

**Florida High Speed Rail Authority
Meeting Minutes
October 3, 2002
Greater Orlando Aviation Board Room
Orlando International Airport, Orlando, Florida**

Call to Order: Chairman Frederick Dudley called the meeting of the Florida High Speed Rail Authority (FSHRA) to Order at 9:10 a.m. Members in attendance were: John P. Browning, Jr., Vice Chairman; Norm Mansour, Secretary; Lee Chira, Treasurer; C.C. “Doc” Dockery; William Dunn, P.E.; Skip Fowler, Esq.; and Leila Nodarse, P.E.; Heidi Eddins and Secretary Barry were absent.

1. Welcome and Introductions:

Chairman Dudley welcomed those in attendance and provided a brief review of the meeting agenda. He explained that a brief midday break would be taken, but that the Board would likely continue the meeting during lunch so as to complete as much work as possible. Chairman Dudley briefly discussed the strategic planning session and FHSRA Board meeting that occurred in September and he explained that a press release sent out during that time frame mis-stated the Authorities activities. Due to this, Chairman Dudley explained that press releases would no longer be issued without his prior approval.

2. Meeting Minutes from September 6, 2002:

The minutes from the previous meeting, held on September 6, 2002 were reviewed. On a motion made by Mr. Fowler and seconded by Mr. Chira, the meeting minutes were approved unanimously and without correction.

At this point, Chairman Dudley recognized Senator Lee Constantine and invited him to address the Board. Senator Constantine stated that he was happy to see the Authority meeting in Orlando and he thanked them for their hard work with regards to the HSR system.

3. Request for Proposals

A. Presentation of the September 9 Draft RFP

Mr. Haddad called the Board members attention to the Draft RFP included under tab 3.a. of the agenda package. He provided a brief review of staff and consultant activities pertaining to the RFP subsequent to the previous FHSRA meeting. Mr. Haddad stated that a vendor meeting held on September 17, 2002 has led staff to offer several changes for consideration by the Board.

Mr. Haddad stated that he would like to review these proposals prior to reviewing the RFP. Chairman Dudley agreed, but requested that the consultant staff participate in this review. He also requested a highlight of the major changes that were made to the RFP as a result of the previous FHSRA meeting.

Mr. Bottcher provided a review of the major changes incorporated into the current RFP including:

- The incorporation of Mr. Dockery's suggestions to change the cost estimate required to be provided to include a firm-fixed price for only the portions of the project that will require public funding;
- A change that limits the amount of right-of-way (ROW) to be acquired by the contractor to only those needs that are in addition to the ROW identified in the EIS. He explained that all ROW identified in the EIS would be provided by the FHSRA Authority;
- The addition of sections outlining the insurance and bonding requirements, based on input from industry specialists;
- A change defining ownership of the HSR system. In the most recent version of the RFP, the FHSRA would be considered passive owners of the system and the DBOM&F contractor would lease and operate HSR. Mr. Bottcher explained that language was also added to allow for flexibility in this area in the event of a conflict with federal regulations or to respond to a unique financing plan; and
- A relaxation of the financial detail required, given the move towards a lump sum, firm-fixed price.

B. Proposed Changes Offered by RFP Team

Mr. Haddad directed Board members attention to the information included under tab 3.b. of the agenda package. He explained that the recommended changes were grouped into two categories, the first being "substantive" changes and the second including minor editorial changes. Mr. Haddad proceeded to explain the first change regarding the addition of appendices to the document. He also explained that the final estimated RFP document including the appendices would cost \$1,300 to obtain. Mr. Haddad stated that this price covers the expenses associated with reproducing the document.

Chairman Dudley commented that he understands that this is in keeping with Florida Statutes and that copies can be requested through the Authority. He further stated that a full set of the RFP documents would be available for public review at no cost at Mr. Haddad's office in Tallahassee. Mr. Beck added that portions of the document would also be available upon request at a nominal reproduction charges. Mr. Newman added that the firm selected to complete the printing is Triangle ReproGraphics, located in Orlando, Florida.

Mr. Haddad went on to explain that there is an additional change to the appendices that is not reflected in the agenda. He stated that a "Sample Master Schedule" would be inserted before the Ridership Study information, with subsequent re-lettering as necessary.

Mr. Share commented that a letter had been received from the law firm of Broad & Cassel on behalf of the Orlando-Orange County Expressway Authority. He suggested adding this to the appendices as well, however, Chairman Dudley commented that he would prefer to re-visit this topic later in the meeting. Chairman Dudley solicited questions or comments from the Board members regarding this first item and hearing none, accepted the change as proposed.

Mr. Haddad then explained the change proposed to page 4, line 3 of the RFP, moving the mandatory Pre-Proposal meeting to October 15, 2002 in response to a previous slip in the release date of the RFP. He added that the meeting would be held at the Hyatt Hotel in Orlando, Florida. Hearing no objections, Chairman Dudley accepted the change as recommended.

Mr. Haddad went on to an amendment on page 4, line 9 of the RFP, extending the date for the commencement of revenue service to begin in 2008 rather than 2007. The FHSRA accepted the change without objection.

Mr. Haddad then explained a recommended addition to page 7, line 4 directing the FHSRA to use the DOT's Form #375-030-12 for the EIS contract when necessary. Chairman Dudley questioned whether this meant that the Authority would be responsible for the cost of additional environmental studies that might be required? Mr. Haddad responded affirmatively. The FHSRA accepted the change without objection.

