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New Jersey Turnpike Authority Rules

Notice of Proposed Substantial Changes

Proposed Changes: N.J.A.C. 19:9 _____

Proposed: March 4, 2024 at 56 N.J.R. 3(1)

Authorized By: New Jersey Turnpike Authority Board of Commissioners, James D. Carone,
Executive Director.

Authority: N.J.S.A. 27:23-5.s.

Submit written comments by October 4, 2024, to:

Thomas Holl, Director of Law

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Take notice that the New Jersey Turnpike Authority (Authority) proposed re-adoption with amendments of N.J.A.C. 19:9 on March 4, 2024, at 56 N.J.R. 3(1). The public comment period closed on May 4, 2024.

The Authority is proposing a number of substantial changes to the proposed re-adoption with amendments in response to comments received. A summary of the comments which prompted changes, and the agency response to those, is provided below. This notice of proposed substantial changes is published pursuant to 52:14B-4.10.

Comments were received from Ryan Sharpe, Director of Governmental Affairs and Communications, Utility Transportation Contractors Association of New Jersey; Steven Gardner, Director, New Jersey Laborers'-Employers' Cooperation and Education Trust; Joseph A. Fiordaliso on behalf of American Council of Engineering Companies, New Jersey; Jonathan Testa, Esquire, legal counsel for the Garden State Towing Association, Inc. (GSTA); Sean Cody, President of B&L Recovery & Towing; and John Tumino, Tumino's Towing.

Summary of Public Comments and Responses:

Ryan Sharpe, Director of Governmental Affairs and Communications, Utility Transportation Contractors Association of New Jersey:

1. SUMMARY OF COMMENT: The following language should be added to N.J.A.C. 19:9-2.2: "In addition, a contract shall not be awarded unless the negotiated price is lower than the lowest rejected bi price submitted on the second occasion, and is the lowest negotiated price offered by any responsible contractor."

RESPONSE: The Authority believes that the suggested change is redundant given that the last sentence of this subsection encompasses the required legal analysis under public bid law for determining the proper low bid and award.

2. SUMMARY OF COMMENT: The proposed changes by the Authority to N.J.A.C. 19:9-2.7 base a contractor's financial capacity on the amount of work billed/competed in a year. This process does not coincide with the bonding/financial industry's procedure based on (1) the contractor's net working capital with a multiplier of 15, (2) net book value of equipment less the amount owed with a multiplier of 15, and (3) lines of credit with a multiplier of 7. Commenter provided suggested language, and separately suggests removing the word "certified" from the term "certified audited financial statement."

RESPONSE: The Authority recognizes commenter's concern of financially and technically capable contractors bidding on work classified under the Authority's new classification rating tiers. However, the Authority cannot adopt the language suggested by commenter because (a) it does not allow for classification ratings to be determined per classification being sought, and (b) it does not allow the Authority to apply professional judgment based on project reference checks to the determined classification rating.

To address the initial concern, the Authority is proposing a change to the classification rating tiers in that the \$100 million and \$200 million classification ratings will be deleted; contractors who perform \$50 million worth of satisfactory work under the regulatory timeframe will attain an unlimited rating in the classification for which that type of work was self-performed.

The Authority takes no exception to the comment removing “certified” from the requirement of an audited financial statement and will apply this change.

Steven Gardner, Director, New Jersey Laborers’-Employers’ Cooperation and Education Trust:

3. SUMMARY OF COMMENT: The Authority has proposed a repeal of N.J.A.C. 19:9-2.4 because the provision is superfluous and essentially reproduced in each contract entered into by the Authority. While we are in agreement with the current practice described by Authority counsel, we believe that the Authority should maintain language in its regulations that explicitly states that the Authority shall consistently include contractual language preserving all of the interests, remedies, and prerogatives available to it under the law.

If Authority is concerned that the rule, as currently worded, unduly limits the Authority’s ability to adequately protect its interests, we would recommend that instead of deleting the rule in its entirety, the Authority amend the existing provision with language that retains the express directive to include appropriate language regarding the termination of contracts in a manner that is more flexibly general than the current text.

RESPONSE: The Authority agrees with the commenter that the existing text of the rule should remain in place and the proposal to eliminate it is stricken.

