

**Louisiana Transportation Authority**  
**Meeting**  
Louisiana State Capitol  
Hainkel Room  
Baton Rouge, Louisiana  
Tuesday, March 31, 2009

**MINUTES**

**I CALL TO ORDER**

**II ROLL CALL**

**Board Members Present:**

William D. Ankner

Jackie Adcock

Representative James Morris, designee of House Speaker Tucker

**Board Members Absent:**

Representative Nita Hutter

Camille Conaway

Senator Butch Gautreaux, (designee of Senate President Joel Chaisson)

Senator Joe McPherson

Kevin Davis

Stephen Grissom designee of Secretary Stephen Moret, DED

No quorum present. Secretary Ankner made some general comments. No business took place.

**III ADJOURNMENT**

Meeting adjourned.

Respectfully submitted,

William D. Ankner, Ph.D.  
Chairman

Date approved: 8-12-09

**Louisiana Transportation Authority  
Meeting**  
Louisiana State Capitol  
House Committee Room 1  
Baton Rouge, Louisiana  
Wednesday, November 19, 2008

**MINUTES**

**I CALL TO ORDER**

**II ROLL CALL**

**Board Members Present:**

William D. Ankner (arrived at 9:30 a.m.)

Camille Conaway

Senator Butch Gautreaux, designee of Senate President Joel Chaisson)

Representative James Morris, designee of House Speaker Tucker

Senator Joe McPherson

Kevin Davis

Stephen Grissom designee of Secretary Stephen Moret, DED

Jackie Adcock

**Board Members Absent:**

Representative Nita Hutter

**Speakers Present:**

Michael Bridges, Undersecretary LA DOTD

Sharon Lyles, Deputy General Counsel LA DOTD

Cheryl Duvieilh, Attorney LA DOTD

**III ADOPTION OF MINUTES FROM OCTOBER 22, 2008 MEETING**

Senator Gautreaux offered a motion to dispense with reading and to approve the minutes of the October 22, 2008, LTA meeting. No objection. All in favor, **Minutes of October 22, 2008 APPROVED.**

**IV OLD BUSINESS**

**BRIEFING ON DIRECTOR LIABILITY AND INSURANCE**

Sharon Lyles gave a briefing on the issue of director liability and insurance regarding LTA Board members. A two page document was presented to members. Ms. Lyles reported that there was a 5 million dollar cap for insurance with the Office of Risk Management for each member.

**CONSIDERATION OF RETAINER CONTRACTS, AS AMENDED EXECUTED BY THE CHAIRMAN BETWEEN THE LTA AND CONSULTANTS FOR COMPREHENSIVE STRATEGIC ADVISORY SERVICES RELATED TO LTA PARTICIPATION IN PUBLIC- PRIVATE PARTNERSHIPS**

**S. P. 736-99-1505 TranSystems Corporation**

**S. P. 736-99-1552 C. H. Fenstermaker & Associates, Inc.**

**S. P. 736-99-1554 Wilbur Smith Associates, Inc.**

**S. P. 736-99-1555 URS Corporation**

Michael Bridges, Undersecretary of LA DOTD stated that this was on last months agenda. He requested consideration and approval of the five retainer contracts. At the last meeting, LTA approved the issuance of a task order to PB Americas to assist in preparing guidelines and proposed legislation to clarify some of the PPP statute language. We are moving ahead with the retainer contract. These retainers will be assigned task orders as necessary as we receive unsolicited proposals or if the Board decides to go out and solicit proposals.

Senator McPherson questioned why so many consultants are needed to accomplish this task.

Secretary Ankner answered that when he arrived, there was an RFP that was out to select one consultant team. He stated that other states in the country have teams available as opposed to a single team, which allows for a mix of capabilities with different skills and strengths, allowing the authority to select the best team. He thought the authority would do better if we had more competition amongst the teams.

Senator McPherson clarified that the next item is to ratify the retainer contracts, which means the consultants are on retainer and there is no cost to retain these consultants.

Secretary Ankner confirmed that there is no cost associated with a consultant being retained.

Discussions then continued regarding LTA's authority, scope of P3 projects and Design Build.

Senator McPherson questioned whether when the LTA was created, that the legislature knew it was going to be this broad and used on this frequency. This is new in Louisiana. LTA is granted a lot of authority.

Secretary Ankner stated that action cannot be taken on a solicited proposal without the support of the board and committees. The board needs to approve solicited proposals. I agree that this is a new area for Louisiana and the rest of

the country. There are some states, Texas, Florida and Virginia that are in the forefront of this.

Sharon Lyles stated that the legislature last year expanded design build authority. The Department, as an executive department of the state does not have P3 authority. The only P3 authority is with the LTA. P3 stands for public private partnerships.