Mr. Haddad went on to explain that staff recommended an amendment to page 8, line 44 that allows for delay damages for the contractor in the event that the Authority fails to acquire the ROW necessary to meet the projected construction schedule. He stated that this was proposed by contractors and endorsed by Mr. Chira at the vendor meeting. With no additional discussion, the FHSRA accepted the recommended amendment without objection.

Mr. Haddad then informed the Authority that a lengthy section was added beginning on page 11 pertaining to insurance and bonding requirements. He reminded the FHSRA that they had requested detailed consultation from insurance industry representatives and their recommendations included in the section were being offered for review. He continued to explain the requirements for insurance, surety bonds and performance bonding. Chairman Dudley asked Mr. Bottcher if he had checked to see if this section was in compliance with Florida Statutes and he replied affirmatively. Mr. Bottcher added that the banking industry would also require 100% construction bonding for the project.

Mr. Fowler questioned the reference to the construction bonds being issued in phases and whether that meant the bond would only cover a few miles of the system. Mr. Bottcher explained that the phasing would encompass a specifically identified grouping of tasks as outlined in the construction plan. Mr. Fowler questioned whether that was actually acceptable under Florida Statutes. Discussion continued and Mr. Fowler again asked how the entire system would be covered if the bonding only applies to a specific phase and Mr. Bottcher acknowledged that it would not be covered in its entirety.

Mr. Chira added that a performance bond is what will actually cover the operation of the entire system upon completion of construction. He added that it doesn't cover a circumstance where the contractor "goes bust" after only 5 out of the 10 phases are complete. Chairman Dudley added that the single identified DBOM contractor would be liable for construction and operations of the HSR system. Discussion continued and Mr. Beck stated that a warranty clause would cover this concern.

Mr. Dockery asked if insurance industry representatives were available to discuss this topic and staff replied that there were no participants at the meeting. Mr. Dockery then stated that he does not believe the market would provide an opportunity to bond the entire project and therefore the FHSRA should not require it. He continued to say that Mr. Bottcher, along with insurance industry consultants, has developed language that is reasonable within today's bond market environment and is acceptable under Florida law. If it is not, he continued, then the FHSRA must seek to change the law. Discussion continued and Mr. Chira re-stated that his primary concern continues to be in the operations more so than with the construction.

Chairman Dudley suggested that if private sector funding is used initially and the public funding is allocated for the latter stages, then perhaps the bonding requirements could simply be required for the private contribution, thus reducing the overall bonding level required. Mr. Mansour then expressed his objection to the current status of this issue at such a late stage in the process.

Chairman Dudley suggested amending section 5(c) to delete the text that reads "on a phased basis to be agreed upon with the Authority." He added that the FHSRA could return to this discussion after they have received more information from the industry specialist.

Mr. Chira offered a motion to temporarily postpone discussion regarding this amendment until additional information is received regarding insurance and bonding issues for HSR. Mr. Fowler seconded the motion and the FHSRA unanimously approved the motion.

Mr. Haddad returned to the RFP review explaining the language on page 8, line 41 adding a "Buy America" clause. Chairman Dudley asked vendors whether this would increase the overall project cost and response from the audience indicated that it would. Minor discussion occurred and consultant staff indicated that this might be a Federal requirement. Chairman Dudley commented that there is a clause requiring compliance with all Federal requirements, therefore this statement is redundant. The FHSRA Board agreed to disregard this suggestion.

Mr. Haddad explained a change to page 20, line 40 clarifying the role of the technical materials provided by the Authority in the appendices to encourage flexibility and innovation in the design of a new system. He added that a warranty statement was also added requiring compliance with industry standards. Chairman Dudley recommended

taking the two issues under separate consideration and the FHSRA members agreed. The Authority accepted lines 1 through 12 without objection.

Chairman Dudley then asked Mr. Bottcher whether such non-specific language regarding warranties would present legal concerns and Mr. Bottcher stated that he thought it would. Mr. Bottcher stated that industry standards for a warranty would be defined in the actual contract based on the proposed technology. Minor discussion continued and Chairman Dudley stated that the industry standards should be included in an appendix to the RFP.

Mr. Fowler asked whom the actual beneficiary of the warranty is with regards to equipment purchased by the contractor. He stated that in this case, the warranty is not actually a concern of the FHSRA. The FHSRA agreed to disregard the warranty statement recommended in lines 13 and 14.

Mr. Haddad went on to explain an addition to page 21, line 9, which adds maps to the appendix defining the five segments referenced in the RFP. With no additional discussion, the FHSRA accepted the recommended amendment without objection.

Mr. Haddad then explained changes recommended on page 21, lines 20-23 defining the route alternatives that would be required to be included as part of a proposal. He continued to say that the requirements include the Bee-Line and the Greenway routes on the Orlando end and the I-4 route on the Tampa end. He further explained that the EIS work would still include all five segments and four potential alternatives, but that the proposers would only be required to respond to those just mentioned.

Mr. Fowler asked whether there is an assumption that certain stations would be included or if this merely pertains to the routes. Mr. Haddad replied that this only pertains to the routes. He added that the FHSRA is only requiring three stations and the remaining station location options are at the discretion of the proposers. Mr. Fowler replied that the ridership forecasts are based on certain station locations and he questioned how the FHSRA could omit these from consideration. Chairman Dudley commented that if the FHSRA considers the additional stations in their judgment, then they are in essence dictating the stations that should be included. Mr. Fowler stated that he believes the contractors will propose stations based on economic factors rather than FHSRA preferences. Mr. Mansour commented that the proposals are intended to include the routes as well as the stations and Mr. Share concurred. Mr. Chira stated that the FHSRA has an obligation to consider all stations that might be planned to ensure that it is in keeping with the intent of an HSR system.

