

**PROCEEDINGS OF NEW JERSEY TURNPIKE AUTHORITY
SPECIAL MEETING
TUESDAY, NOVEMBER 17, 2009**

Chairman Dilts called the Authority into session in the Executive Boardroom of the Authority's Administration Offices, Woodbridge, New Jersey, at 3:36 P.M.

PRESENT

Participating via telephone conferencing: Chairman Stephen Dilts; Commissioner Michael DuPont; Commissioner Harold Hodes; Commissioner David Evans; Commissioner Raymond Pocino; Commissioner Clive Cummis; Commissioner Troy Singleton; and Commissioner Ulises Diaz.

Executive Director Diane Gutierrez-Scaccetti (participating via teleconference); and Secretary Rose Stanko.

NOTICE OF MEETING

This is a special meeting of the New Jersey Turnpike Authority. Notice of this meeting has been provided in accordance with Chapter 231, P.L. 1975 in that notice has been given to two newspapers and notice has been forwarded to the Secretary of State, Trenton, New Jersey. In addition, notice of said meeting has been and is being displayed in the main lobby of the Authority's Administration Headquarters in Woodbridge.

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RECUSALS

The Secretary reported that no advisements of recusal had been submitted for this agenda and asked for any further recusals or abstentions to be placed on record for this meeting. There was no response.

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At this juncture, Chairman Dilts opened the floor for public comment pertaining to the items being presented for Board approval. There was no response.

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The presence of a quorum confirmed, the Members of the Authority then moved on the following matter being considered:

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LAW

262-09

Executive Director Gutierrez-Scaccetti presented the recommendation contained in the memorandum dated November 13, 2009, concerning the recommendation to **Re-Adopt the New Jersey Turnpike Authority's Regulations, N.J.A.C. Title 19**, Pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.

In anticipation of the automatic expiration on December 9, 2009 of the New Jersey

Turnpike Authority's regulations, N.J.A.C. Title 19, under the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., the staff of the Turnpike Authority together with the law firms of DeCotiis FitzPatrick Cole & Wisler, LLP ("General Counsel") and Wilentz, Goldman & Spitzer, PA ("Special Counsel for Intellectual Property/Software/Trademark/Copyright"), reviewed the current regulations and now proposes an updated body of regulations for Commission approval and promulgation. Made a part hereof is an executive summary noting the major amendments to the regulations.

To a large extent the proposed regulations are substantially identical to those due to expire, however certain key revisions implicate changes in policy and certain procedures. Some of the more significant changes include the following: 1) Authorization of electronic bidding as an additional bidding format to the current sealed paper bid approach is a major change being recommended. The Turnpike Authority's Engineering Department has tested electronic bidding with success under the scrutiny of the Law Department. 2) The addition of "political subdivisions" of the State of New Jersey has been added to the list of governmental entities that hold contracts with vendors from whom the Authority may purchase equipment, goods, materials, supplies and services without public bidding. 3) The Procedures for prequalification and award of construction contracts has been amended to bring the provisions into conformity with current prequalification procedures.

Accordingly, it is recommended that the New Jersey Turnpike Authority's Commissioners authorize and approve the proposed regulations, as updated and approved by the Law Department and General Counsel. It is also recommended that the Commissioners authorize the Executive Director, with the assistance of the Law Department and General Counsel, to prepare, execute and file the documents consistent with the foregoing.

**PROPOSED RE-ADOPTION WITH AMENDMENTS
NEW JERSEY TURNPIKE AUTHORITY
TITLE 19 – ADMINISTRATIVE CODE**

EXECUTIVE SUMMARY

This memorandum discusses certain amendments proposed for adoption in connection with the New Jersey Turnpike Authority's (the "Authority") re-adoption of N.J.A.C. 19:9-1.1 et seq. (the "Code"), scheduled to expire on December 9, 2009. Pursuant to regulations promulgated by the New Jersey Office of Administrative Law ("OAL"), regulations currently in effect are extended for a period of one hundred and eighty (180) days if a conforming proposal is submitted prior to the expiration date.

Before this document was generated, the Code was circulated for comment to each department within the Authority as well as the New Jersey State Police. The Code was also reviewed by the Law Department for technical conformity including, without limitation, terminology, cross-references and overall clarity. In this regard, the discussion below is limited to substantive amendments to the Code.