Joseph A. Fiordaliso on behalf of the American Council of Engineering Companies, New Jersey:

4. SUMMARY OF COMMENT: In 19:9-2.8 (e)4-vi, the Authority is proposing to add the word “any.” Please explain the intent of the proposed addition of the word “any” to this statement. Please clarify whether “any” outstanding work with the Authority is intended to include potential work, as in the ceiling of an on-call agreement. Please indicate all of the active and potential work that “any outstanding work” might be inclusive of. Commenter is concerned that this proposed edit could significantly impact Expression of Interest rankings and could include projects that are substantially complete but have not yet been closed out.

RESPONSE: “Any” was included to support the definition as described in the solicitation documents. The definition of outstanding work has not changed per the Authority Consultant’s Disclosure of Outstanding Work form found at www.njta.com.

5. SUMMARY OF COMMENT: Many SBE/DVOB firms have a high workload since the Authority mandates that prime consultants utilize these firms. Commenter proposes to prorate the subconsultants’ (and possibly the prime consultants’) workload to the percentage of work being assigned.

RESPONSE: The proposed changes do not include modifications to this section on this topic. The Authority declines to make the proposed change as contracting set-asides for small business, minority-owned business and others are applied in conformance with State statute and Department of the Treasury regulations, including N.J.S.A. 52:32-17 et seq., N.J.A.C. 17:13-1.1 et seq. and N.J.A.C. 17:14-1.1 et seq.

6. SUMMARY OF COMMENT: Commenter expresses concerns about the impact the proposed change in limit for simple procurements in N.J.A.C. 19:9-2.8 g(2) will have on a firm's multiplier.

RESPONSE: The Authority's regulations do not govern the multiplier for professional services.

7. SUMMARY OF COMMENT: Regarding the Authority's review of "all fee proposals" when negotiating a fair and reasonable fee with the highest technically ranked qualified firm, fee proposals from other selected qualified firms should only be considered if fee negotiations with the top technically ranked qualified firm do not result in the negotiation of a fair and reasonable fee. Commenter cites qualifications-based selection (QBS) benefits and provides a mark-up of the language in question, primarily proposing to add the word "qualified" in front of "firm".

RESPONSE: The use of all fee proposals to negotiate a fair and reasonable fee is an effective procedure for the Technical Review Committee and is unchanged as proposed. The Authority declines to modify the existing procedure as the suggested change would restrict the information available to make an informed procurement decision.

Jonathan Testa, Esquire, legal counsel for the Garden State Towing Association, Inc.:

8. SUMMARY OF COMMENT: The Authority proposes to amend its towing rate regulations "in response to regular surveying of comparable, regional toll roads, and substantive comments received during a recent rulemaking that culminated in modest adjustments, effective August 1, 2022 and March 20, 2023, to the fees that may be charged by services providers for towing services and road services on the Roadway."

As the GSTA previously explained in its prior public comments, and now reiterates, its members continue to experience significant increases in overhead operational costs due from commercial insurance rates, labor, fuel, and equipment costs over the past 12 approximate years.

The drastic increases in overhead expenses experienced by GSTA members in New Jersey is corroborated by a 2019 pre-pandemic study conducted by the Towing and Recovery Association of America, Inc., and roadside assistance/claims management company Agero, Inc., which found towing companies saw a drastic increase in annual average overhead costs beginning in 2016, with annual average increases in overhead costs accelerating to 7.36%, over 2x higher than the annual 3.28% average increase for overhead costs from 2012 through 2015. The TRAA-Agero Study is directly in-line with, if not lower than, the drastic increases in overhead costs our members have experienced during the same time-period.

The GSTA thanks the Authority for having reconsidered its prior position with respect to the rate regulations and appreciates the Authority's recognition of the exceptional service GSTA members have provided its patrons over the years, enabling the Authority to exceed national averages in incident response and roadway clearance. Increases to the rate regulations remain necessary as a matter of public safety and to ensure that reliable and professional towing and recovery services continue to be provided to the users of the Parkway and Turnpike.

However, further nominal increases are necessary which are set further in further detail below.

The GSTA respectfully disagrees with the limited nominal increases by the Authority, especially considering that prior to 2023 the rate regulations had not been adjusted for approximately 10 years. To date, the Authority has not adopted many of the established New Jersey State Police (NJSP) maximum rates, which have been determined to be objectively reasonable and have been adopted for use throughout the state, including on the Atlantic City Expressway.