Lengthy discussion occurred and Chairman Dudley confirmed that only three stations were actually being required and that the FHSRA is, in no way, dictating any additional stations. Mr. Dunn added that each proposer will evaluate the costs and benefits of various alternatives and the FHSRA will ultimately be provided with a menu of options that will be available. Chairman Dudley suggested re-visiting the discussion as time permits and requested additional comments regarding the amendment under consideration. Hearing no objections, the FHSRA adopted the change as recommended.

Mr. Haddad explained the next change was recommended to page 22, line 13 regarding the relocation of utilities. Minor discussion occurred and the FHSRA accepted this change without objection. Chairman Dudley added that FHSRA staff is further authorized to make all necessary editorial changes required to the RFP based on the actions taken at this meeting.

Mr. Haddad reviewed additions to page 22, line 33 adding various reference documents to the RFP. Hearing no objections, the FHSRA adopted the change as recommended.

Mr. Haddad then explained the change to page 22, line 39 moving material from the body of the document to the appendices. Hearing no objections, the FHSRA adopted the change as recommended.

Mr. Haddad went on to explain that the changes to page 23, lines 18 to 42 also moved information to the appendices. Hearing no objections, the FHSRA adopted the change as recommended.

Mr. Haddad then reviewed additions to page 24, line 1 detailing the design review requirements and process. Chairman Dudley asked if this is a new section and what its origin was. Mr. Share explained that it was recommended by the vendors and is being offered with staff support. Hearing no objections, the FHSRA adopted the change as recommended.

Mr. Haddad reviewed the addition to page 25, line 25 to add flexibility to the ownership structure of the system and to enhance financing options under federal programs such as tax-exempt bonding. Chairman Dudley requested that the sentence be modified to read, "ownership structure of the system may be modified by the Authority to comply with federal requirements..." Discussion occurred regarding the term ownership and the actual ownership of ROW. Mr. Bottcher explained that ownership would not include ROW. Hearing no further comments or objections, the FHSRA adopted the change as amended.

At this point in the meeting, Mr. Daniel Bancroft from Marsh joined the group via conference call. Chairman Dudley requested that members refer back to the insurance and bonding items beginning on page 8 of the amendments sheet in the agenda package. He reviewed the earlier discussion regarding 100% bonding requirements outlined under sub-section (c). He stated that the FHSRA has been told that a payment and performance bond exceeding \$1.2 billion is not available in today's market and Mr. Bancroft concurred. Chairman Dudley then asked if that was the basis for adding the language pertaining to phasing. Mr. Bancroft replied that this was correct and that it was intended to add some flexibility for vendors to develop a surety arrangement that would be acceptable to the FHSRA.

Chairman Dudley asked Mr. Bancroft to comment on the possibility of limiting the requirement for a payment and performance bond to only those funds required to be

provided by the private sector. Mr. Bancroft was unable to respond to the question and instead referred to Drew Brock who was unavailable at the present time.

Mr. Fowler then asked Mr. Bancroft to estimate the largest bond value available today and Mr. Bancroft replied that the top-end surety bond is \$500 million. Mr. Fowler followed up by asking what would happen if, under a phased bonding program, the vendor goes bankrupt during the middle of the project or if the system didn't work at the end of the phases. Mr. Bancroft again deferred.

Mr. Mansour explained that some skepticism exists regarding whether the lending institutions will support this project and asked Mr. Bancroft to comment. He replied that marketing the project will be an important factor in success and the insurance and bonding section was drafted with that in mind.

Chairman Dudley explained that the HSR project falls under F.S. 25505, requiring that public projects in excess of a given amount have 100% bonding. He continued to say that the FHSRA is also concerned with setting a minimum bonding requirement that allows many vendors to qualify. In light of this, he suggested a combination of the two that might address both issues. Mr. Bancroft explained that this was the intent of sections A, B, and C is meant to cover this and he explained the content of these sections.

Chairman Dudley commented that the consideration of bonding over phases is the question facing the FHSRA and he revisited the notion of public versus private funding. Discussion continued regarding how to differentiate the public and private expenditures over the course of the project. Chairman Dudley recommended removing reference to 100% and changing the language as follows: "to the maximum extent satisfactory to the Authority based upon current market conditions and availability." Mr. Bottcher commented that this is not a substantial change and he re-stated the proposed language.

Mr. Dunn stated that he's concerned about potential protests from vendors based on a contradiction between the preferred proposal and the potential bonding capacity. Chairman Dudley stated that the bonding issue would not be addressed for quite some time after the contract award and thus would not elicit a protest. Mr. Bottcher added that there's always a chance for some type of protest, but this is not likely to be an issue. Chairman Dudley then asked Mr. Bancroft if they have located Mr. Brock and Mr. Bancroft replied negatively. Mr. Dudley then requested that Mr. Bancroft please have Mr. Brock telephone in when he is able.

Mr. Dunn asked about the public funding process and whether it would be according to a schedule. Mr. Bottcher replied that this is a DBOM&F contract, which is typically a turnkey operation requiring a lump-sum payment at the end. Mr. Share stated that he envisioned this as a progress based payment schedule. Mr. Bottcher stated that a DBOM&F usually requires a lump-sum payment, however a scheduled payment option is also available. Discussion continued and Mr. Bancroft was excused. Mr. Bottcher requested that the wording of Chairman Dudley's change be extended to say "availability and applicable statutes."

