



## **DELAWARE RIVER JOINT TOLL BRIDGE COMMISSION GUIDELINES ON CONFLICT OF INTEREST AND RECUSAL**

The following constitutes the Delaware River Joint Toll Bridge Commission's (the "Commission") Conflict of Interest and Recusal Guidelines (the "Guidelines"), as adopted by the Commission on November 29, 2004, and as may be amended from time to time by the Commission as needs arise.

### **AVAILABILITY OF GUIDELINES**

- A. These Guidelines, and any amendments or supplements thereto, apply to all Commissioners, all employees and all consultants and professionals hired by the Commission.
- B. These Guidelines, and any amendments or supplements thereto, shall be distributed to all Commissioners and all employees involved in the procurement of professional services and to the consultants and professionals hired by the Commission.
- C. These Guidelines, and any amendments or supplements thereto, shall be available at the request from any employee of the Commission.
- D. These Guidelines, and any amendments or supplements thereto, shall be available to any member of the public upon receipt of a written request to the office of the Executive Director of the Commission; and
- E. These Guidelines shall be provided to all prospective vendors as part of the materials comprising any Letters of Intent/Request for Proposals ("LOI/RFP") or Request for Qualifications/Request for Proposals ("RFQ/RFP") for professional services.

## **SCOPE OF GUIDELINES**

These Guidelines memorialize the Commission's policies dealing with conflicts of interests, for the Commissioners, employees, consultants and any other professionals retained by the Commission from time to time. It is the Commission's intent to ensure that the public confidence is maintained in the manner in which the Commission's deliberations are held and the way decisions are made. These guidelines also ensure that when a conflict of interest arises, appropriate steps are taken to ensure that the Commission is advised of the conflict. These Guidelines also provide that if a conflict arises, the party having said conflict takes appropriate steps to recuse himself or herself.

## **LEGAL BACKGROUND**

Conflicts of interest are regulated by both State and Federal law. In addition, from time to time, various Governors from the Commonwealth of Pennsylvania and the State of New Jersey have issued Executive Orders dealing with same. Ethical conduct by various public officials in Pennsylvania is dealt with in the Public Official and Employees Ethics Law, 65 Pa.C.S. § 1101 et seq. ("Pennsylvania Ethics Law"). New Jersey's Ethical Conduct as it relates to various State boards is governed by NJSA 52:13D-23 ("New Jersey Ethics Law").

The Pennsylvania Ethics Law requires each board member with a conflict of interest to:

1. Abstain from voting;
  2. Disclose the conflict of interest, both orally and in writing to the Board;
- and,
3. Abstain from any responsibility for the administration of the subject contract.

The New Jersey Ethics Law prohibits a Member or employee from having an interest, financial or otherwise, direct or indirect, or from engaging in any business or transaction or professional activity, which is in substantial conflict with the proper discharge of his or her duties in the public interest. In addition, the New Jersey Ethics Law prohibits a member or employee from using or attempting to use his or her official position to secure unwarranted privileges or advantages for himself, herself or others.

Under Federal regulations, 49 C.F.R. §1836, (B)(3), provide that no Board Member of a board receiving federal grants will participate in the selection, award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, is involved.

Because the Commission is a Bi-State Authority, none of the above laws apply directly to the Commission. Therefore, the Commission is instituting its own guidelines, taking due account of the conflict of interest laws of the respective states, as well as Federal regulations.

In order to identify and avoid any potential conflicts of interest, the following policy is hereby adopted:

#### **DEFINITION OF CONFLICT OF INTEREST**

1. A conflict of interest shall be defined as the use of an official's office to receive confidential information, which may result in the private pecuniary benefit of:
  - a. the Official;
  - b. the Official's immediate family (*i.e.* the official's parent, sibling, spouse, child, etc); or
  - c. a business with which the Official or the Official's immediate family is associated.

2. An Official shall be defined as any member of the Commission, or any employee, consultant or professional retained by the commission.

3. Associated business - An official is considered associated with a business, if he or she is a director, officer owner, employee or otherwise has a financial interest in the business.

4. Private pecuniary benefit will be defined as:

a. Engaging directly or indirectly in any business transaction or private arrangement for profit that accrues from or is based upon his or her official position, authority or employment; or,

b. Participating in negotiations of, or decisions to, award contracts, settlement of any claims or charges in any contracts, making of loans, the granting of subsidies, the setting of rates, or the issuance of permits, certificates, guarantees or other things of value, to with or for, any entity in which a Commissioner, or employee, consultant or professional hired by the Commission has any third-party financial or personal interest.

