

Comments of the Independent Regulatory Review Commission



Philadelphia Parking Authority Regulation #126-6 (IRRC #3039)

Taxicab Medallion Sales by the Authority

January 8, 2014

We submit for your consideration the following comments on the proposed rulemaking published in the November 9, 2013 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Philadelphia Parking Authority (Authority) to respond to all comments received from us or any other source.

1. Comments by Senator Lawrence M. Farnese, Jr. – Legislative intent; Protection of the public welfare.

Senator Farnese submitted comments to highlight several concerns he has with this regulation in a letter dated January 7, 2014. His concerns relate to specifying a minimum number of Wheelchair Accessible Vehicles to be licensed; using a public, open bidding process; and allowing more non-medallion owner taxicab drivers and potential new and reputable companies to buy medallions. Senator Farnese concludes that, ultimately, the intent of Act 119 of 2012 (Act 119) was to provide for more wheelchair accessible taxicabs in Philadelphia and the regulations, as written, do not adequately represent this intent. We will review the Authority's responses to Senator Farnese as part of our consideration of whether the final regulation is in the public interest.

2. Sale of 150 additional medallions – Consistency with statute; Legislative intent; Implementation procedure; Clarity.

Background

The amendments made by Act 119 provide the procedure for the sale of additional medallions by the Authority in 53 Pa.C.S. § 5711(c)(2):

The Authority is authorized to issue the following:

- (i) Subject to the provisions of subparagraph (ii), a maximum of 1,600 certificates of public convenience and corresponding medallions for citywide call or demand service and an additional 15 certificates of public convenience and corresponding medallions restricted to wheelchair-accessible taxicab service as provided in this chapter.

(ii) Beginning June 1, 2013, and each June 1 thereafter until there is a total of 1,750 certificates of public convenience and corresponding medallions, the maximum number of certificates of public convenience and corresponding medallions for citywide call or demand service shall be increased by 15. The authority, in its discretion, may issue the certificates and medallions authorized by this subparagraph with special rights, privileges and limitations applicable to issuance and use as it determines necessary to advance the purposes of this chapter and may issue the certificates and medallions authorized by this subparagraph in stages.

In the Preamble to the proposed regulation, the Authority explains, in part: “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.” We note that the regulation does not specify what type the new medallions will be, but rather states the notice of the sale will specify “special restrictions that have been attached to a medallion.” See proposed Sections 1013.33 and 1013.34(4).

In relation to the comments submitted on this proposed regulation, commentators raise two points:

Will the 150 new medallions exclusively be issued as wheelchair accessible medallions?

Commentators express concern that the Authority’s interpretation of Act 119 is that not all medallions will be issued as wheelchair accessible medallions. One commentator asserts that the Authority has exceeded its legal authority through the proposed regulation.

In regard to what type of medallions (e.g., “special restrictions . . . attached to a medallion”) the Authority will issue, we ask the Authority to:

- Provide its interpretation of the statute and how the regulation is consistent with legislative intent;
- Explain how the regulation’s language properly implements the statute;
- Explain why the regulation is not specific regarding what type of medallions will be issued; and
- Explain the Authority’s intentions regarding what type(s) of medallions will be issued.

How many new medallions does the Authority anticipate selling each year?

The statute set forth a process that began June 1, 2013, with a maximum annual increase of 15 medallions each June 1 thereafter until there is a total of 1,750 certificates of public convenience and corresponding medallions. 53 Pa.C.S. § 5711(c)(2)(ii). It is our understanding that the Authority has not yet sold any additional medallions over the cap of 1,600 established prior to Act 119. Given that the starting date of June 1, 2013 has passed, it is not clear what specific plan the Authority will pursue in selling the new medallions.

Commentators believe that the Authority should sell all 150 medallions at once to address the shortage of wheelchair accessible vehicles in Philadelphia. Public comments also question the 10-year distribution schedule of medallions.