Mr. Dockery pointed out that the statutes might need to be amended to reflect current market conditions with respect to insurance and bonding. Chairman Dudley added that this is a significant public works project that was certainly not envisioned under F.S. 25505 and he concurred with Mr. Dockery's remarks. Mr. Dunn suggested that they consider the experience of the Orlando International Airport expansion project, which is approximately \$4 billion. Discussion continued and members recognized that the airport project is being built in phases that each has independent utility, unlike HSR.

Chairman Dudley returned to the agenda topic under discussion and polled FHSRA Board members for further comment. Hearing none, the FHSRA adopted the change as amended.

Mr. Haddad returned to the agenda and discussed an amendment to page 26, lines 14 and 15, adding clarification of the requirements for the electronic submittal drawings. After minor discussion, the FHSRA adopted the change without objection.

Mr. Haddad then outlined the changes recommended to page 27, lines 23 through 27 regarding the terms and conditions developed for the DBOM&F and the vendors ability to re-negotiate these. Chairman Dudley questioned the use of the term "industry standards." Brief discussion occurred and the FHSRA adopted the change without objection.

Mr. Haddad went on to explain the change to page 28, line 40 that states that the identified vendor will not be required to have executed contracts with their subcontractors prior to the execution of the DBOM&F contract. Chairman Dudley asked why the FHSRA is requesting a list of subcontractors. Mr. Bottcher explained that this would be needed to determine whether a firm is qualified to complete the project. Mr. Share agreed that this would assist members in determining the level of expertise available among a particular team. Chairman Dudley commented that the FHSRA might dislike a particular subcontractor or determine that they are not qualified. In this case, he asked, would the vendor be permitted to remove the objectionable firm and substitute another sub consultant in its place? Staff responded affirmatively. Hearing no further comments or objections, the FHSRA adopted the change as recommended.

Mr. Haddad then explained a recommended addition to page 30, line 3 regarding the management plan. He stated that requirements for the management plan had not been established during previous drafts and it is being incorporated at present. The FHSRA adopted the addition as amended.

Mr. Haddad then discussed changes to page 31, lines 5 through 19. He stated that this change requires the proposers to provide a full description of the technology being proposed in response to the RFP. Mr. Chira questioned the amendment process should a contractor decide to change their technology. Mr. Bottcher replied that a substantial change would require a re-bidding of the project. Discussion continued over what constitutes a substantial change and staff explained that this would at the discretion of the

Authority, with the original contract as the default condition. Hearing no further comments, the FHSRA adopted the change without objection.

Mr. Haddad went on to discuss the change on page 31 lines 22 through 36 removing some unnecessary language. Mr. Bottcher added that the changes to section D and E are editorial in nature. Chairman Dudley asked members for comments or questions and hearing none, the FHSRA adopted the change as recommended.

Mr. Haddad then presented the changes recommended to page 32, lines 6 through 11 clarifying that additional ROW needs required for maintenance facilities/yards and shop locations must also be included in the proposal. The FHSRA adopted the recommendation without objection.

Mr. Haddad explained the amendments to page 35, lines 23 through 27 outlining the Quality Management Plan. Chairman Dudley questioned the difference between a QMP and a quality control plan. Mr. Quandt explained that this is a generic term used in industry. Hearing no further comments or objections, the FHSRA adopted the change as proposed.

Mr. Haddad reviewed the next change on page 38, line 2, which adds a hold harmless clause for pre-existing hazardous materials found on site. He added that this is taken directly from FDOT standards. Chairman Dudley commented that it's not clear that this includes pre-existing conditions which were unknown and not caused by the contractor. Discussion continued regarding liability, containment and other contingencies with respect to the discovery of hazardous materials. Mr. Share reminded the Authority that much of the corridor is within an already disturbed corridor and therefore it is unlikely that a hazardous material will be encountered. Chairman Dudley commented that, based on the discussion, the proposal has been amended to include reference to pre-existing conditions and those not caused by the contractor. Hearing no further discussion, the FHSRA Board members adopted the recommendation as amended.

Mr. Bottcher went on to review the change recommended under page 38, lines 10 through 13 adding several agencies. The FHSRA adopted the recommendation without objection.

Mr. Bottcher then explained an amendment to page 40, lines 27 to 33 clarifying that the equity commitment be presented in the form of a letter of credit or similar means prior to the contract award. The FHSRA adopted the recommendation without objection.

Mr. Bottcher then reviewed page 41, line 43 adding a stipulation that any default by the contractor on payment of the rolling stock would allow the FHSRA to obtain possession of the equipment rather than having it repossessed. The FHSRA adopted the recommendation without objection.

Mr. Share interjected to make the FHSRA aware of a concern he had with regards to including rolling stock in the firm-fixed price option adopted by the FHSRA. He stated that the current language allows contractors to present the price of rolling stock in two

different ways and therefore he recommends that the firm-fixed price include infrastructure only, not rolling stock. Mr. Dockery agreed to this, however Mr. Bottcher stated that he doesn't see a need to change the language proposed by Mr. Dockery. The FHSRA turned to page 39 in the RFP, Chapter 7, Section 1. Mr. Share stated that vendors have a set of conditions they will recommend for developing this amount and by removing the reference to rolling stock in this paragraph, some of those conditions would be removed. Chairman Dudley offered a change to line 20 and 21 deleting "rolling stock" and adding "excluding rolling stock" to the end of the sentence. Mr. Bottcher added that the reference to procurement of rolling stock should also be removed from line 23 and Mr. Share continued that it should likewise be removed from line 26 and the words "excluding rolling stock" should be added.

