

## NEW YORK CITY TAXI AND LIMOUSINE COMMISSION

### Notice of Promulgation of Rules

**Notice is hereby given in accordance with section 1043(e) of the Charter of the City of New York (“Charter”) that the Taxi and Limousine Commission (“TLC”) hereby promulgates amendments to rules governing issuance and public sale of taxicab licenses.**

These rules are promulgated pursuant to sections 1043 and 2303(b)(11) and of the Charter and sections 19-503 and 19-532 of the Administrative Code of the City of New York. These rules were not included in the TLC’s regulatory agenda for Fiscal Year 2007 because the need for such rules was not anticipated at the time the regulatory agenda was published.

These rules were published for comment in the City Record on May 8, 2007. A public hearing on these rules was held by the TLC at its offices at 40 Rector Street, 5<sup>th</sup> Floor, New York, New York 10006 on June 14, 2007 at 9:30 a.m. Pursuant to section 1043(e)(1)(c) of the Charter, these rules will take effect 30 days following publication in the City Record.

### **Statement of Basis and Purpose of Rules**

The rules amend chapter 13 of the rules of the Taxi and Limousine Commission (“TLC”), governing the issuance and public sale of taxicab licenses, generally known as medallions. The changes are made generally to reflect experience gained with the auctions of taxicab licenses held in 2006 and to ensure that future auctions provide for full and fair competition among all bidders.

These amended rules will apply to an auction of one hundred fifty taxicab licenses authorized by chapter 535 of the laws of 2006 and section 19-532 of the New York City Administrative Code, an auction of unsold medallions remaining from the taxicab license auctions authorized by chapter 63 of the laws of 2003 and section 19-532 of the New York City Administrative Code, and any additional auctions that might be authorized in the future.

The amended rules include a number of technical and terminological amendments to existing rules, as well as the following substantive amendments:

- The amended rules eliminate provisions permitting a minifleet purchaser to purchase only one medallion to add to an existing minifleet; experience with prior auctions demonstrated that minifleet purchasers did not use that option.
- The rules 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. This change is made to reduce the possibility of collusion or other misuse of bid information.
- The rules provide anti-collusive bidding language and further restrict the ability of winning bidders who are also reserve bidders to default on winning bids in favor of their reserve bids. These changes are made to align practices more closely with those in place for the procurement process under the General Municipal Law and to assure that the auctions are open, fair and competitive.
- The rules permit the Chairperson to establish separate reserve classes (of at least 10 % of the number of medallions being sold in each class) for each type of medallion being sold. This change is done to permit the TLC to set reserve classes of a size that will help guarantee that all medallions will be sold in any auction.
- The rules provide that tie bids will be decided by drawing at the public bid opening, regardless whether the bidders choose to attend the opening. This provision is intended to eliminate an unnecessary delay in the auction process.
- The rules provide that a bidder’s failure to close within 30 days of notification of the winning bid will require submission of an additional deposit of \$25,000, and that failure to close on the bid within 60 days of the bid opening would result in a

disqualification of the winning bidder and forfeiture of the first deposit of \$2,000 per medallion. This provision is intended to ensure that winning bidders close on their bids promptly, and put their medallions into service promptly.

- The rules expressly provide that closing on a winning bid shall be scheduled only after the winning bidder demonstrates satisfaction with the requirements of medallion ownership and submits proof that the bidder has purchased a vehicle that is eligible for hack-up. This provision is intended to ensure that winning bidders promptly qualify to own medallions, and promptly put their medallions into service.
- The rules provide that bidders must be individual persons, to reflect experience in prior auctions, although bids will continue to be assignable to partnerships, corporations and limited liability companies in which a winning bidder is a partner, shareholder, or member. The TLC's experience in 2006 was that all bids were placed by individuals, but that many winning bids were closed upon by corporations, limited liability companies, or partnerships. Bidders typically do not organize entities to own medallions until they know that they are winning bidders.
- The rules clarify that new fingerprints must be obtained prior to closing from any winning bidder who does not have fingerprints in electronic format on file with the TLC. The prior rules specified that fingerprints had to be obtained within 30 days of the bid opening, but the experience of the 2006 auction indicated that the timing of the closing, rather than the bid opening, was a more important reference point for obtaining fingerprints.
- The rules clarify that the statutory ratio of independent medallions and minifleet medallions will be maintained as required by the Administrative Code.