The Authority's current rates have pushed many of the most reliable towers to the brink and GSTA has lost trained, experienced, and highly skilled drivers to other business industries, while many towing companies have been forced to abandon their Turnpike/Parkway contracts all together. Without nominal increases and amendments to the rate regulations, we remain very concerned that many of the towing businesses servicing the Turnpike and Parkway will not be able to survive. Specific suggestions for rate increases follow.

Under the NJTA's prior approved rate regulations, storage under N.J.A.C. 19:9-3.1(b) is now free for the first 12-hours after a vehicle is towed from an Authority roadway, thereby making the Authority's rates lower than that of the NJSP. The Authority should adopt further increases to the storage rates to better enable towers to free-up storage space, combat historical abuses for the commercial trucking industry, and alleviate the growing overhead expenses towers are incurring to safely store electric vehicles post-accident.

The commercial trucking industry and insurance industry are well-aware of the Authority's longstanding reduced storage rates and have taken advantage of these rates to the direct detriment and expense of GSTA towers for years. As a result, instead of having vehicles promptly relocated to a non- Authority regulated yard, commercial trucks remain dormant at our towers' storage yards for an extraordinary amount of time and take up much needed space for passenger vehicles.

The only way to prevent this long-standing abuse by the commercial trucking industry is to increase the Authority storage rates to the same level of the NJSP maximum rates. Otherwise, the commercial trucking/insurance industry will continue to be unmotivated to remove vehicles from our tower's Authority regulated storage yards within a reasonable amount of time.

In addition, electric vehicles continue to increase in popularity and, based on a September 2022 report from BloombergNEF, are projected to account for over half of the passenger vehicles sold in the U.S. by 2030. Almost all electric vehicles on the market are powered by high-voltage lithium-ion batteries, which pose a new risk of injury to towers and other emergency responders as they are highly susceptible to ignite/reignite after an electric vehicle is involved in an accident.

According to a 2021 Safety Report published by the National Transportation Safety Board (NTSB), the high-voltage lithium-ion batteries used in electrical vehicles pose a risk of after an accident and further revealed that a lithium-ion battery can reignite multiple times, even days or weeks after a crash. Due to the increased potential for lithium-ion batteries to ignite/reignite in a damaged electric vehicle post-accident; the NTSB has found towers are highly susceptible to risks of injury and storage yard fires. These risks will only continue to increase as electrical vehicles become more prevalent. The NTSB, the National Fire Protection Association (NFPA), SAE International and most electric vehicle manufacturers recommend a 50-foot clearance around a

stored, damaged electric vehicle while it remains in the tower's storage yard. However, the NTSB's study further found this to be infeasible and potentially impossible as the electric vehicle market continues to expand.

For these reasons, at a minimum, the following nominal increases are necessary to the storage rates under N.J.A.C. 19:9-3.1(b) to bring the NJTA's rates more in line with industry standard rates and the NJSP's established rates:

1. The storage rate for "Passenger Vehicles" should be increased to \$50.00 per calendar day;
2. The storage rate for all "Vehicles over 15,000 pounds" except buses should be increased to \$125.00 per unit per calendar day; and
3. The storage rate for "Buses" should be increased to \$250 per calendar day.

For "[l]andoll w/tractor" the current NJTA proposed rate should be increased from \$450.00 per hour to the current NJSP rate of \$500.00 per hour;

For "[r]elief refrigerated tractor trailer," the current NJTA rate should be increased from \$450.00 per hour to the current NJSP rate of \$550.00 per hour;

For "[f]ront end loader (two-yard minimum bucket)" the current NJTA rate of \$300.00 per hour should be increased to the current NJSP rate of \$400.00 per hour;

For "[b]ob cat/skid steer," the current NJTA rate of \$300.00 per hour should be increased to the current NJSP rate of \$400.00 per hour for each piece of equipment used;

For "[f]ork lift (5,000 pounds minimum capacity)" the current NJTA rate of \$300.00 per hour should be increased to the current NJSP rate of \$400.00 per hour regardless of the capacity;

For "[b]ackhoe" the current NJTA rate of \$300.00 per hour should be increased to the current NJSP rate of \$400.00 per hour;

For "[d]ump truck" the current NJTA rate of \$350.00 per hour should be increased to the current NJSP rate of \$400.00 per hour;

For "[d]ump truck w/tractor" the current NJTA rate of \$350.00 per hour should be increased to the current NJSP rate of \$400.00 per hour; and

For "[r]oll off container (40-yard) + disposal fee" the current NJTA rate of \$350.00 per hour should be increased to the current NJSP rate of \$400.00 per hour plus the disposal fee.