Michael Bridges explained that the Department has to come to the Joint Transportation Committee for approval on any design build project. The LTA has a point in the process where it has to go to the Transportation Committees, who holds a public hearing.

Senator McPherson questioned the oversight function?

Sharon Lyles stated that the statute was unclear, and thought the concept is that, before the LTA may go out for solicited proposals or even accept an unsolicited proposal, there has to be some vetting and the proposal has to go before the Joint Transportation Committee.

Senator McPherson stated that he just wanted to make a point. In my review of this, I recognized that there were some implications in the legislation. I would like to make sure that there is an oversight function. The legislature has been very conservative granting authority to do design build. The TIMED program, which has been successful, but it was not what we passed originally. It is not what the voters thought they were approving. I don't know if the road contractors and port developers understand that we are getting ready to bundle projects and I don't know how our small contractors can compete and fit in to this environment. I just want it to be stated publicly.

Kevin Davis moved to approve. The motion was seconded by Senator McPherson. All in favor of modifying the retainer contracts.

All in favor move to item 4

**APPROVED RATIFICATION OF RETAINER CONTRACTS, AS AMENDED,  
EXECUTED BY THE CHAIRMAN BETWEEN THE LTA AND CONSULTANTS  
FOR COMPREHENSIVE STRATEGIC ADVISORY SERVICES RELATED TO  
LTA PARTICIPATION IN PUBLIC- PRIVATE PARTNERSHIPS**

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## **DRAFT GUIDELINES FOR UNSOLICITED AND SOLICITED PUBLIC PRIVATE PARTNERSHIP PROPOSALS**

Michael Bridges informed the members that at the last meeting, draft guidelines were provided for P3 proposals. He introduced Cheryl Duvieilh, staff attorney, who assisted and would discuss the major points.

Cheryl Duvieilh discussed that the guidelines should be promulgated to let the public know how the authority is going to proceed with selecting a project. The first draft was about 50/60 pages, which was hard to follow, so we sat down with a consultant and we now have a second draft which is about 18 pages. We felt a lot of things in the first draft were more for a manual or discussion, not specific guidelines and could have been confusing. General provisions discuss how a project is selected by risk assessment, value, the money, and the economics behind the decision. Duvieilh discussed the choice of solicited and unsolicited proposals and the LTA's authority to select a project. The guidelines set forth negotiation procedure and the agreement form.

Cheryl Duvieilh explained that it was important for the guidelines to set forth different conflicts of interest. The second review has been performed, and time frames need to be added into the guidelines.

Secretary Ankner explained that he hoped that through the guidelines, we can develop a level of comfort within the Board as to what we are going to do and how we are going to do it and if there are things that you feel uncomfortable about or you think need further explanation. We certainly need to know that so that we are in a position that everyone on this board knows how the DOTD is going to undertake the responsibilities of this board with respect to our solicited or unsolicited proposals. If there are concerns about transparency, if there are concerns about negotiations, if there are concerns about how we are going to pay, if there are concerns about profit. If the private sector does not come in and undertake these jobs, particularly if they are financing them and they say they are not interested in the profit that has been one of the areas that has been a concern in other states. We need to be articulating those within the guidelines.

Secretary Ankner expressed a need to have a comfort level as to where we are on some of those issues, so as you go through the evaluation process, is that going to be fair as far as you are concerned? That is critical. That is why we are not looking at doing this right now in terms of getting ratification to these guidelines. We need to have your input on this.

Cheryl Duvieilh discussed the need for legislation regarding confidentiality.

Kevin Davis discussed the possibility of local governments or quasi government agencies with authority in some arena bringing forward proposals. He questioned whether there should also be verbiage of not just private entities but local governments or those other entities. He did not envision a private entity making a proposal unsolicited without the concurrence of the State of Louisiana, or without the concurrence of the local governing authority. He envisioned in some cases local jurisdiction or the people who are spearheading transportation related issues – more so than just the private sector woke up and said I want to build a highway.

Secretary Ankner stated that the guidelines did not look at the alternative of public/public partnerships. He didn't know what if any modifications there would need to be in the legislation. He thought there were ways we can work it today, probably not as efficiently as if we did it within this structure.

Senator McPherson questioned about the safeguards and confidentiality.

Sharon Lyles stated that if the LTA were presented with an unsolicited proposal, the LTA has to go out within a certain period of time for competing proposals based on what they submitted.

Senator McPherson asked who would define a project or scope of work.

Secretary Ankner explained, by example, that if there is for I-49 south an unsolicited proposal to do that and there are propriety ideas in that unsolicited proposal, the propriety ideas would not go forward but the idea of the project from a to b to construct is what the decision would be on. We would go out and advertise that and everyone would have an opportunity to come in and say how they would do a to b. We then have an opportunity to go forward with more than simply the unsolicited proposal. We could have competing proposers.