#### **RECUSAL - COMMISSIONERS**

If a member of the Commission has a conflict of interest, or will accrue a private pecuniary benefit, the following shall apply:

A. The member shall abstain from participating in any discussion of a contract in which such member has a conflict of interest.

B. The member must, prior to any vote being taken or any deliberations being held by the Commission, quickly announce his or her recusal in the public record, by way of a written memorandum to be filed with the person keeping the minutes of the meeting. Recusal shall be both oral and in writing.

C. Once the member has recused himself/herself, the member shall not participate in any discussion on said issue or contract, nor shall the member participate in any deliberations.

D. In addition, the member will be required to abstain from voting. The only exception to this requirement is if the member's abstention makes it impossible to obtain the legally required votes because of quorum requirements. In that case, Legal Counsel must certify in the minutes that there was both the need to make a decision and that time constraints required it to be made at said meeting.

### **EMPLOYEES, CONSULTANTS AND PROFESSIONALS**

With respect to employees, consultants and professionals hired by the Commission from time to time, the following shall apply:

A. No employee, consultant or professional may use his or her employment by the Commission to promote his or her private benefit ("benefit") except for remuneration paid by the Commission for the services or employment rendered. Such benefit shall be considered a conflict of interest and an adverse pecuniary interest.

B. In the event that an employee, consultant or professional finds him or herself in a conflict of interest, he or she shall immediately notify the Executive Director of said conflict and prepare a written memorandum to be in the appropriate Commission's file. To the extent, the employee, consultant or professional participates in deliberations, negotiations, recommendations of any contracts, he or she shall immediately cease involvement in same and the Commission shall utilize other employees and/or retain other consultants or professionals for any deliberations, negotiations or recommendations as the Commission deems appropriate.

C. This provision shall specifically apply to, and correlate with the Commission's Professional Services Procurement Guidelines adopted by the Commission on November 29, 2004.

### **RECOMMENDATION**

1. Any member will consult with the Commission's legal counsel as soon as he or she becomes aware of an actual or apparent conflict of interest, or if he or she has any questions as to whether a relationship or action by the member may constitute a potential conflict of interest.

2. Each employee, consultant or professional shall immediately notify the Executive Director of the Commission as soon as he or she becomes aware of an actual or apparent conflict of interest or if he or she has any questions as to whether a relationship constitutes a conflict of interest.

3. The Executive Director shall consult with legal counsel of the Commission when he or she is notified by an employee, consultant or professional of the possibility of a conflict of interest. After said consultation, the Executive Director shall notify the employee, consultant or professional whether or not he or she believes a conflict of interest has arisen.

4. If the Executive Director believes that he/she has a conflict of interest, he/she shall immediately inform the Commission's legal counsel and the Chair and Vice Chair of the Commission. The Chair and Vice Chair after consultation with the Commission's legal counsel, shall determine whether or not a conflict of interest has arisen.

5. If it is determined that a conflict of interest for a member is present, he or she shall immediately file a written memorandum with the Chair and the person responsible for taking the minutes of the Commission disclosing the nature of any conflict of interest as soon as

the member becomes aware that an actual or apparent conflict of interest existed. The member shall refer to the written memorandum publicly, announcing the conflict of interest prior to any discussions on the issues, deliberations on same, and a vote being taken. The memorandum shall be made a part of the minutes of any meeting in which a vote is taken on the matter.

6. As to employees, consultants or professionals, a written memorandum, shall be issued to the Executive Director disclosing the nature of any conflict of interest as soon as the employee, consultant or professional becomes aware that an actual or apparent conflict of interest exists. Said memorandum shall be placed in the employee's personnel files. As to the consultant or professional, this memorandum shall be made a part of the minutes of any meeting in which there is any discussion, deliberation or vote taken on the matter in conflict.

7. As to the Executive Director, if it is determined that he/she has a conflict of interest, he/she shall immediately file a written memorandum with the Chair and the person responsible for taking the minutes of the Commission, disclosing the nature of any conflict of interest as soon as the Executive Director becomes aware that an actual or apparent conflict of interest exists. The Executive Director shall not participate in any discussion of the issues in which he/she has a conflict of interest. The memorandum shall be made a part of the minutes of any meeting that any discussion on the issues take place and shall be placed in his/her personnel file.