Section 1. Title 35, chapter 13 of the Rules of the City of New York is amended as follows:

[Deleted material is in brackets]

New material is underlined.

§ 13-01 Definitions.

For purposes of this chapter:

- (a) “Accessible medallion” shall mean a taxicab license valid for use only with a vehicle accessible to a passenger using a wheelchair;
- (b) “Alternative fuel medallion” shall mean a taxicab license valid for use only with a vehicle powered by compressed natural gas or a hybrid electric vehicle;
- (c) “Bidder” shall mean an individual submitting a bid for one or more lots of taxicab medallions at an auction provided for under this chapter, except that, as to subdivisions (f), (g), (h), (m), (n), (o) and (p) of section 13-03 of this chapter, the term bidder shall include any and all of the owners, partners, shareholders, or members of any entity to which a bid is assigned pursuant to subdivision (g) of section 13-03;
- ([c]d) “Chairperson” shall mean the Chairperson of the Taxi and Limousine Commission, as defined in section 2301(c) of the New York City Charter, or his or her designee;
- ([d]e) “Commission,” “minifleet,” “taxicab,” and “taxicab license” shall have the meanings of those terms as defined in section 1-01 of this title .
- ([e]f) “Hybrid electric vehicle” shall have the meaning of that term as used in section 19-533 of the Administrative Code and in section 3-01.1(b) of this title;
- ([f]g) “Independent medallion” shall mean a taxicab license that must be owned by the owner of no more than one taxicab license, as provided by section 19-504(i) of the Administrative Code;
- ([g]h) “Lot” shall mean one taxicab license, in the case of an independent medallion, and two taxicab licenses in the case of minifleet medallions; [except that in a public sale of restricted medallions, where a bid is submitted by the owner of a minifleet, a lot may consist of either one or two taxicab licenses, at the bidder’s option;]
- ([h]i) “Minifleet medallion” shall mean a taxicab license that must be owned by the owner of more than one taxicab license, as provided by section 19-504(i) of the Administrative Code;

- (i) “Restricted medallion” shall mean either an accessible medallion or an alternative fuel medallion;
- (j) “Unrestricted medallion” shall mean a taxicab license that is not a restricted medallion.

§ 13-02 Issuance and Public Sale of Additional Taxicab Licenses.

- (a) In accordance with Administrative Code section 19-532, the Chairperson may issue and sell additional taxicab licenses up to the number authorized by state and local law.
- (b) Medallions shall be sold in lots. The ratio of minifleet medallions to independent medallions shall be maintained in accordance with section 19-504(i) of the Administrative Code.
- (c) Only a person who owns no other medallions shall own an independent medallion. Independent medallions shall be subject to the “owner must drive” requirements of section 1-09(b) of this title.
- (d) A minifleet medallion shall be owned only by a minifleet in which each officer, director, [or] shareholder, partner or member does not have a financial interest in any independent medallion.
- (e) The terms and conditions for the public sale of licenses pursuant to this chapter shall provide that vehicles operated by or under agreement with the owners of such licenses shall be entitled to accept hails from passengers in the street in accordance with section 19-504(a)(1) of the Administrative Code.
- (f) The Chairperson shall place a public notice of the date and time upon which bids are due, the number of medallions to be sold, whether those medallions shall be sold as accessible medallions, alternative fuel medallions or unrestricted medallions, the numbers of minifleet and independent medallions to be sold, the size of the reserve classes for each type of medallions to be sold and other terms of sale in the City Record for five (5) consecutive days, beginning not less than thirty (30) days prior to the deadline for bidding. In the event that the Chairperson shall, in his or her discretion, postpone the public sale, the Chairperson shall place notice of such postponement of the sale in the City Record for five (5) consecutive days beginning at least ten (10) days prior to the new deadline for bidding, The Chairperson may place such additional notices in the City Record or other publications, as the Chairperson deems advisable.

- (g) Separate public sales may be conducted for each of independent and minifleet medallions for each of accessible medallions, alternative fuel medallions, [unrestricted independent medallions,] and unrestricted [minifleet] medallions.