Senator McPherson questioned regarding the priority program safeguards. If it is a highway project or bridge project or port project, naturally a solicited would be within our priority program and priority rankings, but an unsolicited would have to fit into our priorities, we wouldn't just because somebody said here is a great project we would have to do it within our priority rankings.

Secretary Ankner stated in affirmation and explained that we need to be able to move that into our priority program. It does not have to be in the priority program.

Sharon Lyles stated that the project would have to be in the state wide transportation plan. It would then have to fit in. The LTA Board would have to ask, whether it should be in the state transportation plan.

Senator McPherson questioned that if it was in the priority program, you would not have to go through that exercise. If it wasn't already identified and approved by the legislature and priority program, then it would have to be ranked and brought back to the legislature?

Secretary Ankner responded, yes.

Michael Bridges clarified that we are talking about the priority program and then we are also talking about the state wide transportation plan. The state wide transportation plan was developed in 2003 in coordination with the LIIEP commission. It was a 30 year plan and is in the process of being updated right now as far as numbers, what has been completed and what has not been completed. That is the requirement; it has to be in the state wide transportation plan. Now the priority program is everything we ever thought about. So if it is not in there, then this Board can then ask the Secretary to go back and put it in, but there is a process to get that. Everything in our priority program is derived from the state wide transportation plan.

Senator McPherson questioned whether there would be an example foreseen of where State dollars would be used outside of our priority programs without legislative approval for a project.

Sharon Lyles stated, No.

Secretary Ankner stated that he didn't think he had the authority to do that. He cannot spend trust fund dollars outside of the highway and port priority programs.

Senator McPherson stated that it is as far as authorized by the legislature with Louisiana Transportation Authority. We keep belaboring the point, I just want to make sure we know the parameters and guidelines.

Secretary Ankner stated that there is a safeguard. There is no way that we can spend state money on a project that is not part of our highway priority program.

Senator Gautreaux stated that we are dealing with an issue of a toll. So none of these are in the plan that I am aware of, at least in the six parishes that I handle, in the state wide plan. So the senator, you are covered and I understand your concerns. What would happen if we wanted to build a toll road from Baton Rouge to New Orleans for example, that would come here and it would not impact your priority list or any of those things? The only other comment I would make is that I envision we would be going back to the state wide plan to add these things because they are not in them yet. I don't know of any toll roads proposed in any MPO's region around the state that went into the state plan.

Secretary Ankner stated, No. There was no toll road, but the project itself would, say the widening of 10 from Baton Rouge to New Orleans, is in the plan and 49 south is in the plan. What is not in the plan is how we are going to fund this. So, the issue is a funding issue. The private sector comes in with an idea for tolls or availability.

Sharon Lyles added that she agreed. I think the Louisiana Constitution limits the uses of Transportation Trust Fund dollars. You would have to be within the four corners of the constitutional provision.

Senator McPherson questioned that if it did not affect state dollars, and you have a municipality or police jury or some other governmental entity that wants to do a project with a private entity, why would they need to use this legislation? Why would they need to use this authority?

Secretary Ankner stated that he was unsure but expressed that the one thing that I am concerned about, the law that exists for parishes to be able to do toll roads, is the fact that you need to look at this as quarters. We cannot have parts of the system, these two parishes have tolls, these two parishes have tolls, but in the middle there are no tolls. I think that could create an absolute nightmare on our transportation system. I think this is my personal concern the way the law is right now. With respect to the state system and all. By having just one parish able to make those decisions that affects multiple parishes, that gives me a little bit of angina. I think this authority can provide an umbrella there to help make sure that the overall transportation system is also considered in that decision making.

Senator McPherson expressed concerns that the legislators have looked at where municipalities have tried to move up their projects by trying to do some up front financing through the local government and those other things and would be cautious. This is being used as a vehicle to do those things, is my only suggestion.

Senator Gautreaux responded that he didn't think that was even a possibility of local governments coming in those circumstances. But, there is a funding that was set aside for these projects so you cannot get 100%. What you can do is make a project – make something up to 2M short to make all the numbers work. You have got a toll. You may have whatever that may be but you are 2M short. That is when you would come here. My legal counsel told me that I have authority to build toll roads in St. Tammany Parish. Not state roads. These would be local connector roads. So, I certainly agree with you from your position if I tried to do a state road that connected to my neighboring Parishes, you know. From a Senator's stand point, they could be coming here asking for funding in the short fall for the toll project.

