed being told that by Freidman, but Dzhaniev did not.) Freidman stated that, based on his experience in the industry, he felt that his higher bids, as well as his client's lower bids, would all be winning bids. In fact, ultimately, all of Freidman's bids, as well as those of his clients, were winning bids in the June 22, 2006 auction.

One of Freidman's clients in the June 22, 2006 auction was Irene Papas. Papas is Freidman's executive assistant who, since 2004, has assisted Freidman

with all of the auction bid form packages, making sure that everything is complete before it is sealed and delivered to the TLC. Freidman was asked if Papas had access to the information in the Bid Forms prior to them being sealed and submitted to the TLC. Freidman stated, "Did she touch them, did she feel them, possibly, as a member of Taxi Club Management. Irene is my executive assistant. She works for Taxi Club. That is her job. She fills out these forms. I don't sit there and fill them out myself, and she has an assistant herself." In the June 22, 2006 Auction for Alt-Fuel Minifleet medallions, Papas successfully bid and won two medallions with the assistance of her boss and broker, Evgeny Freidman.

When asked if he considered Basin and Dzhaniyev to be competing bidders, given that anyone who puts in a bid is competing against all others who also bid, Freidman stated that he "did not like the term competing bidders," rather he would classify his clients as "separate individuals who were also bidding for medallions." Freidman explained that he, Basin and Dzhaniyev had already formed the necessary corporations in order to separately close on the medallions they each won at both of the 2006 auctions in which they participated. He further explained that, while he assisted in forming all the corporations, each individual would be the sole shareholder for his respective corporation.

### **Vladimir Basin**

Vladimir Basin was interviewed by DOI under oath on July 21, 2006. He was represented by his attorney, Michael S. Pollok, Esq. Basin stated that he met Freidman many years ago, when he worked for Freidman's father. He said

that he owns 33 medallions and that all are managed by Victory Taxi Garage, the company he owns together with Freidman and Dzhaniyev. Basin further said that all of his medallions are insured through Freidman's insurance brokerage, and that he used Freidman as a broker for the 2004 and 2006 auctions. He said that he did this because Freidman was the authority in the taxi business and more specifically in Accessible and Alt-fuel medallions. According to Basin, Freidman did not charge him for his broker services, because they did business together and because Basin insured his medallions with Freidman.

Basin stated that he privately discussed his bids in the 2004 and the 2006 auctions with Freidman, in Freidman's capacity as his broker. Basin said that they had these discussions at Freidman's house two or three days before the bids were to be submitted. Basin further said that he authorized Freidman to fill out the paperwork for him in connection with each of these auctions, but that he, Basin, entered the bid amounts himself and signed the sheets.

In his interview with DOI, Basin testified that he never discussed his bid amounts with anyone other than Freidman. Basin asserted that he did not discuss his bids with his other Victory Taxi Garage partner, Dzhaniyev. He stated that in the June 22, 2006 auction, Freidman told him that he [Freidman] was bidding the same amount as Basin and that Freidman was also going to place a higher bid for a certain number of medallions, but Freidman still expected Basin's bids to be winning bids.

**Mamed Dzhaniev**

Mamed Dzhaniev was interviewed under oath by DOI on July 21, 2006. He was accompanied by his attorney Nicholas J. Pinto, Esq. At his interview, Dzhaniev stated that he met Basin when the two were attending a taxi school, not long after he came to the United States more than 10 years ago, and that the two of them then became friends. Dzhaniev said that he drove a cab for a number of years before he decided to buy an independent medallion. He said that he used Freidman as his broker to buy his first medallion. Later Dzhaniev said that he bought a Minifleet medallion under his wife's name in a deal in which he also used Freidman as a broker. Dzhaniev stated that due to the restrictive nature of the Independent medallion, he subsequently sold his Independent medallion (again through Freidman) and began acquiring Minifleet medallions. Eventually, he said that he went into business with Freidman and Basin in Victory Taxi Management. Dzhaniev stated that currently all of his 22 medallions are managed by Victory Taxi Garage, and that he obtains his insurance through Freidman's insurance brokerage company.