§ 13-03 Sale by Sealed Bid.

- (a) A bidder shall submit a sealed bid no earlier than [~~three (3)~~]four (4) business days prior and no later than [~~5:00 p.m.~~]12:00 noon on the date set by the Chairperson as the deadline for bidding. A bidder shall submit each sealed bid by hand delivery, either in person or by an agent at the place designated by the Chairperson. Bids shall be received between the hours of 9:00 a.m. and [~~5:00 p.m.~~]12:00 noon. Bids must be received by the Chairperson no later than [~~5:00 p.m.~~]12:00 noon on the deadline date. A bidder must submit a bid on a form [~~approved~~]prescribed by the Chairperson in a 9" x 12" sealed envelope with a cover form prescribed by the Chairperson with only one bid for one lot per envelope, which bid is accompanied with the following: (i) a deposit of \$2,000 for each medallion for which a bidder submits a bid, in the form of a certified check, bank check, money order, or a check issued by a taxicab broker or taxicab agent licensed by the Commission pursuant to chapter 5 or chapter 12 of this title, respectively, payable to the "New York City Taxi and Limousine Commission"; and (ii) a letter of commitment for no less than eighty percent (80%) of the bid amount, issued by a bank or credit union licensed to do business in the State of New York or other lender licensed by the State of New York or the Federal Government. Each bidder shall certify, as part of each bid form, that such bidder has not relied on any statements or representations from the City of New York in determining the amount of such bidder's bid. Each bidder shall further certify that such 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 inducing any other prospective bidder to submit or not submit a bid for purpose of restricting competition. Each bidder shall further certify that such bidder has not disclosed any bid price either directly or indirectly to any other bidder for the purpose of restricting competition or inducing any other prospective bidder to submit or not to submit a bid for the purpose of restricting competition. Each bidder shall further certify, as a part of each bid form, that such person is not acting as a taxicab broker for any other bidder, and is not the owner, shareholder, partner, member, or employee of any person or entity acting as a taxicab broker for any other bidder. No bid amounts shall be accepted which provide for a price ending in fractional cents per medallion. Any bid for which a bidder has failed to use the proper form or the proper envelope, or for which either the bid form or the envelope cover form is not properly completed in the Chairperson's determination, or which does not contain the proper deposit or a commitment letter meeting the requirements of this subdivision, or which is a bid for more than one lot per envelope, or for which the price per medallion is set

forth ending in amounts ending in fractional cents, or which is non-responsive or non-conforming in any other respect, shall be deemed non-responsive and rejected. A bidder shall not have an opportunity to correct any bid.

- (b) Each bid must be submitted in [the 9" x 12"] a conforming sealed envelope [supplied by] with a cover form prescribed by the Chairperson on which the bidder shall indicate the following: (i) the bidder's name, address, phone number and date of sale, and (ii) whether the bid is for one [or more] lot[(s)] of minifleet medallions or for one lot of one independent medallion and (iii) whether the bid is for an unrestricted medallion lot, an alternative fuel medallion lot or an accessible medallion lot.
- (c) [The]A minimum upset price for medallions to be sold [shall] may be determined by the Chairperson. The Chairperson may establish different upset prices for each of independent and minifleet medallions for each of accessible medallions, alternative fuel medallions, [unrestricted independent medallions] and unrestricted [minifleet] medallions. [The]A minimum upset price shall be set by publication in the City Record no less than ten (10) days prior to the deadline for submission of bids. Any bid received for less than the minimum upset price should such price be set shall be rejected as non-responsive. [The bidder shall not have an opportunity to correct the bid.]
- (d) On a date set by the Chairperson, the bids shall be opened in public and the winning bids announced at the public sale. The winning bids shall be the highest bids that are complete in accordance with the provisions of subdivision (a) of this section, and are responsive as set forth in subdivision (c) of this section. The winning bidders shall be notified promptly by certified mail. Tie bids will be decided with a drawing which shall be held at the bid opening. Winning bids shall be published in the City Record and posted at the Commission's office and on the Commission's website.
- (e) Within thirty (30) days [of] after the bid opening, each winning bidder shall close on his or her medallion(s), except that if such bidder is unable to close within that period, such bidder shall, no later than thirty (30) days after the bid opening [file fingerprint records with the Chairperson (unless such records are already on file with the Chairperson and are less than six months old), and either] (i) deposit \$25,000 in a certified check for each medallion covered by the winning bid, [or]and (ii) [schedule a closing with the Chairperson, for a date approved by the Chairperson] provide the Chairperson with proof of purchase of a vehicle eligible for hack-up pursuant to section 3-03 or section 3-03.1 of this title in the form of a certificate of origin or title, or a bill of sale or a sales contract. All purchases of medallions pursuant to winning bids shall close by no later than sixty (60) days after bid opening unless extended by the Chairperson for reasonable cause shown. All closing dates are subject to the approval of the Chairperson. Failure by any winning bidder to comply with any deadline contained in this subdivision shall