The proposed amendments are as follows:

SUBCHAPTER 1. TRAFFIC CONTROL ON NEW JERSEY TURNPIKE

§ 19:9-1.1 Definitions

The definitions of "Car" and "Heavy Truck" were amended to conform to the vehicle classification system used on the Roadways.

The definition of “Parkway” was amended to include all areas within the Parkway Right-of-Way, the Arts Center, the Telegraph Hill Nature Area, all bridges, tunnels, interchanges, entrance plazas, service areas and other property, including easements, necessary for the operation of the Parkway. This was amended to conform the current definition provided for the Turnpike.¹

The definition of “Turnpike” was amended to include maintenance facilities and, similar to the phrasing in the “Parkway” definition, to include all real property and improvements owned by, operated or under the jurisdiction of the Authority.

§ 19:9-1.9 Limitations on use of Roadway

Section 1.9(b)(2), concerning prohibitions on the Parkway, was amended to conform the provision, specifically with respect to tractor-semitrailer-type vehicles, with those currently in effect on the Turnpike (Section 1.9(c)(2)).

Section 1.9(b)(3), concerning prohibitions on the Parkway, was amended to allow Heavy trucks to traverse Ramp 7 in Woodbridge Township, Middlesex County, per the State Police, recognizing that Ramp 7, which is included under the definition of “Parkway,” is utilized by drivers of Heavy trucks to access the Turnpike.

Section 1.9(c), concerning prohibitions on the Turnpike, was amended to incorporate a weight restriction for tri-axle tractor-semitrailer type vehicles.

§ 19:9-1.16 Intoxicating beverages

This provision was amended to prohibit consumption of intoxicating beverages while “occupying” a vehicle on the Roadway, per the State Police, whereas the regulations currently prohibit such consumption while “driving” a vehicle on the Roadway.

§ 19:9-1.19 Tolls; payment required

Section 1.19(b) was amended to eliminate direct payment by credit card as an acceptable means of toll payment, since this form of payment has been administratively eliminated by the Authority prior to this re-adoption.

§ 19:9-1.24 Lane usage; Interchanges 11 to 14

Section 1.24(a) was amended to authorize use of “vehicles with hybrid engines”, regardless of occupancy, in HOV lanes on the Turnpike.

§ 19:9-1.30 Arts Center

Section 1.30(c) was amended to add “firearms, knives and other weaponry” to the list of items banned from the Arts Center Amphitheater.

SUBCHAPTER 2. PURCHASING AND CONTRACTING

Subchapter 2, Purchasing and Contracting, was amended as a whole, to allow for electronic bidding on Authority contracts and for the sale of surplus property. Significantly, the proposed amendments were drafted in such a manner as to allow the Authority a level of flexibility to choose from a range of acceptable electronic bidding programs going forward. The proposed amendments nevertheless provide the necessary restraints intended to preserve the integrity of the bidding process.

In this regard, the proposed amendments require procedures for maintaining documents in a manner that preserves their integrity, ensures that their timely receipt can be established and verified, and allows the entire contents of each bid to be clearly established and publicly inspected at the date and time bids are opened. Note that utilization of electronic bidding by the Authority is entirely elective; the Authority may continue to utilize traditional paper bid procedures, going forward, as it develops expertise in implementing the electronic system.

A provision was added at §19:9-2.2(c)10 to permit the Authority, subject to applicable law and a right to protest under §19:9-2.12, to disqualify a bidder for up to 12 months from bidding, or revoke the prequalification of a bidder for that period, if the bidder withdraws or attempts to withdraw its bid based on “unilateral mistake.” A similar provision, which appears in the existing regulations at §19:9-2.7, is being deleted from that section because it more appropriately belongs in §19:9-2.2.

¹ The definition of “Roadway,” which includes the defined terms “Turnpike” and “Parkway,” has not changed. However, the definition of “Parkway” is expanded to expressly include all off-roadway property such as service areas, service stations, maintenance facilities, and so forth, similar to the definition of “Turnpike.” Consequently, the defined term, “Roadway,” now encompasses all Authority property, whether on or off the roadways, whether owned or operated by or under the jurisdiction of the Authority, or which may be acquired. This all-encompassing definition of “Roadway” is used throughout the regulations in place of the formerly undefined term “Authority property.”