We agree to the extent that it is not clear how the statute is being implemented at this point. For example, if the regulation was effective by April 15, 2014, as the Authority expects, how many new medallions would the Authority offer for sale as of June 1, 2014, June 1, 2015, etc.? We ask the Authority to provide a schedule of its intended sale of new medallions for the period “beginning June 1, 2013, and each June 1 thereafter until there is a total of 1,750 certificates of public convenience and corresponding medallions.”

3. Section 1013.32. Bidder qualifications. – Reasonableness; Clarity; Implementation procedure.

Person in good standing

Paragraph (a)(3) states a person in good standing with the Authority is a person who “has not sold a medallion in the most recent 365 days.” This provision implies that anyone who sells a medallion for any reason is no longer in good standing with the Authority. On one hand, this might deter bidders whose only intention is to resell medallions. It would also eliminate a person who had to sell a medallion due to Authority violations. On the other hand, this provision would also eliminate a bidder who has held a medallion for many years in good standing, but wants to sell a medallion to raise funds to bid on a wheelchair-accessible medallion. We also question whether this provision would affect an otherwise qualified bidder who owns and sells a medallion outside of the Authority’s jurisdiction. In the final regulation submittal, the Authority should explain why this provision is needed and what goals it accomplishes in establishing a person’s credentials as a qualified bidder.

Pending medallion taxicab certificate holder

We question the reasonableness of the timeline for a person to qualify as a pending medallion taxicab certificate holder. Section 1013.34, consistent with 53 Pa. C.S. § 5717(b), requires notice of a proposed sale to be published in the *Pennsylvania Bulletin* 60 days or more before bids are due. Subsection (b) addresses bidders who are not medallion taxicab certificate holders: “To qualify to bid as a pending medallion taxicab certificate holder, the SA-1 **shall be filed 45 days or more before the date bids are due.**” [Emphasis added.] This potentially would leave only 15 days from publication of the notice for a person to submit the information to qualify as a pending medallion taxicab certificate holder. As outlined in the following comment, this form requires a lot of information, such as a credit report obtained within the last 30 days. The Authority should explain how 15 days is sufficient time for a bidder to submit the information to qualify as a pending medallion taxicab certificate holder.

SA-1 application

The SA-1 application we found on the Authority’s website (<http://philapark.org/taxis-limousines/forms/>) is titled “APPLICATION FOR THE ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND OR THE TRANSFER OF TAXICAB, LIMOUSINE OR DISPATCH RIGHTS ISSUED BY PHILADELPHIA PARKING AUTHORITY.” This appears

to be a multi-purpose document, consisting of 18 pages, which includes issuance of a certificate of public convenience along with transfer of rights for a taxicab, limousine or dispatch.

We note that successful completion of the SA-1 application is critical to a successful bid and furthermore to a pool of bidders who may bring the highest bid. We did not find clear direction either in the regulation, or in the directions to fill out SA-1, as to how to correctly fill out this document for the purposes of qualifying to bid as a pending medallion taxicab certificate holder. In the final regulation submittal, we recommend that the Authority establish a clear process for a person to qualify as a pending medallion taxicab certificate holder and provide an explanation of how the process is in the public interest.

4. Section 1013.33. General provisions. – Economic impact; Reasonableness; Implementation procedure.

Advertisement for bids or for public auction

Under 53 Pa. C.S. § 5717(b), the Authority is given the following authority to solicit bids:

Medallions shall be sold to the highest bidder after due notice **by advertisement for bids or for public auction** in the Pennsylvania Bulletin [Emphasis added.]

Subsection (a) of the proposed regulation directly states that the Authority “will sell taxicab medallions by sealed bid.”

Parties opposing sealed bids provided the following comments:

- The regulation does not have enough procedures in place to prevent corruptive bidding practices.
- How can the industry and the public ensure that the Authority is conducting sales with objectivity without an open and honest live auction?
- The auction should be a transparent process conducted in an open manner.
- There have been several examples of sealed bids that ended in investigations in other jurisdictions, including allegations of collusion and corruption.