result in disqualification of the winning bid as provided in subdivision (l) of this section.

- (f) [The ten (10) highest non-winning bids for unrestricted independent medallion lots, and the ten (10) highest non-winning bids for unrestricted minifleet medallion lots shall be notified of reserve status. Separately for accessible medallion lots and for alternative fuel medallion lots, the five (5) highest non-winning bids for alternative fuel medallion lots and the five (5) highest non-winning bids for accessible medallion lots shall also be notified of reserve status.] The Chairperson shall determine for each type of medallion being sold the number of the highest, non-winning bids for such type of medallion that will be accorded reserve status, provided that such number shall be not less than 10 per cent of the total number of medallions of that type being sold. The holders of the highest non-winning bids which are accorded reserve status shall be notified of such reserve status. Reserve status may be converted to a winning bid upon the failure of a winning bidder to comply with [either] subdivision (e) [or subdivision (h)] of this section. In the event that a reserve status is converted to a winning bid, the holder of such reserve status shall be so notified, and the date of notification shall be deemed to be the date of the bid opening for purposes of calculating such holder's deadlines pursuant to this chapter. If, for any type of medallion, there are a greater number of bids at the lowest bid price qualifying for reserve status than are established by the Chairperson pursuant to this subdivision, a drawing will be held to determine which of those tied bids will hold reserve status. Such drawing shall be held at the bid opening. Any bids otherwise qualifying for reserve status under this subdivision made by any bidder who was a winning bidder for any lot will be disqualified from reserve status upon such winning bidder's failure to comply with the requirements of subdivision (e) of this section.
- (g) The rights of a winning bidder are not assignable prior to the close of sale, except that such rights may be assigned to a corporation, limited liability company or partnership by a winning bidder who is a shareholder of such corporation, member of such limited liability company, or partner of such partnership. No winning bid may be assigned to any corporation, limited liability company or partnership the shareholders, members, or partners of which include any other winning bidder for a lot at a higher price than the winning bid being assigned and who has failed to comply with the requirements of subdivision (e) of this section with respect to such higher-priced lot.
- (h) Each winning bidder must demonstrate compliance with all of the requirements applicable for issuance and ownership of a taxicab license, including those contained in sections 1-02 and 1-03 of this title, must submit all documentation required by the Chairperson, must clear outstanding fines and penalties, and must submit proof of purchase of a vehicle eligible for hack-up [pursuant to section 3-03 or section 3-03.1 of this title] as required by subdivision (e) of this section, before a closing can be scheduled. Each winning bidder must also, prior to the

closing, submit fingerprint records as directed by the Chairperson unless such bidder has electronic fingerprints already on file with the Commission. Each winning bidder of an independent medallion must demonstrate an ability to comply with the owner-must drive service requirements of section 1-09 (b) of this title by holding or obtaining a taxicab driver's license issued under chapter 2 of this title or by providing as an owner of an entity to which such bid has been assigned a person who holds such a license.[All sales shall close no later than sixty (60) days after bid opening unless extended by the Chairperson for reasonable cause shown.]