Dzhaniev said that he used Freidman as a broker in the 2004 and the 2006 auctions. He further claimed that he never discussed his bids for the 2004 and 2006 auctions with anyone other than Freidman. Dzhaniev went on to say that, beginning with the 2004 auction and continuing through the 2006 auctions, Freidman advised him not to discuss his bids with anyone, and pointed out the Non-Collusion Clause of the Bid Form as the basis for this instruction. Dzhaniev testified that he did not find out until the June 22, 2006 auction results

were posted that Freidman had bid for 20 medallions at a price higher than the price Dzhaniev was advised to bid on for the Alt-fuel medallions.

### **CONCLUSIONS AND POLICY AND PROCEDURE RECOMMENDATIONS**

The investigation revealed three main areas of concern with the TLC medallion auction process.

- First, the Non-Collusion Clause in the Bid Form is unclear and should be revised.
- Second, the TLC's practice of permitting "brokers" to work with bidders in deciding what bids to select is inconsistent with the requirements of the Non-Collusion Clause.
- Third, the TLC's practice of naming Reserve Status Bids could enable bidders to place multiple bids in an attempt to manipulate the auction and thereby cause the City to not get the top bid price for all medallions that are auctioned.

DOI's findings were shared with the TLC during the preparation of this report. In response, the TLC proposed a revised set of rules for the next medallion auction, which should take place in the upcoming fiscal year. A copy of the proposed revised rules is attached hereto as Exhibit 8. Each of DOI's findings is discussed in greater detail below and includes the TLC's response and proposed rule revision.

#### **1. The Non-Collusion Clause**

Freidman was both a bidder in the 2004 and 2006 auctions and a "broker" for other bidders in those same auctions. In his capacity as a broker, he spoke to



the other bidders and gave his opinion of how much they should bid, and subsequently, his company prepared these bidders' respective bid packages in the agreed-upon amounts. Each of the bidders signed a Bid Form that included a Non-Collusion Clause in which they affirmed that: "I have arrived at the above bid amount by my own free independent evaluation, & I have not entered into any agreement relating to this bid with any other competing bidder." The aforementioned facts, and in particular the practice of bidders also acting as brokers, give rise to the need for clarification of the Non-Collusion Clause on the Bid Form, so that bidders accurately certify all of the circumstances of their bids.

Almost everyone DOI spoke to at the TLC interpreted the Non-Collusion Clause in the agency's Bid Form as meaningless and looked to the TLC Rules as their guide to the bidders' conduct in connection with the auctions. Indeed, many of the TLC officials DOI spoke to were not even aware of the existence of the Non-Collusion Clause prior to DOI's inquiry. However, all bids are accompanied by the Bid Form and bidders are required to "certify" the Bid Form's contents. DOI was told that the Bid Form's provisions are strictly enforced in other respects, apart from the Non-Collusion Clause.

The TLC's rules for brokers, found in Chapter 5 of the TLC Rules, and the TLC's rules for auctions, found in Chapter 13 of the TLC Rules, must be clarified and reconciled with the Non-Collusion Clause in the Bid Form so that bidders do not certify to non-collusion yet enter into the type of pre-bid arrangements that existed in connection with the Freidman group's bids in the 2004 and 2006 auctions. In addition, the Non-Collusion Clause does not conform to General

Municipal Law Section 103-d, which clearly sets forth non-collusion obligations under State law on competitive procurements, as opposed to auctions. While there is no legal requirement to do so, the Bid Form and the TLC Rules should be modified to conform to the analogous non-collusion obligations that State law places on procurement contracts. The TLC also needs to ensure that all rules are consistently enforced.

The TLC has agreed that the Bid Form and the TLC Rules should be consistent with each other and that the Non-Collusion Clause should be clarified, utilizing General Municipal Law Section 103-d as a model. The TLC has proposed revised non-collusion language and has indicated that it intends to consistently enforce the Non-Collusion Clause.