We note that neither the preamble nor the regulatory analysis form (RAF) provide a detailed explanation of why the Authority proposed a sealed bid process for the sale of medallions. Furthermore, in response to RAF Question #26, the Authority responds that no other alternative regulatory provisions were considered. In the final regulation submittal, we request that the Authority explain how the process proposed to sell medallions is in the public interest. The Authority should explain how the regulation preserves the integrity of the bidding process and how it eliminates or reduces the opportunity for collusion and corruption.

5. Section 1013.34. Notice of medallion sale by the Authority. – Reasonableness; Clarity; Implementation procedure.

60 days or more

The opening paragraph states that “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 are due from bidders.” This tracks the statutory provision at 53 Pa. C.S. § 5717(b)(1). We outlined concerns that bidders might not have enough time to qualify to bid as a pending medallion taxicab certificate holder under Subsection 1013.32(b). Given the discretion in statute to publish “not less than 60 days before auction,” the Authority should consider establishing in regulation a longer timeframe than 60 days, or explain how all bidders can reasonably meet a timeline with as little as a 60 day notice before sealed bids are due.

Other terms of sale

Paragraph (8) allows the notice of medallion sale to include “other terms of sale.” This provision is vague because it could encompass an unlimited realm of terms of sale. It should either be deleted or amended to limit the scope of these terms of sale.

6. Section 1013.35. Procedures for bidding. – Reasonableness; Fiscal impact; Clarity.

Form No. MA-2

Paragraph (a)(3) requires completed form MA-2 and states the form is available on the Authority’s website at www.philapark.org/tld. We were not able to locate this document on the website. Without this form, we are not able to evaluate whether Paragraph (a)(3) is in the public interest because we do not know what information it entails. The same concerns apply to Subsection (c).

Deposits for bids

Subparagraph (a)(4)(i) requires a deposit of \$5,000. A commentator questions whether this amount is sufficient compared to the expected market value for the medallions which the commentator believes is now more than \$500,000. The Authority should explain how the amount of the required deposit specified in the final regulation is sufficient.

Unsuccessful bids

Subparagraph (a)(4)(i) specifies that the \$5,000 deposit will be nonrefundable as to the highest bidder and credited toward the sale price if the sale is approved. We recommend that the regulation also specify what happens to the deposits from the unsuccessful bidders and, in relation to Subsection 1013.36(b), what happens to the deposit from a bidder who originally won the bid but subsequently was not approved as the winning bidder.

7. Section 1013.36. Bid opening. – Reasonableness, Economic impact; Clarity.

Timeline in Subsection (b) Nonsuccessful bid review

If the high bidder is subsequently not approved, Subsection (b) sets forth the procedures to determine and notify the highest nonsuccessful bidder, or readvertise the bid. Paragraph (4) allows the Director to amend the mandatory closing date. However, Paragraph (5) also allows the Director to request to readvertise the bid process if “. . . the original successful bidder fails to close by the date designated in Section 1013.34.” Between Paragraphs (4) and (5), it would appear there is a time period when the Director could simultaneously offer the bid to another bidder with an amended closing date and readvertise the bid after the original closing date published under Section 1013.34. We recommend that the Authority amend Subsection (b) so that a medallion is clearly either in the process of being sold or being readvertised for a new bid.

As provided in this subchapter

Paragraph (b)(2) ends with the phrase “as provided in this subchapter.” Is the intention to reference the entirety of Subchapter C, or was the intent to reference this “section”? The final-form regulation should clarify the reference.

8. Section 1013.37. Medallion bid approval process and closing on sale. – Consistency with statute; Reasonableness; Clarity.

Transfer or sale of medallions

Subsection (g) establishes measures which the Authority describes in the Preamble as “intended to discourage” rapid turnaround sales “through graduated fee transfer disincentives during the first three years after purchase” The Authority should explain how these multipliers of transfer fees are consistent with the statute, needed and reasonable.

Reference to the act

Paragraphs (g)(1), (2) and (3) reference the fee schedule in “section 5710(a) of the act.” Should these references be to section 5710**(b)(8)** of the act?