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**DOI INVESTIGATION OF TAXI AND LIMOUSINE COMMISSION MEDALLION AUCTION
FINDS LOOPHOLES IN RULES**

--TLC agrees with DOI's findings and recommendations and has revised its auction rules--

ROSE GILL HEARN, Commissioner of the New York City Department of Investigation (DOI), announced today the findings and recommendations from DOI's investigation into the Taxi and Limousine Commission ("TLC") medallion auctions. The DOI report found that the TLC rules were not consistently applied and that they conflicted with the TLC auction bid form. As a result, the TLC has proposed revisions to its auction rules in an effort to clarify its regulations regarding collusion among bidders, the relationship between brokers and bidders, and the policies governing "reserve status" bids.

Commissioner Rose Gill Hearn said, "DOI examined the TLC rules and regulations for its medallion auctions and found several inconsistencies and concerns. DOI shared its findings with the TLC, which, to its credit, prepared a set of revised auction rules. Because the auctions generate great interest from potential buyers, it is important that the TLC rules are clear, consistent and fair."

TLC medallion auctions do not occur on a regular basis. As a result, when they do occur, they present a revenue opportunity for the City and a rare chance for people to obtain the coveted taxi medallions.

The New York City Law Department requested that DOI look into whether identical bids made by three bidders during a June 2006 auction were the result of illegal collusion or violation of any other law, rule or regulation that governs the auctions. The request came after a representative from the New York City Office of Management and Budget ("OMB") observed that three bidders made multiple identical bids for medallions and collectively won all 54 medallions that were auctioned.

As a part of its investigation, 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. As a result of its investigation, DOI found:

- The Non-Collusion Clause in the auction bid form is unclear and should be revised. The TLC's practice of permitting licensed TLC brokers to assist bidders in determining the amount they

should bid for a medallion is inconsistent with the requirements of the Non-Collusion Clause, if the broker is also bidding for medallions at the same auction.

- The TLC has proposed a new rule that would prohibit brokers and their principals, employees, etc., from bidding in an auction if they have provided advice to other bidders. DOI and the TLC believe that this proposed change will reduce the ability of bidders to collude with each other or misuse bid information.
- The TLC's rules governing "reserve status" bids need to be clarified. A "reserve status" bid is a non-winning bid, which is lower than the winning bids and held in reserve in case a winning bidder fails to complete the purchase of a medallion. Currently, a bidder may be able to default on a winning bid in favor of a lower "reserve status" bid. This creates the possibility for bidders to place multiple bids in an attempt to manipulate the auction and thereby result in a loss of revenue to the City. The TLC agrees that the rules regarding "reserve status" bids need to be clarified and 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.

Commissioner Gill Hearn thanked the Taxi and Limousine Commissioner Matthew W. Daus and members of his staff for their assistance in this investigation. Commissioner Gill Hearn also thanked Corporation Counsel Michael A. Cardozo and members of his office for their assistance on this matter.

The investigation was conducted by the Taxi and Limousine Inspector General's Office under the supervision of Inspector General Julie Block.

DOI is one of the oldest law-enforcement agencies in the country. The agency investigates and refers for prosecution City employees and contractors engaged in corrupt or fraudulent activities or unethical conduct. Investigations may involve any agency, officer, elected official or employee of the City, as well as those who do business with or receive benefits from the City.

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NEW YORK CITY DEPARTMENT OF INVESTIGATION

**TAXI AND LIMOUSINE COMMISSION
MEDALLION AUCTION REPORT**

**ROSE GILL HEARN
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NYC TAXI AND LIMOUSINE COMMISSION**

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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 22nd 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, Dzhaniyev, Mikhlin 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 Dzhaniyev 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 Dzhaniyev each made bids for \$680,498, \$678,854 and \$676,756 per medallion that were ultimately losing bids. Mikhlin 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 Dzhaniyev 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 Dzhaniyev 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.¹ The last medallion was sold to an individual other than

¹ Complications arose from the October 15, 2004 auction, resulting in litigation when Freidman, Baisin and Dzhaniyev 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 \$225,111.20.² (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.³

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

² 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 Dzhaniev 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 Dzhaniev 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, Dzhaniev, 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 Dzhaniev. 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

³ 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

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 Dzhaniev, 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.”⁴ Frasier stated that his view was not altered by the fact that Freidman, Basin and Dzhaniev 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 16th identical bidding pattern of Freidman, Basin and Dzhaniev 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 Dzhaniev 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

⁴ 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.⁵ 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

⁵ 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 Dzhaniyev 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 Dzhaniev. 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, Dzhaniev. 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 Dzhaniyev 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).⁶ This would have resulted in the group closing on

⁶ 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.