## 2. The TLC Rules Regarding Auctions and Brokers

A theme repeated throughout the TLC Rules, as well as the TLC's auction promotional materials, is that people who wish to get involved in the taxi industry should consult with experts in that industry. The TLC's materials specifically advise bidders to consider the services of a licensed TLC Broker, and the TLC permits the use of a broker in their auctions. However, the TLC's rules are silent as to whether a broker can also be a bidder in the same auction. The specter of collusion and a potential conflict arises when a broker bids on his own behalf while also advising other bidders in the same auction. This potential conflict was evident in the June 22, 2006 auction, where Freidman bid for 20 medallions at a price that was \$10,000 more than he advised his clients to bid, in order to increase his chances that he would win those bids. The TLC's rules and

procedures do not currently address whether and under what circumstances, if any, a broker can advise clients on auction matters and also bid at that auction. The rules should be clarified by the TLC, in conjunction with advice from the Law Department, to explicitly prohibit brokers from placing bids on their own behalf in any auction where they are advising others in their broker capacity.

The TLC has proposed a rule which would eliminate the ability of licensed taxicab brokers and their principals and employees to purchase medallions on their own behalf while advising potential purchasers at the auction. DOI and the TLC believe that such a rule would reduce the ability of bidders to collude with each other or otherwise misuse bid information.

### **3. Reserve Status Bids**

In the June 16, 2006 auction of 54 medallions, Freidman, Basin and Dzhaniev placed the winning 54 bids as well as the 54 next highest non-winning bids. Chapter 13-03(f) of the TLC Rules provides that if a winning bidder fails to take the steps required to close on a winning bid, fails to close on a winning bid within the specified time period, or is unable to acquire a vehicle within the specified time period, up to 5 reserve bids are deemed to be winning bids and replace any bids that did not close. TLC officials stated that they interpret that rule to mean that up to 5 bids would be replaced in the case of default and, in the case of the June 16, 2006 auction; the group could only walk away from 5 of the winning bids (10 medallions).<sup>6</sup> This would have resulted in the group closing on

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<sup>6</sup> Each bid can be for one or two medallions, bids for a Minifleet medallion are for two medallions.

44 medallions at a price of \$477,666.50 and 10 medallions at their next lowest bid of \$453,722, thereby resulting in a loss to the City of \$239,445.

Some individuals at the TLC suggested that Freidman, Basin and Dzhaniyev may have originally interpreted the TLC Rules to allow them to walk away from some or all 54 of their top bids and to close on the medallions at the next lowest bid price, since their second highest bid prices were also higher than any other competitor's bid. In doing so they would have forfeited their deposit which was \$2,000 per bid, rather than the two deposits totaling \$27,000 per bid, because Freidman's lobbying efforts resulted in a rule change prior to the auctions. The TLC claims that, under their interpretation of the rules, the group could only have walked away from 5 of the winning bids, or a total of 10 medallions, but that Freidman, Basin and Dzhaniyev might have chosen to challenge that interpretation in court, arguing that the meaning of the TLC Rules was not entirely clear on this point. Accordingly, the meaning of rules should be clarified to lessen the chance that they are the subject of future litigation.

The TLC agrees that rules regarding reserve status bids need to be clarified. It has proposed rules that would specify the circumstances in which a bidder would and would not be able to close on a reserve status bid. These rules further set forth the number of allowable reserve bids for each type of medallion.

EXHIBIT "C"

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## Medallion Auction Speculation

George Lutfallah • Wed, Nov 13, 2013

Last month the City of Chicago held an auction for 50 taxicab medallions. After the auction closed on October 18, rumors began circulating the industry that there had only been one bid on the medallions.

The results of the auction haven't been officially released by the city. On Tuesday, November 5, I wrote to BACP Commissioner Rosemary Krimbel and asked where I could find medallion auction results. Commissioner Krimbel responded, "We'll release that data as soon as all of the paperwork and closings occur - probably a few weeks." I asked her about the rumor that was circulating, that there had only been one bid in the auction, and asked her if she could say how many qualified bids were received. Ms. Krimbel replied, "I cannot. But there was more than one bid for sure!"

Some financiers and brokers expressed frustration at the lack of transparency by the city. I asked Commissioner Krimbel for comment on how many medallions were taken and the number of qualified bids. According to Ms. Krimbel, "any answer I give you would be inaccurate until the paperwork and closings occur."

However according to a source at Bronner Group, LLC - the firm where bids were to be mailed - there were two bidders, but one was disqualified for not specifying a bid amount or including the required deposit.