Mr. Haddad commented that this seemed to indicate that the contractor would be required to fund the rolling stock. Mr. Share responded that that was incorrect. Discussion continued and Mr. Dockery explained that his intent was to provide flexibility in how the rolling stock is provided, but not to require how contractors fund the rolling stock or that they be required to provide it at their expense. Chairman Dudley directed staff to review the RFP with regards to this matter and ensure that this intent is preserved. The FHSRA adopted the amendment as discussed.

Mr. Dunn voiced his concern with regards to line 27 of that section requiring vendors to express the price in 2003 dollars. He stated that there are no escalators and therefore estimates should be made in actual dollars expected when payment is to be made. Mr. Dunn recommended removing this sentence completely and the FHSRA agreed without objection.

Chairman Dudley then thanked Mr. Dockery for a trip he had taken recently on behalf of the FHSRA and asked him to discuss the results of his visit. Mr. Dockery stated that he met with the Deputy Secretary of Transportation, Michael Jackson and FRA Administrator Mr. Ruter. At these meetings, he explained, they discussed HSR in Florida and recognized that there are no funding programs in place at the present time to support such projects. Mr. Dockery added that he was advised to coordinate and communicate with people involved in similar initiatives throughout the nation to develop recommendations for future funding programs. He added that he also met with Mr. Dyer, the staff director for Florida Senator Young and learned of additional funding that is being allocated towards the HSR project in Florida. Mr. Dockery thanked HNTB for helping set up the meeting and Mr. Share for attending with him. He noted that it was a very productive day of meetings.

Chairman Dudley adjourned the meeting at 12:20 p.m. for a brief period of time. He explained that the meeting would continue through lunch and requested that the group reconvene after only a short break. After reassembling, participants were shown a video for HSR being developed by HNTB. The group offered favorable comments regarding the educational video and Chairman Dudley requested that copies be sent to the Florida House and Senate subcommittees that deal with transportation issues.

The FHSRA then returned to a review of the substantive amendments being proposed by staff. Mr. Haddad began the afternoon session by reviewing a change to page 43, lines 19 to strike the reference to Section 341.840 Florida Statute based upon a recommendation from Mr. Chira. The FHSRA adopted the amendment as discussed.

Mr. Haddad then presented a suggestion offered by Mr. Dunn to add alternative evaluation criteria to page 47, line 9 of the RFP. Mr. Haddad explained that this was in response to vendor's requests to identify the relative importance of each criteria. Mr. Share added that this was actually developed by staff to provide some guidance to the vendors regarding the importance of various criteria. Chairman Dudley commented that the terms were vague and nonspecific and would be subject to legal challenge. Ms. Nodarse commented that she thought the criteria would be helpful, however she preferred to see safety with the highest priority.

Mr. Mansour added that this was offered as an alternative to having a point system while still offering a guide to vendors regarding what the FHSRA believes is of relative importance in the proposals. Ms. Nodarse added that it is a compromise. Mr. Mansour further explained that it provides a general idea of where the Authority is placing importance, while preserving the option for FHSRA members to ultimately select the proposal based on their own objective criteria. Chairman Dudley commented that this is subject to legal challenges and added that it does not necessarily reflect the actual priorities expressed by each Board member.

Lengthy discussion continued and Ms. Nodarse stated that expressing the selection criteria in these terms would eventually be required; therefore she advocated doing that now. Chairman Dudley replied that he sees no harm in each member using their own experience and expertise to judge the proposals and to place value in areas they believe warrant greater emphasis. He added that this does not require that they each define their assessment.

Mr. Mansour stated that he did not originally support the notion of an arbitrary weighting, however he recognizes that this is a compromise attempting to be somewhat responsive to the vendors request for guidance. He continued to say that this was not an effort to impose one member's values upon another, but rather to add more information to the same list of criteria that has existed in every version of the RFP drafted thus far.

Chairman Dudley asked if it would be appropriate for him to use his own judgment when reviewing the proposals even if the FHSRA adopt some type of mathematical formula for ranking proposals. Ms. Nodarse responded by stating that they are not considering a quantitative assessment. She continued that the Board is simply agreeing to consider certain information and are expressing a relative importance for those considerations.

Mr. Browning added that he thinks identifying a list of considerations would be beneficial, but that it does not need to be included in the RFP. He added that the relative importance of certain criteria may increase if the pricing is close, however they may seem

insignificant if the price is very different. As such, he continued, establishing this in advance may actually be misleading to the contractors.

Mr. Share commented that staff developed the list carefully and that it is consistent with previous versions of the RFP. He added that in his experience most, if not all, RFP's include some guidance regarding evaluation criteria, even if they are not weighted. Chairman Dudley replied that he would agree to consider each of the criteria, provided that there is no attempt to attach weighting or value to any of the items on the list.