§ 19:9-2.2 Purchases for amounts requiring public advertising

Pursuant to Executive Order No. 37 (Corzine), "contracts . . . with the federal or any state government or any agency or political subdivision thereof" have been included among those contracts where the Authority is permitted to dispense with public bid procedures.

§ 19:9-2.5 Purchase under or in combination with State or other agency contracts

Consistent with Executive Order No. 37, this Section has been amended to add "political subdivisions" of the State of New Jersey (e.g., municipalities and counties) to the list of governmental entities which hold contracts with vendors from which the Authority may purchase equipment, goods, materials, supplies and services, without public bidding.

§ 19:9-2.6 Sale of surplus personal property

Section 2.6(f), which permits employees to bid on surplus personal property, was deleted because, under the Uniform Ethics Code, such action would require approval from the State Ethics Commission, and pursuant to the Code, "the Commission has never approved such a request."

This Section was also amended to reflect that surplus property sales are under the jurisdiction of the Department of Technology and Administrative Services and not the Purchasing Department. As well, it was amended to provide that if the anticipated aggregate sales proceeds is less than \$2,500, bids may be informally solicited by telephone. Further, advertisements for competitive bids in excess of \$2500 may be posted on the Authority's website, in addition to newspaper advertisements. This Section has also been clarified to provide that, consistent with law, any changes to advertised bids shall be made by written addenda and not orally.

Further, Section 2.6(p) deleted a provision that, contrary to law, purports to permit the Executive Director to waive the failure of a bidder to submit a bid deposit with its bid, to avoid rejection of the bid. Finally, Section 2.6(s) is amended to make the buyer of surplus property responsible for removal of said property at the buyer's expense.

§ 19:9-2.7 Procedure for prequalification and award of construction contracts

Amendments to Section 19:9-2.7 were recommended in order to bring it into conformity with current prequalification procedures. Specifically, minimum contract work is specified for special classification ratings. For example, a contractor seeking a classification rating up to \$150,000 must have performed a contract(s) in a single year worth \$90,000; a contractor seeking a classification rating up to \$500,000 must have performed a contract(s) worth \$300,000, and so forth.

In addition, this Section was updated to provide, with specificity, acceptable forms of documentation to establish satisfactory financial condition of the prospective bidder. For example, a contractor's Qualifying Statement must be accompanied by certified audited financials or a CPA review of financial statements.

Further, a provision has been added to permit the Chief Engineer to direct the use of a Request for Qualifications Information (RFQI) process to prequalify contractors for specialized projects involving homeland security, or in other exigent circumstances.

§ 19:9-2.8 Procedure for prequalification and award of contracts for architectural, engineering and land surveying services

Substantively, these provisions were amended in two respects. First, the boundary dividing "complex projects" and "simple projects" has been increased from an estimated fee of \$1,000,000 to \$2,000,000. Second, the relevant criteria for "experience" have been updated in order to bring them into conformity with current EOI procedures. For example, "Experience on similar projects" has been amended to "Experience of the firm on similar projects," and "Experience of the Project Manager or Resident Engineer on similar projects." As well, "Extent of New Jersey presence" has been deleted and replaced with "Attainment of Small Business Enterprise goals."

§ 19:9-2.10 License to cross fee schedule

The fine under Section 2.10(j) was increased from \$200.00 to \$500.00 for unauthorized work undertaken on the Roadway without a license or permit.

SUBCHAPTER 3. FEES

§ 19:9-3.1 Towing rates on the Turnpike and the Parkway

Section 3.1 has been amended to add a description of heavy-duty towing services that are procured through a competitive process to select Authority-authorized heavy duty towers. As defined, heavy duty towing services are intended to handle disruptions of traffic on the Roadways resulting from incidents involving large overturned commercial vehicles or spillage of products that would entail the use of special equipment and expertise in comparison to routine towing services. Special equipment and experience required to respond to and resolve these types of incidents are necessary to avoid significant disruptions in traffic flow on the Roadways.

This Section also sets forth maximum rates that may be charged by Authority-authorized heavy duty towers for use of various equipment and specialized labor. The maximum rates established for these specialized services and equipment are based upon rates in the towing industry in order to attract reliable towing companies to participate in the Authority's towing program while ensuring that patrons of the Roadways are charged reasonable rates for the services.