RESPONSE: The Authority designed the proposed rates by applying and adjusting for current market influences such as insurance, storage, real estate taxes, fuel costs and employee competition by other industries, as well as factoring in current cyclical and sustained market forces. The

Authority also considered existing and recently amended NJSP rates and believes the Authority rates as proposed reflect existing market conditions, and that further increases are unwarranted at this time. In response to the towing industry's concerns, the Authority has taken significant steps to adjust towing and storage rates over the past two years. NJSP rates are only one of several factors considered in the proposed rates, and the Authority's statutory mandates and responsibilities to its patrons, who pay to use its roadways, are neither identical nor unilaterally analogous to those of the NJSP.

Sean Cody, President of B&L Recovery & Towing:

9. SUMMARY OF COMMENT: As a long-time towing and recovery contractor for the Turnpike and Parkway, we respectfully request these below itemized fees be increased and implemented as quickly as possible. The towing, recovery and storage industry has been hit with the highest increases for insurance, drivers / mechanics and labor, fuel costs continue to skyrocket, inflation has hurt this industry especially hard; there is no relief in sight. This is a crucial time for this industry and without relief and increased rates, many companies may have problems fulfilling their obligations, and may not be able to keep to the standards expected of them to run a 24-hour towing operations for the Turnpike/Parkway. We propose the following increases:

Passenger Vehicles storage rate to \$50.00 per calendar day.

Vehicles over 15,000 pounds storage rate to \$125.00 per unit per calendar day.

Landoll tractor trailer towing rate to the current NJSP rate of \$500.00 per hour.

Relief refrigerated tractor trailer to the current NJSP rate of \$550.00 per hour.

Front end loader (two-yard minimum bucket)" to the current NJSP rate of \$400.00 per hour.

Bob cat/skid steer to the current NJSP rate of \$400.00 per hour for each piece of equipment used.

Forklift (5,000 pounds minimum capacity) to the NJSP rate of \$400.00 per hour regardless of the capacity.

Backhoe to the current NJSP rate of \$400.00 per hour.

Dump truck to the current NJSP rate of \$400.00 per hour.

Dump truck w/ tractor trailer to the current NJSP rate of \$400.00 per hour.

Roll off container (40-yard) + disposal fee to the current NJSP rate of \$400 per hour.

RESPONSE: The Authority designed the proposed rates by applying and adjusting for current market influences such as insurance, storage, real estate taxes, fuel costs and employee competition by other industries, as well as factoring in current cyclical and sustained market forces. The

Authority also considered existing and recently amended NJSP rates and believes the Authority rates as proposed reflect existing market conditions, and that further increases are unwarranted at this time. In response to the towing industry's concerns, the Authority has taken significant steps to adjust towing and storage rates over the past two years. NJSP rates are only one of several factors considered in the proposed rates, and the Authority's statutory mandates and responsibilities to its patrons, who pay to use its roadways, are neither identical nor unilaterally analogous to those of the NJSP.

John Tumino, Tumino's Towing:

10. SUMMARY OF COMMENT: We would ask to rise the truck and car storage town rate to match the NJSP rate because a 53-foot trailer takes up the same space as three cars that are now \$43.00 per day each car, which nets us \$143.00 storage, and a single trailer is only \$81.00 and we have had trucking companies not pick up a trailer because of the low rate for storage. Car storage should also be raised to \$50.00 per day.

A fuel surcharge is needed, paid by the Authority or the patron, and could be the same as NJSP rates.

The Authority should increase all extra heavy duty towing and recovery services equipment under N.J.A.C. 19:9-3.1(a)5i to match NJSP rates.

RESPONSE: The Authority designed the proposed rates by applying and adjusting for current market influences such as insurance, storage, real estate taxes, fuel costs and employee competition by other industries, as well as factoring in current cyclical and sustained market forces. The Authority also considered existing and recently amended NJSP rates and believes the Authority rates as proposed reflect existing market conditions, and that further increases are unwarranted at this time. In response to the towing industry's concerns, the Authority has taken significant steps to adjust towing and storage rates over the past two years. NJSP rates are only one of several factors considered in the proposed rates, and the Authority's statutory mandates and responsibilities to its patrons, who pay to use its roadways, are neither identical nor unilaterally analogous to those of the NJSP.