Discussion continued and Chairman Dudley requested that Mr. Bottcher provide a legal comment regarding this process. Mr. Bottcher stated that there would not be a score sheet, per se, but the FHSRA members would be required to look at each proposal and rank them according to each of the criteria listed in the RFP. Chairman Dudley stated that if the FHSRA members are required to express their assessments regarding each of the criteria, could they then be asked to defend those assessments in court. Mr. Bottcher stated that they would have to defend their assessments in a court challenge regardless of what methodology they utilize. Discussion continued.

Mr. Dunn stated that he has consistently opposed the application of any weighting, however he added that he thinks a list of considerations would be helpful to members. He continued to say that he would prefer a statement be added that includes "any other criteria deemed to be of importance." Discussion continued and staff explained that some minor editorial changes and detail have been added to this section, changing it slightly from earlier versions, however the basic list is unchanged.

Mr. Dunn offered a motion to adopt the proposed list of considerations without any weighting attached. Mr. Fowler seconded the motion. The motion passed with Ms. Nodarse and Mr. Dockery voting in opposition.

Chairman Dudley excused himself from the remainder of the meeting and turned the Chair to Vice-Chairman Browning.

Mr. Haddad reviewed the final substantive amendment offered to the RFP regarding an addition to page 47, line 10 eliminating proposals that are not considered to be qualified applicants. Mr. Dunn asked when this would be accomplished and suggested that it be as early as possible after submissions are received. Mr. Bottcher agreed that a preliminary decision should be made early on and carried through the process.

Mr. Fowler questioned what figure they would provide to the legislature given that they may receive multiple proposals that include various alternatives. Mr. Bottcher explained that they may have a range of prices to consider and Mr. Fowler replied that that might not satisfy the legislature. Mr. Dockery commented that he thinks they should start floating the estimated project costs in December. He added that the actual bid prices will be important, however he thinks that discussions will already be underway regarding the funding levels necessary to begin construction on the HSR system. Mr. Fowler replied that the legitimate proposals may vary greatly and he is not clear on how the FHSRA

plans to present this to the legislature. Mr. Dockery stated that he does not anticipate bringing a proposal to them, but rather a price for what it will cost to commence construction of a HSR system in Florida. He continued to say that this figure, in terms of annual allocations for example, would be fine tuned during the session based on the discussions that occur. Discussion continued and Mr. Bottcher explained that the environmental process has a great deal of influence on the current timeline as well.

Vice-Chairman Browning returned to the basic RFP recommendation and asked for additional questions or comments. Hearing none, the FHSRA adopted the change without objection.

Vice-Chairman Browning briefly discussed the editorial changes and Mr. Haddad suggested that members review these and provide questions or comments as needed. On a motion made by Mr. Chira and seconded by Mr. Dunn, the FHSRA unanimously approved the editorial changes as recommended by staff.

C. Proposed Terms & Conditions

No additional discussion required at this point.

D. Other Proposed Changes

Deferred until after public comments are received.

E. Public Comment

Mr. Matt Barkley from Bombardier Transportation and Mr. Mitch Lester from Fluor Daniel addressed the FHSRA regarding written comments to the current RFP. Mr. Barkley emphasized portions of these written comments beginning with their suggestion to have the FHSRA provide reimbursement of predevelopment costs incurred by the contractor after the Record of Decision (ROD). He explained that these would be capped at \$2.5 million. Mr. Bottcher stated that this would not be allowed under Florida law as it is being presented. Mr. Dockery commented that he supports this request and asked Mr. Bottcher to explain how this could be accomplished. Mr. Bottcher explained that the FHSRA would enter into a contract with the vendor to perform work for the environmental documentation required, which could cover this. Discussion occurred and Mr. Share stated that the Board should be clear about what expenses this would cover.

Mr. Barkley then mentioned that they listened to the discussion regarding the evaluation criteria, however they want to stand by their earlier statements supporting the establishment of an objective set of criteria rather than a subjective methodology.

Mr. Lester then reviewed an amendment they are suggesting pertaining to ROW on page 8, line 44 and page 9, line 3. He explained that this language would omit references to “out of pocket” costs and to references regarding float in the construction schedule. Minor discussion followed.

Mr. Barkley then presented a modification to page 11 of the RFP regarding insurance and bonding requirements. He acknowledged the complexity of this issue and recommended a meeting between industry professionals to iron out the details of this section of the RFP. He added that this could be included as an amendment to the RFP if necessary. Mr. Barkley went on to discuss additional changes to the bonding section as well as the quality management plan. In closing, he requested that the FHSRA review the items included in their letter and take them into consideration.

Mr. Ralph Mervine addressed the FHSRA Board on behalf of Global Rail Consortium. He commented that they concur with the Fluor/Bombardier comments with respect to reimbursement for costs incurred and then he went on to re-emphasize their support of establishing some type of evaluation criteria to assist the board in evaluating the proposals consistently. Mr. Fowler asked if Mr. Mervine would be in favor of a ranking system that produced a final score for each firm. Mr. Mervine replied that he understands that these scores can be used to produce the desired results of the reviewer, however they do favor some type of guide or indication regarding what will be considered. Mr. Chira commented that the list adopted by the FHSRA accomplishes this.

Mr. Ron Chance from the Washington Group then addressed the FHSRA Board and stated that they stand by their original set of comments and have nothing further to add at this point. He thanked the FHSRA for providing multiple opportunities for vendor input and he requested a copy of the Fluor/Bombardier letter.

Mr. John Hoheck from the Sierra Club also addressed the FHSRA Board stating that they support the HSR alignment utilizing the I-4 corridor between Tampa and Orlando. He requested that the Board consider proposals that maximize the usefulness of HSR for the local communities of Florida. Mr. Hoheck commented that he favors the alignment connecting HSR to the Orange County Convention Center and to Disney and abandon any alignment along SR 417 (Greenway).