Discussion regarding use of funding for approved projects



Sharon Lyles clarified that at the moment, the only money the LTA has is the money that was dedicated from Act 11 of the 2008 2<sup>nd</sup> session through the transportation mobility fund. That is 7% of the motor vehicle sales tax and it is phased in over 7 years. So, the only appropriation that is in existence as of today is about 2 ½ million dollars and there is a restriction on using that money for anything other than the final design and construction. You cannot use it for studies. There is also as you might recall from Mr. Bridge's presentation last time, this authority has to promulgate rules and regulations on how those projects would be selected and how you would use that money which is subject to the administrative procedure act. So, we are a ways away from doing that because this authority at this moment has not adopted anything for the transportation mobility fund. The use of it at this point. Eventually, I think over time, it is I believe the figures Mr. Bridges had was around 27 million dollars, but it would be 2015 before that happens.

Michael Bridges added that one other caveat on the use of the transportation mobility fund, the qualifier for funding, it has to be either a mega project from priority list A – D of the state wide transportation plan or identified as a mega project by the LTA and recommended by the LTA to be included as a mega project.

Secretary Ankner continued with guideline discussions. The other area that we would like to see looking over the table to contents, are there things we have missed in terms of big ideas? I think one of the areas that has to improve is the conflict of interest. But as you look at this, please feel free to contact us any time with areas that we should be looking at or specifics or what we are saying. If you think we need to get greater specificity we can. We are trying to have this as more of a set of guidelines and then have the manuals and things like that become more specific directions to the unsolicited and solicited proposals. I think it is in our best interest to have documents that are protecting our rights but are perceived by the private sector as being friendly and open to them participating in this and for the municipalities and parishes to think that these are friendly guidelines for them to be able to look at the kinds of projects that LTA can undertake as something in their best interests.

Senator Gautreaux questioned whether the guidelines were modeled off an existing plan in another state?

Secretary Ankner responded that this is a compilation of what we hope are the best practices of what is happening in other states.

Senator Gautreaux questioned which states would this plan closely resemble?

Secretary Ankner responded that there were four States, Texas, Florida, Virginia and Washington State, those are four of the major P3 leaders. There are also at

the federal level national guidelines. National legislation of both design build basically as a sample of legislation and of guidelines as well. Different organizations also have guidelines on design builds and P3's. The American Engineering Association has guidelines. The people who we had helping us are familiar with those kinds of proposals and guidelines, as well as, laws in other states. We were trying to look at what are the best practices and how they apply to us so we could provide the best guidelines. In some States, there really isn't any empathy towards design build or P3's, California being one. They have tried to use their guidelines and laws to be very restrictive to limit the access. In this State, we want to be open to it so that if there are ideas solicited or unsolicited that make good sense for this State, we are in a position to be able to embrace them. Not have legal and guideline hurdles that prevent good ideas from coming to us. It is really those four States right now who are the leaders.

Senator Gautreaux requested solicitation of some comments from other states. He wants to hear about their success and their failures.

Senator McPherson suggested that we solicit input from the AGC and other authorities.

**MOTION by Senator McPherson to solicit to identifying stakeholders and get input. Representative Morris seconded. No discussion. All in favor. No opposition. Motion passed.**

Camille Conaway inquired as to whether or not the draft will be available on line and how we were going to do outreach.

Secretary Ankner stated that public skepticism is the killer for P3 from his observations around the country and conversations. I was just at the Bond Buyer Finance Conference where I was speaking in Denver yesterday. If the public is skeptical of this, if the industry and the legislature are skeptical of this, it is a killer. There needs to be a public support for this as a tool for us to be successful. Making sure that the stakeholders, as well as, the public at large and the legislature understand what we are doing is absolutely critical to the LTA's mission. I thank you for that motion and we will proceed. Is there anything else you would like to talk about concerning the draft guidelines?

Stephen Grissom clarified that there are two types of projects. One that would fit the criteria of the mobility fund and then a separate set of proposals that might not fit the criteria. So this authority would be reviewing quite a few different types of proposals, is that correct?

Michael Bridges responded that mega projects are qualified for use of the mobility fund. There can be unsolicited proposals presented that do not tap into

the mobility fund, wouldn't qualify for the mobility fund, but we could still consider them.

**IV NEW BUSINESS**

No new business

**V OTHER BUSINESS**

No other business

**VI PUBLIC COMMENTS**

No public comments

**VII DATE FOR NEXT MEETING**

Suggest later part of January and final document a week ahead of time. Washington Mardi Gras is the last week of January. First week of February?

**VIII ADJOURNMENT**

MOTION to adjourn by GAUTREAUX, SECONDED by DAVIS.

The meeting was ADJOURNED.

Respectfully submitted,

William D. Ankner, Ph.D.  
Chairman

Date approved: 8-12-09

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The Louisiana Transportation Authority may convene in Executive Session to consider one or more of these topics. Any formal action taken by the Authority will be in open, public session.

***If you need special assistance relative to the meeting or further information  
Please contact J. Michael Bridges, Undersecretary, Office of Management and  
Finance Louisiana Department of Transportation and Development 225-379-1270***