§ 19:9-3.2 Road service rates on the Turnpike and Parkway

Section 3.2, setting forth rates for road services provided to patrons of the Roadways, has been amended to include tire repair and replacement services for trucks and buses, which services are solicited through public bid. A maximum Service Charge, Hourly Labor Rate, and Additional Tire Service charge are established, which together with the Authority's public procurement of companies specializing in the provision of tire repair services, will ensure that commercial patrons of the Roadways pay market-based rates for tire repair and replacement services in addition to the retail cost of tires and rims, if needed.

SUBCHAPTER 4. INSPECTION AND OBTAINING OF AUTHORITY RECORDS

Where possible, existing procedures for obtaining Authority records were continued for purposes of efficiency. However, the current regulations are, on their face, inconsistent with the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. (OPRA), and therefore required revision. Notably, Section 4.2, purportedly defining "nonpublic information," was eliminated entirely since what is and is not available for public inspection is governed by OPRA. Accordingly, Section 4.1 was amended to provide that "public records," as defined by OPRA, shall be made available to the public.

SUBCHAPTER 5. ADMINISTRATIVE PRACTICES

No substantive changes have been made to this subchapter.

SUBCHAPTER 6. PETITIONS FOR RULES; OPPORTUNITY TO BE HEARD UPON A SHOWING OF SUFFICIENT PUBLIC INTEREST IN A PROPOSED RULEMAKING

No substantive changes have been made to this subchapter.

SUBCHAPTER 7. ORGANIZATION OF THE NEW JERSEY TURNPIKE AUTHORITY

§ 19:9-7.3 Functions of the departmental units and divisions

These provisions were amended to eliminate departments no longer in existence, to include departments and divisions created since the Code was adopted, and to conform descriptions of the various departments and divisions to their actual functions. Additionally, descriptions of the functions of non-departmental divisions are included.

SUBCHAPTER 8. DEBARMENT, SUSPENSION AND DISQUALIFICATION FROM CONTRACTING

The only substantive change to this Section involved the definition of "person," which was amended to include principals of a corporation, company, firm or association, and partners of a partnership as within the definition. This change addresses the situation where a corporate or partnership Authority vendor is debarred but attempts to recast itself as a different corporation or partnership with the same principals or partners as the debarred entity. The intent of this amendment is to debar the principals and the partners individually.

SUBCHAPTER 9. ELECTRONIC TOLL COLLECTION MONITORING SYSTEM

§ 19:9-9.2 Toll collection monitoring system violation

Section 9.2 (b) was amended to reference N.J.S.A. 27:23-34.3 with respect to the time period that shall elapse for issuance of an Advisory and Payment Request by the Authority. Further, in addition to re-stating the current administrative fee of \$25, a provision was added to permit the Authority to establish such other administrative fee as may from time to time be necessary based on actual costs of processing and collecting the violation, and further provides that the administrative fee will be posted on the Authority's website. Additionally, Section 9.2(f) was amended to increase the time period, from 30 days to 60 days, for which the lessor of a violating vehicle may submit a rental agreement to the Authority without being subject to penalty.

APPENDIX A

Amendments were made to bring conformity to current procedures and descriptions of work including, without limitation, contractor classifications.

The Executive Director certified the recommendation for consideration.

On motion by Commissioner DuPont, seconded by Commissioner Hodes, the Authority unanimously approved the recommendation, as presented; and received and filed the memoranda.

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ENGINEERING

263-09

ITEM DEFERRED

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Upon conclusion of business, the Chairman opened the floor to public comment on other matters. There was no response.

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The motion to adjourn was made by Commissioner Hodes, seconded by Commissioner DuPont and, after the voice vote, the motion was duly adopted. The Authority adjourned the special meeting at 3:43 P.M., to meet for its next regular scheduled meeting at the new State Police Troop E Headquarters in Holmdel, NJ, on Wednesday, December 16, 2009, at 9:30 A.M.

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Rose Stanko
Secretary

APPROVED:

Stephen Dilts, Chairman and NJ Department of Transportation Commissioner

Michael R. DuPont, Treasurer

Harold L. Hodes, Commissioner

David G. Evans, Commissioner

Raymond M. Pocino, Commissioner

Clive S. Cummis, Commissioner

Troy Singleton, Commissioner

Ulises E. Diaz, Commissioner