Mr. Daryl Oster from ET3.com, Inc. addressed the FHSRA Board in support of the vendor's request to seek re-imbursement for expenses incurred after the ROD. In addition, he voiced his opposition to the RFP change increasing the bid bond requirement.

Mr. Tom Lewis, Vice-President of Walt Disney World Company commented on Mr. Hoheck's suggestion to drop any alternatives from consideration at this point in the process. Mr. Lewis stated that dropping any alternatives from consideration might jeopardize the NEPA process and he added that he thinks the Sierra Club would be very concerned about having the FHSRA comply with all environmental regulations and requirements. He added that he believes that the FHSRA has worked diligently to reach a satisfactory compromise with regards to the route alternatives and he urged the Board to follow through with the currently adopted RFP language.

F. Approval of the RFP

Vice-Chairman Browning stated that the FHSRA would review and discuss any unresolved issues at this point and take actions as might be necessary. Mr. Share stated that there were two issues to be revisited: 1) discussion regarding the letter received by the OOCEA and its possible incorporation into the appendix of the RFP; and 2) the section on insurance and bonding.

Mr. Share explained that there is a risk associated with the use of ROW that is not adequately addressed in the RFP and he recommended that the FHSRA assume that risk rather than passing it along to the vendors. Mr. Bottcher stated that this issue is addressed in the ROW section of the RFP and Mr. Beck concurred. Discussion continued and Mr. Beck stated that there are outstanding bonds that cannot be impaired by actions of the legislature such as those being considered by the FHSRA. He added that he does not see any issues in the aforementioned letter that would be problematic to the FHSRA activities at this time. The FHSRA took no action on this item.

Mr. Chira commented on the Fluor Daniel/Bombardier recommendation to page 8, line 44 of the RFP pertaining to expenses incurred due to construction delays, not caused by the contractor. Mr. Bottcher stated that they added the provision to allow for compensation of costs incurred to the contractor due to delays caused by the FHSRA, however they intentionally limited these to the “out of pocket” costs. He added that this issue is not likely to occur, but was included as a mechanism to encourage the state to expeditiously pursue ROW acquisition. Mr. Bottcher also explained that the float typically accrues to the entity that’s subject to incur delay penalties and in this case that is the Authority rather than to the vendor.

Mr. Share offered a suggestion that in lieu of receiving additional information regarding the insurance and bonding issues, the FHSRA adopt the section as is, with the acknowledgement that it can be amended in the future, if necessary. Vice-Chairman Browning solicited input from the FHSRA members and Mr. Mansour stated that he would prefer to let the insurance professionals talk prior to making any decision on this matter. Vice-Chairman Browning replied that there is no additional time to delay action on this issue. He added that it would be reasonable to issue an amendment to the RFP with regards to the insurance and bonding after further input is received, however he indicated that a decision must be made on the RFP document during this meeting.

Mr. Chira questioned whether the FHSRA would have an opportunity to review the insurance and bonding changes if identified and staff responded affirmatively. He went on to say that, with that in mind, he favored including the recommended information as presented and putting the proposers on notice of a potential change.

In response to an earlier comment, Mr. Dunn stated that the \$10 million bid bond was changed in the RFP to a \$25 million surety bond, which would be executed by the contractor at the time of the award. He added that this is a very different scenario and that the two should not be compared.

On a motion made by Mr. Dunn and seconded by Mr. Dockery, the FHSRA unanimously approved the recommendation to incorporate the insurance and bonding section until such time that alternate language is proposed.

Mr. Dockery offered a motion to adopt the Fluor Daniel/Bombardier suggestion to add information to the RFP authorizing reimbursement of predevelopment costs to the identified proposers, after the issuance of the ROD and not to exceed \$2.5 million. Mr. Chira seconded the motion.

Mr. Fowler commented that clarification would be necessary regarding what work will be conducted under this contract. Mr. Bottcher stated that these details could easily be incorporated into the environmental services contract as well as the RFP. Vice-Chairman Browning questioned where the funds would come from to pay for this if it becomes necessary to do so. Mr. Dockery replied that it would become a part of the budget allocation for the FHSRA to complete the required work in support of an HSR system. Mr. Bottcher stated that it would become part of the 2004 budget. Discussion continued and Mr. Bottcher explained where this would be incorporated into the existing RFP. He called attention to page 6, section M of the RFP and stated that he would add to the first sentence (on line 42) "and such other predevelopment information to be reimbursed up to \$2.5 million, subject appropriation, if the Authority chooses not to proceed with project subsequent to the Record of Decision."

Mr. Dockery commented that this is the essence of his motion and he reaffirmed the motion based on Mr. Bottchers recommended language. The FHSRA approved the motion with Vice-Chairman Browning voting in opposition.

On a motion offered by Mr. Dockery and seconded by Mr. Chira the FHSRA unanimously adopted a change to page 40, line 21 inserting the words "subordinated debt" prior to the words "in-kind services."

Mr. Dunn commented that he intends to scrutinize these documents prior to the next FHSRA meeting and may offer some amendments as a result of this review. He added that there is simply too much information being presented to fully digest the details before voting on the RFP.

Mr. Bottcher commented on wording in the evaluation criteria with regards to the NEPA process and he recommended deleting the references to future phases and ancillary items. The FHSRA members adopted the recommended change without objection.