- (i) All deposits of winning bidders shall be credited toward the sale price or, in the event the winning bidder does not meet the qualifications for issuance of a taxicab license, refunded to the bidder. However, a winning bidder who fails to comply with the deadlines provided in subdivision (e) [or subdivision (h)] of this section, including a winning bidder who does not attempt to meet the requirements of subdivision (h) of this section, shall forfeit deposits made pursuant to subdivision (a) of this section. The Chairperson will return deposits of non-winning and non-responsive bidders. Deposits submitted in respect of bids which achieve reserve status will be held until such bids are converted to winning bids, or until the sales of all lots of medallions of the type for which the bid was made have closed.
- (j) In addition to the amount bid, each winning bidder will be responsible on the transfer closing date for any applicable taxes or fees including two (2) years' worth of license and inspection fees as provided by sections 1-04 and 1-05 of this title, provided however, there will not be any medallion transfer tax collected for this initial issuance of medallions. Each medallion license shall be issued for two (2) years and all the required inspection fees shall be collected at closing.
- (k) Each medallion sold pursuant to this chapter must be hacked up, as that term is used in section 3-01(a) of this title, no later than the fifth business day following the day of the closing on the sale of the medallion, unless extended by the Chairperson for reasonable cause shown.
- (l) Failure of a winning bidder to meet the deadlines provided in subdivision (e) [or subdivision (h)] of this section regarding a winning bid shall result in the disqualification of that bidder as to that winning bid and forfeiture of deposits made pursuant to subdivision (a) of this section.
- (m) Any bid achieving reserve status made by a winning bidder for another bid for which such winning bidder who has failed to meet the requirements of subdivision (e) of this section with respect to such other bid shall be disqualified and the deposits made pursuant to subdivision (a) of this section with respect to such bid will be forfeited.
- (n) If any winning bidder who is a winning bidder in respect of multiple bids, including any bids assigned to an entity in which such bidder is an owner, partner,

shareholder, or member, shall fail to meet the requirements of subdivision (e) of this section with respect to some but not all such bids, such bidder shall be disqualified first on the lowest such winning bid, and then in ascending order of each of the next lowest winning bids. As to such disqualified bids, the deposits made pursuant to subdivision (a) of this section in respect of such bids shall be forfeited, as required in subdivision (l) of this section. Any winning bidder who is a winning bidder in respect of multiple bids, including any bids assigned to an entity in which such bidder is an owner, partner, shareholder, or member, must close first on his or her highest winning bid(s) and then in descending order of each next highest winning bid(s).

(o) No bidder shall collude, consult, communicate or agree in any way with any other bidder or prospective bidder for the purpose of restricting competition or inducing any other prospective bidder to submit or not submit a bid for purpose of restricting competition. No bidder shall disclose any bid price either directly or indirectly to any other bidder for the purpose of restricting competition or inducing any other prospective bidder to submit or not submit a bid for purpose of restricting competition. Violation of this subdivision or submission of a false certification under subdivision (a) of this section shall result in disqualification of all bids submitted by such bidder, in addition to any other penalties provided by law.

(p) No taxicab broker may submit a bid to purchase any lot if such taxicab broker is acting as a taxicab broker for any bidder. For purposes of this subdivision, "taxicab broker" shall include any person or entity, whether or not licensed as a taxicab broker pursuant to chapter 5 of this title, that represents or advises any bidder or potential bidder in connection with an actual or potential bid and either (i) provides advice as to a bid price or potential bid price or (ii) in the course of such representation or advice, obtains actual knowledge of the bid price submitted by any bidder, and any person or entity which is an owner, shareholder, partner, member or employee of such person or entity.

§ 13-04          Classifications of Medallions

A medallion issued pursuant to this chapter as an accessible medallion or an alternative fuel medallion, whether as an independent medallion, or a minifleet medallion, shall remain so classified despite any change in ownership of the medallion after its issuance, and all service and ownership requirements for such type of medallion set forth in chapter 1 of this title shall continue to apply thereto.

§ 13-05          Penalties for Violation of Rules Governing Medallion Auctions

<u>Rule No.</u>	<u>Penalty</u>	<u>Personal Appearance</u>
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		<u>Required?</u>
<u>13-03(o)</u>	<u>\$10,000 and either disqualification of bid or, if sale has closed, revocation of taxicab licenses</u>	<u>Yes</u>
<u>13-03(p)</u>	<u>\$10,000 and either disqualification of bid or, if sale has closed, revocation of taxicab licenses</u>	<u>Yes</u>

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