

RESOLUTION 24-65 – AUTHORIZING THE AUTHORITY TO SEEK A WAIVER OF THE FEDERAL TRANSIT ADMINISTRATION’S BONDING REQUIREMENTS AND ISSUE BID DOCUMENTS FOR NEW VESSEL CONSTRUCTION CONTAINING MODIFIED REQUIREMENTS FOR PERFORMANCE AND PAYMENT BONDS

WHEREAS, the Delaware River and Bay Authority (the “Authority”) is a bi-state Authority of the State of Delaware and the State of New Jersey created by Compact that owns, operates and controls the Cape May-Lewes Ferry; and

WHEREAS, the Authority’s Capital Improvement Program includes a New Vessel Design and Construction project (the “project”) that will enable the replacement of one of the existing vessels at the Ferry; and

WHEREAS, the bids for the project will be solicited in 2025; and

WHEREAS, it has been the practice of the Authority to require winning bidders on all large construction contracts to provide Performance and Payment Bonds equal to 100% of the value of the contract; and

WHEREAS, the issuance of Performance and Payment bonds equal to 100% of the value of construction contracts is required under the terms and conditions of a grant for new vessel construction that the Authority has received from the Federal Transit Administration; and

WHEREAS, the issuance of Performance and Payment bonds equal to 100% of the value of the contract is not the standard industry practice in construction contracts for new ferry vessels; and

WHEREAS, the Authority is concerned that the issuance of Performance and Payment bonds equal to 100% of the value of the contract may unnecessarily reduce the number of bidders on the project; and

WHEREAS, the Authority is conducting a study to verify that a contractor’s issuance of Performance and Payment bonds at less than 100% of the value of the new vessel contract would pose minimal financial risk; and

WHEREAS, the Federal Transit Administration’s rules allow for a waiver of the 100% requirement for the Performance and Payment bonds, if the grantee specifically permits it.

THEREFORE, BE IT RESOLVED, that the Executive Director is hereby authorized to complete the study of the degree of risk posed by allowing the contractor to post Performance and Payment bonds at less than 100% of the value of the new vessel contract. Additionally, the Executive Director is authorized to seek a waiver from the Federal Transit Administration’s Performance and Payment bond requirements.

BE IT FURTHER RESOLVED, that results of the study shall be transmitted to the Board Chair and Vice Chair and Counsel. If the study demonstrates to the Chair and Vice-Chair, with

the advice and consent of Counsel, that the risk to the Authority will not rise to or above 50% of the contract price over the course of the new vessel's construction, and if the requested waiver is granted by the Federal Transit Administration, the Executive Director is further authorized to finalize bid documents for the new vessel project that contain a requirement for Performance and Payment bonds in an amount no less than 50% of the contract price.

Resolution 24-65 Executive Summary Sheet

Resolution: Authorizing the Authority to seek a waiver of the Federal Transit Administration's bonding requirement and issue bid documents for new vessel construction containing modified requirements for Performance and Payment bonds.

Committee: Projects Committee

Committee/

Board Date: December 17, 2024

Purpose of Resolution:

To authorize the Executive Director to conclude a study of the degree of financial risk posed to the Authority by requiring the contractor to provide Performance and Payment bonds at less than 100% of the contract price.

To authorize the Executive Director to seek a waiver from the Federal Transit Administration's grant terms and conditions that require contractors to provide Performance and Payment bonds equal to 100% of the value to the contract.

The results of the study shall be transmitted to the Board Chair and Vice Chair and Counsel. If the study demonstrates to the Chair and Vice Chair, with the advice and consent of Counsel, that the risk to the Authority will not rise to or above 50% of the total contract price during the course of the new vessel's construction, and should said waiver be granted, the Executive Director is further authorized to issue bid documents for new vessel construction with requirements for Performance and Payment bonds equal to no less than 50% of the value of the contract.

Background for Resolution:

The Authority intends to issue bid documents for a new ferry vessel early in 2025. Standard Authority practice heretofore has been to require Performance and Payment bonds equal to 100% of the value of the contract. In addition, the federal agency granting funds for our new vessel construction requires identical bonds of the identical (100%) value.

Standard practice in the ferry vessel construction industry is not to require 100% Performance and Payment bonds. The Authority is concerned that requiring bonds of that value may unnecessarily reduce the number of shipyards that submit bids. The Authority is conducting a study to verify that reducing the 100% number would present minimal risk.

The FTA has a provision allowing for a waiver of its 100% Performance and Payment bond requirements, if lower amounts are specifically allowed by the grantee agency. The Authority will seek such a waiver.

The resolution authorizes the Executive to complete the study and transmit the results to the Board Chair and Vice Chair and Counsel. If the Chair and Vice Chair, with the advice and consent of Counsel, determine that the risk to the Authority will not rise to or above 50% of the value of the contract price, and if the requested waiver is granted by the FTA, the Executive Director may then issue bid documents that require the winning bidder to provide Performance and Payment bonds in an amount no less than 50% of the contract's value.