Mr. Fowler commented that he is still concerned about the RFP requirement to include complete route information, but not complete station information. He commented that they may receive proposals that have many variables associated with them and he questioned how the FHSRA members could make sound decisions without complete information on all of the variables including routes and stops. Vice-Chairman Browning replied that the FHSRA has given the contractors a great deal of information in order to

make decisions on whether or not they think it's prudent to stop at locations in addition to the three mandatory locations identified. He added that it is their choice to make based on the information available to them. Mr. Fowler followed up by saying that he agrees with the Vice-Chairman, however he is simply asking that the FHSRA stipulate that the choices be identified in the proposals.

Mr. Fowler made a motion that the RFP require the proposals include station information on the two alternative Orlando area routes for any additional stations that would be included in the as a part of the construction and operations. Ms. Nodarse seconded the motion.

Mr. Chira explained that a lengthy discussion regarding this issue occurred at the vendor workshop. He added that based on his understanding of the factors involved, he does not think that bypassing Disney is an option for HSR. Mr. Fowler commented that it is his understanding that if a stop is selected at the Orange County Convention Center, Disney has suggested that it will keep it's buses, which will certainly effect ridership. He restated his request to simply have these variables addressed by the vendors.

Mr. Dunn stated that FHSRA has indicated that the vendors should make the determination of what stops will be most beneficial and he does not think a reversal of this stance is appropriate at this point. For the purpose of clarifying the issue, Vice-Chairman Browning restated the intent of Mr. Fowler's motion to include each possible variable in the proposal for consideration by the FHSRA.

Mr. Share pointed out that the current wording in the RFP, which has been developed under consultation with the FRA, includes two routes in the Orlando are and six potential station locations. He continued on to say that this proposal would require the vendors to submit multiple alternatives for review that would likely result in a delay in the overall schedule. Ms. Nodarse acknowledged that the vendors are going to evaluate all of the possible scenarios prior to actually submitting their proposals and therefore it may be unnecessary for the FHSRA to delay the process by having these details submitted as part of the proposal.

After full consideration, the FHSRA voted unanimously against the motion.

On a motion offered by Mr. Dockery and seconded by Mr. Dunn, the FHSRA voted unanimously to adopt the RFP as amended during the meeting, including the appendices.

Ms. Nodarse reminded the board that all of the contractors represented at this meeting spoke in favor of a weighted criteria and Mr. Chira suggested that she work towards developing something for consideration at a future point in time, but to forgo making it a part of the RFP. Ms. Nodarse agreed.

5. Presentation on Orlando to Tampa Corridor

Postponed until next meeting due to time constraints.

6. Status Report on Miami to Orlando Corridor Study

Postponed until next meeting due to time constraints.

7. Staff Directors Report

A. FY 2003/04 Operating Budget Request

Mr. Haddad explained that information regarding the FY 2003/04 operating budget was included because a request must be prepared for legislative approval. He reviewed the line items included in the budget request shown under tab 7.a in the agenda package. Mr. Dunn asked which line item included the \$2.5 million that was just approved for predevelopment cost reimbursement. Mr. Haddad responded that the \$2 million under the additional EIS work would cover some of that and other staff members added that a portion would be included in the following years budget.

Discussion occurred and concern was voiced regarding whether the FHSRA could sign a contract without having the full \$2.5 million set aside in the budget to cover this contingency. Mr. Dockery commented that he thinks that it is essential to keep the predevelopment reimbursement option in the RFP and that the FHSRA must simply work to solicit the funds necessary to cover it.

On a motion offered by Mr. Chira and seconded by Mr. Dunn, the FHSRA unanimously voted to increase the FY 2003/04 Operating Budget Request to \$7.5 million.

B. Recently Executed Task Orders

This item was bypassed due to a restriction on time.

C. Status Report on Authority Expenditures

This item was bypassed due to a restriction on time.

D. Future Board Meeting Schedule

Mr. Haddad presented the current meeting scheduled for November 7, 2002 and stated that Chairman Dudley requested moving to November 15, 2002. Minor discussion occurred and Mr. Dockery stated that he has a conflict with the November 15 date. Mr. Chira suggested holding the meeting in Orlando. Mr. Dockery commented that these dates were picked in advance and each member should prioritize his or her calendars accordingly.

On a motion made by Mr. Chira and seconded by Mr. Fowler, the FHSRA voted unanimously to schedule the next meeting on November 7, 2002 in Orlando.

4. Ridership Study Status Presentation

A. Results of Highway and Airport Surveys

Mr. Bruce Williams from AECOM Consulting provided a brief presentation regarding the surveys that were conducted for the Tampa to Orlando corridor along the highway (I-4) and at the Orlando International Airport.

B. Ridership Model Structure

Mr. Bruce Williams from AECOM Consulting provided a brief presentation regarding the status of the ridership study model structure and forecasting approach.

C. Peer Review Panel Presentation

Mr. Steve Polzin provided a brief presentation regarding the peer review process including the role of the peer panel, the quality assurance elements of the process and the personnel involved in this effort. Mr. Polzin reviewed the peer panel activities that have occurred and explained that the final report would be presented to the FHSRA in November. Mr. Biggs added that preliminary information would be presented at the November meeting.

8. Public Comments

No additional public comments were offered.

9. Other Business

None.

10. Adjourn

The FHSRA solicited additional comments and hearing no further business, adjourned the meeting at 3:20 p.m.