Text of originally proposed rule subject to the new proposed changes. Substantial changes are shown using boldface italics for additions *thus* and italicized braces for deletions to the proposal text *{thus}*:

19:9-2.4 ***{(Reserved)} Termination of contract***

A contract awarded to the successful bidder may be terminated by the Authority at any time for any lawful reason, including, but not limited to, inadequate or improper performance, or for breach of any terms, conditions, or obligations of the contract, as determined by the Authority, or if the vendor shall make an assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or if an involuntary petition in bankruptcy is filed against the vendor and the act of bankruptcy therein alleged is not denied by the vendor, or the vendor, or an owner of more

than 10 percent of the vendor, is indicted by a Federal or state grand jury. Upon termination, the Authority shall be liable only for payment of goods or services properly performed in accordance with the contract. The Authority shall have the right to purchase non-delivered goods to replace defective goods and services on the open market and hold the vendor liable for the difference between the price set forth in the contract for such goods or services and the prices paid on the open market. Further, the Authority reserves the right to terminate any contract entered into provided written notice has been given to the contractor at least 15 days prior to such proposed termination date. In addition, the Authority shall have the right, without the necessity of court proceedings, to recover all equipment, material, or supplies that are the property of the Authority and have been entrusted with the vendor to be used in the performance of said contract. Nothing in this section is intended to limit the Authority's right to legally pursue all costs that exceed the amount due and owing the vendor under said contract. The list of remedies in this section is not exclusive.

19:9-2.7 Procedure for prequalification [and award of] **to bid on** construction contracts

(a) (No change from proposal.)

(b) In order to prequalify [in classification], prospective bidders shall submit annually, or at least 21 calendar days prior to bid opening [of a specific contract], proof of the [following] **items listed in this subsection. In determining the prequalification of a prospective bidder, only that work performed by the prospective bidder on a contract(s) shall be considered:**

1. As to type of work, recent satisfactory experience as a contractor on a contract involving substantially the same or similar work [to] **as** the classification being sought;

2. As to [amount] **value** of work, satisfactory experience within the past three years [as a] **by the** contractor, either on a single contract performed in a single year, or several contracts performed in a single year, having the following minimum [amounts] **values** of contract work for such single year, for the specified classification ratings listed below:

[i. \$90,000 worth of contract work in a year for a classification rating up to \$150,000 maximum;

ii. \$300,000 worth of contract work in a year for a classification rating up to \$500,000 maximum;]

[iii.] **i.** [~~\$600,000~~] **Less than \$1,200,000** worth of contract work in a year for a classification rating up to \$1,000,000 maximum;

[iv.] **ii.** \$1,200,000 **to \$2,999,999** worth of contract work in a year for a classification rating up to \$2,000,000 maximum;

[v.] \$2,100,000 worth of contract work in a year for a classification rating up to \$3,500,000 maximum;]

[vi.] **iii.** \$3,000,000 **to \$5,999,999** worth of contract work in a year for a classification rating up to \$5,000,000 maximum;

[vii.] **iv.** \$6,000,000 **up to \$11,999,999** worth of contract work in a year for a classification rating up to \$10,000,000 maximum; [and]

[viii.] **v.** [~~\$10,000,000~~] **\$12,000,000 up to \$29,999,999** worth of contract work in a year for a classification rating [of unlimited] **up to \$20,000,000 maximum;**

vi. ~~\$30,000,000 to \$49,999,999~~ worth of contract work in a year for a classification rating up to ~~\$50,000,000~~ maximum;

vii. ~~{ \$60,000,000 } \$50,000,000 or greater {to \$119,999,999}~~ worth of contract work in a year for a classification rating *of unlimited;*~~{up to \$100,000,000 maximum;}~~

{viii. ~~\$120,000,000 to \$199,999,999~~ worth of contract work in a year for a classification rating up to ~~\$200,000,000~~ maximum; and}

{ix. ~~\$200,000,000 or greater~~ worth of contract work in a year for a classification rating *of unlimited;}*

3. (No change from proposal.)

4. (No change from proposal.)

5. (No change from proposal.)

6. (No change from proposal.)

7. (No change from proposal.)

(c) (No change from proposal.)

(d) (No change from proposal.)

(e) (No change from proposal.)

(f) (No change from proposal.)

(g) (No change from proposal.)