Another source informed the Chicago Dispatcher that the qualified bidder was Widmarck Paul, a New Yorker who made 20 qualified bids. Each of Mr. Paul's purported bids were for \$593,675, more than a quarter of a million dollars above the prevailing market price of medallions. The Chicago Dispatcher received a document purported to be the "2013 Successful Taxicab Medallion Auction Schedule." It identified Mr. Paul and listed the bid amounts of \$593,675, the deposits and the alleged awarded medallion numbers.

On Wednesday, November 6, I forwarded the document to Commissioner Krimbel, asking her to authenticate it. Ms. Krimbel replied, "No comment. See yesterday's e-mails!"

This isn't the first time Mr. Paul was reportedly the top bidder in a Chicago medallion auction, also bidding more than the prevailing market price. In 2010 Mr. Paul had the top 20 bids, offering \$259,999 on each medallion. The median price at the time was below \$200,000. I reached out to Mr. Paul for comment. When I called Mr. Paul he said he was driving and couldn't talk. A call later that day and another the following morning weren't returned as of publication, nor did we get a response to our inquiry via email.

There are reasons investors would pay a premium to acquire medallions in the auction rather than the market. One significant advantage is that the buyer avoids paying a five percent transfer fee. But paying the transfer fee on a \$330,000 medallion would imply an auction price of \$346,500, some \$13,500 below the city's minimum. There are other factors that lead to a premium in the auction as well. In the auction, investors have the potential to buy the medallions in bulk rather than piecing them together in the market. Also the auction is arguably a "cleaner" sale in that investors have less risk that the deal will fall apart due to a jittery or emotional seller. But the premium applied by Mr. Paul is unprecedented.

Whether Mr. Paul will close on the medallions may depend in part on his ability to obtain financing, assuming he won't be paying cash, which some lenders told the Chicago Dispatcher could be a challenge due to the high price and thus relatively high loan amount.

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Do you expect Medallion prices to rise in the near future?

- Yes
- No

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Medallion Prices

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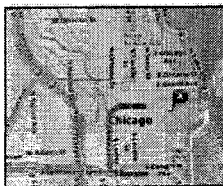


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The other medallions received no qualifying bids, according to a source at Bonner. While Paul bid \$593,675 per medallion, the city didn't even receive the minimum bid of \$360,000 on the other 30 available medallions.

Locally, enthusiasm for the medallion auction from the major players in the Chicago market was lackluster. Some argued that medallions weren't even worth the \$360,000 minimum bid. Various lenders and brokers told the Chicago Dispatcher the market price was roughly between \$320,000 and \$330,000.

What were the reasons for the lack of bids among Chicago taxi industry folks? According to Comey Dilanjan, president of Taxi Consulting Corp., "There's a lot of uncertainty in the market. People are nervous. The industry is nervous." He says ridesharing apps that compete with taxicabs are having an impact. "It's affected the little guy on up," Dilanjan said.

According to attorney Charles Goodbar, another factor impacting the demand for taxicab medallions is that with the most recent ordinance the city shortened the maximum number of years many vehicles could be on the street. He said that cab owners are more likely to sell their medallions when they have to change their vehicles and that this year the city is retiring two model years. Thus more medallions have already been available in the market, to which investors have already committed.

Mr. Goodbar also said that the city's centralized dispatch system for wheelchair accessible vehicles (WAVs) is creating a headache for fleet owners because the system isn't working properly.

Gene Freidman of Dispatch Taxi is currently seeking a temporary restraining order from the city of Chicago's department of Business Affairs and Consumer Protection (BACP). He's asking the courts to prevent BACP from prosecuting existing citations and issuing any further citations for "failure of any licensed WAV taxicabs to participate and follow the procedure as they relate to the centralized wheelchair accessible vehicle taxicab dispatch system."

According to court documents, Mr. Freidman alleges he and others "are being required, under color of law, to install certain dispatch equipment in their WAV taxis that does not work and the use of which could be in violation of other state laws."

Regarding the auction, Mr. Freidman said the minimum bid price wasn't the problem. He wrote via email, "medallions are worth [the minimum bid of \$360,000 imposed by the city]." He said the reason for the lack of bids from the Chicago taxicab industry "was a message from the industry to consumer affairs and the commissioner!"

Mr. Freidman wrote, "I hope mayor got that message that he has a rogue out of control commission that has no idea what is really happening in the market and the street!"

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