

PROPOSED RULEMAKING

PHILADELPHIA PARKING AUTHORITY

[52 PA. CODE CH. 1013]

Taxicab Medallion Sales by the Authority

The Philadelphia Parking Authority (Authority), on September 25, 2013, adopted a proposed rulemaking order to provide for the sale of Philadelphia taxicab medallions by the Authority.

Proposed Rulemaking Order; Philadelphia Taxicab and Limousine Regulations; Doc. No. 126-6

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”),¹ 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 years², including medallions designated only for use on wheelchair accessible vehicles.³ 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.⁴

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.

§ 1013.31. Purpose and definitions.

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

¹ See 53 Pa.C.S. §§ 5722 and 5742.

² See 53 Pa.C.S. § 5711(c)(2).

³ See 53 Pa.C.S. § 5711(c)(2.1).

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

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.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 29, 2013, the Authority submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Urban Affairs Committee and the Senate Consumer Protection and Professional Licensure Committee. In addition to submitting the proposed rulemaking, the Commission provided IRRC and will provide the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Authority, the General Assembly and the Governor of comments, recommendations or objections raised.

Conclusion

The Authority, therefore, formally commences its rule-making 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) and (d)(24)); sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 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; *Therefore,*

It Is Ordered That:

1. A proposed rulemaking be opened to consider the regulation set forth in Annex A.
2. 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. 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. 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. 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. 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.
7. The contact person for this proposed rulemaking is James R. Ney, Director, Taxicab and Limousine Division, (215)-683-9417.

VINCENT J. FENERTY, Jr.,
Executive Director

Fiscal Note: 126-6. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART II. PHILADELPHIA PARKING AUTHORITY

Subpart B. TAXICABS

CHAPTER 1013. MEDALLION TAXICABS

Subchapter C. MEDALLION SALES BY THE AUTHORITY

Sec.

- 1013.31. Purpose and definitions.
- 1013.32. Bidder qualifications.
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- 1013.35. Procedures for bidding.
- 1013.36. Bid opening.
- 1013.37. Medallion bid approval process and closing on sale.

§ 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 subchapter, have the following meanings, unless the context clearly indicates otherwise:

Bidder—A person qualified under § 1013.32 (relating to bidder qualifications) to submit a sealed bid for a taxicab medallion sold by the Authority. The term includes a 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 shall 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 be sold.

§ 1013.32. Bidder qualifications.

(a) To participate as a bidder, a person shall be a medallion taxicab certificate holder or person authorized as provided in subsection (b) and a person in good standing with the Authority. A person in good standing with the Authority:

- (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. 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. Participation in the bidding process does not guarantee the issuance of the medallion taxicab certificate by the Authority.

(c) Bids submitted in violation of this section will be considered nonresponsive.

§ 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 restrictions by order and identify a medallion to which a 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 are due from bidders. The notice will include:

- (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 a 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 shall:

(1) Submit the bid in a 9" x 12" sealed envelope. The exterior of the sealed envelope must identify, in the English language and Arabic numerals, the medallion number for which the bid is intended and additional information identified in the notice provided under § 1013.34 (relating to notice of medallion sale by the Authority). Information required under this paragraph must 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. Form No. MA-2 is available at www.philapark.org/tld.

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

(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 nonrefundable 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 80% of the bid amount, issued by a bank, credit union or other lender licensed to do business in this Commonwealth.

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

(b) *Late bids.* A 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.* Form No. MA-2 will include provisions through which each bidder shall provide the following information with an accompanying verification:

(1) The bidder has not relied on 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 another bidder or prospective bidder for the purpose of restricting competition or of inducing another prospective bidder to submit or not to submit a bid for the purpose of restricting competition.

(3) The bidder has not disclosed a bid price, directly or indirectly, to another bidder for the purpose of restricting competition or of inducing another 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 another bidder and that the bidder is not a person with a controlling influence over another bidder.

(d) *Nonresponsive bids.* The following will be considered nonresponsive bids and 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 nonresponsive or nonconforming in any other respect.

(4) Bids below the upset price.

(e) *Bids final.* All bids are considered final and a bidder will not be allowed to correct a bid after submission.

§ 1013.36. Bid opening.

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

(1) Each bidder, or an individual authorized as the bidder's representative as provided in § 1001.28 (relating to power of attorney), shall be present at the bid opening to address 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 Headquarters and listed on the Authority's web site at 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 shall appear before the Director or a 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) *Nonsuccessful bid review.*

(1) A list of the responsive, nonsuccessful 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 nonsuccessful 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 nonsuccessful bidder shall notify the Director of his decision to become a successful bidder within 5 business days of notice. In the event the noticed nonsuccessful bidder elects not to become a successful bidder, the Director may proceed to notify nonsuccessful 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 request authorization from the Board to readvertise the bid process for a 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 his rights to the winning bid status. An assignment such as this is void.

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

(a) The sale of a medallion to a successful bidder is prohibited if that bidder is not qualified to be a medallion certificate holder under 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 will witness the execution of each document by the proposed buyer or his designated agent. A 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 3 years from the date of closing, except as follows:

(1) A medallion sold within 1 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 2 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 3 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) does 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 under 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 under 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.

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