

Florida High Speed Rail Authority
DRAFT Meeting Minutes
September 6, 2002
Mission Inn Golf and Tennis Resort
Howey-in-the-Hills, Florida

Call to Order: Vice Chairman John P. Browning, Jr. called the meeting of the Florida High Speed Rail Authority (FHSRA) to Order at 1:20 p.m. Members in attendance were: Norm Mansour, Secretary; Lee Chira, Treasurer; C.C. "Doc" Dockery; William Dunn, P.E.; Skip Fowler, Esq.; Leila Nodarse, P.E.; and Heidi Eddins; Chairman Frederick P. Dudley and Secretary Thomas Barry were absent.

1. Welcome and Introductions

Vice Chairman Browning welcomed every one and proceeded directly to the meeting agenda.

2. Meeting Minutes from August 13, 2002

The minutes from the previous meeting, held on August 13, 2002 were reviewed. On a motion made by Mr. Dunn and seconded by Mr. Fowler, the meeting minutes were approved unanimously and without correction.

Vice Chairman Browning then explained that there would be a change to the agenda to accommodate the representative from the Federal Rail Authority (FRA). Hearing no objection, Vice Chairman Browning moved to agenda item 5.

5. FRA Presentation on the NEPA and safety review process

Mr. Mark Yachmetz began by commenting that this particular environmental review schedule creates new challenges in terms of its complexity and aggressive schedule. He stated that FRA has little experience with the Design, Build, Operate, Maintain and Finance (DBOM&F) concept and therefore, they have worked closely with the FHSRA staff to develop a schedule that will help meet the constitutional requirements. Mr. Yachmetz went on to say that the FRA is expected to issue a draft Environmental Impact Statement (EIS) in July 2003, a final EIS based on the preferred alternative in December 2003 and a Record of Decision completed in March 2004.

He emphasized the FRA's concern regarding the lack of flexibility in the current time schedule. It is typical, he said, to encounter unexpected issues in this type of complex review process, and there is no room in this schedule to allow for any delay or additional analysis that may be recognized as necessary.

Mr. Yachmetz also stated that NEPA is based on a reasonable analysis of all alternatives. He commented that this is the key to the NEPA review process, and although he understands that there may be business decisions that may cause a technology to be discarded from consideration, the FHSRA must maintain at least two alternatives through the NEPA review process.

Finally, he stated that, with regards to safety, some technologies have not been recognized in federal safety regulations and therefore, a risk assessment must be performed for the selected route and the preferred technology. The appropriate DBOM&F contractor must be prepared to work closely with the FRA to accomplish this.

Ms. Eddins asked Mr. Yachmetz to explain the risks of eliminating an alternative. He replied that the litigation risk is the primary concern for any environmental review and further stated that environmental decision making is based on a great deal of case law and precedent. Ms. Eddins followed up by asking why a Rule of Particular Applicability (RPA) is still being discussed when the alignment is likely to be within an existing highway median. Mr. Yachmetz replied that the FRA recognizes that an RPA may be required for certain technologies. He further stated that this would be analogous to the process used for the Acela system in the Northeast. Mr. Yachmetz explained that the need for an RPA would be determined during the risk assessment process.

4. Letter to Disney and Orange County

Vice Chairman Browning called the Board members attention to the letter included under tab 4 of the agenda package. The letter was signed by FHSRA Treasurer Lee Chira and addressed to Mr. Richard Crotty, Chairman of the Orange County Commission and to Mr. Tom Lewis, Vice President of Transportation Development for the Walt Disney World Company. Members acknowledged the letters and Mr. Haddad stated that responses were recently received. He provided copies of the responses to the FHSRA Board members.

3. Request for Proposals (RFP)

A. Review of Third Draft RFP

Vice Chairman Browning suggested that Mr. Haddad assist the Board in reviewing the draft RFP page-by-page, outlining the changes that have been incorporated since the previous version was presented. Vice Chairman Browning explained that this document includes the motions made by the Authority during the previous meeting as well as the changes offered by FHSRA members in the interim period. He further suggested that the Board express their recommendations and objections during the review, but wait to recognize a motion for approval until the review is complete. Board members agreed with the suggestion and Mr. Haddad provided a brief review of activities that have occurred over the previous few weeks.

Mr. Haddad explained that FHSRA staff has also received letters from Washington Group/Siemans, Fluor Daniel/Bombardier and the Global Rail Consortium in response to the RFP. He pointed out that one letter was included under tab 3.a. in the agenda package and he distributed copies of the additional letters to the FHSRA. Vice Chairman Browning requested members proceed to page 5 of the document to begin the review.

Ms. Eddins asked whether there is any flexibility included in the RFP with regards to issuing an RPA if it is required. Mr. Beck replied that there is no flexibility in the schedule.

Mr. Haddad explained that the changes included on page 7 were made by FHSRA staff based on discussions at the previous FHSRA meeting requiring the DBOM&F contractor to assume the risk of ridership and O&M funding. In addition, he explained that a recommendation by Mr. Dockery was also included as an alternative to this section. Mr. Haddad also emphasized that the potential proposers have expressed their preference for the alternative presented by Mr. Dockery. Brief discussion occurred and members agreed to accept the alternative presented by Mr. Dockery.

Mr. Dunn explained the difficulty presented to vendors at the present time due to the unknown variables that exist. He suggested that the FHSRA staff estimate the costs of items such as ROW, environmental mitigation and others, since they have more information than the DBOM&F contractor at the present time. Vice Chairman Browning suggested that Mr. Dunn make a list of these and present a suggestion or motion during the next review. He then emphasized that today's review is intended to focus on the changes presented within this document and to reach some consensus on these issues rather than introduce new topics.

Mr. Haddad explained that the changes on page 8 regarding the lump sum /fixed price continue to be a concern for vendors. Vice Chairman Browning commented that he recognizes this concern and reminded everyone that this document is still in work. He stated that the Board might accept this language today with the understanding that it will continue to be refined by staff as necessary to be responsive to vendor comments.

Mr. Dunn commented that, based on the current schedule, the Board will not meet to review the document again before issuance. Mr. Share recommended that the issue date for the RFP be changed to October 7, 2002, which would allow for one more review. FHSRA members concurred with this suggestion. Mr. Bottcher also commented that item Q on page 9 should be changed to May rather than April. He explained this was a typographical error.

Mr. Haddad explained changes on page 32 and Ms. Eddins requested further detail be added to line 40. She requested that the sentence be extended to read, "may be condemned by the Florida Department of Transportation through its power of eminent domain, subject to applicable federal law."

Mr. Haddad explained that the language recommended by Mr. Dockery in essence turns over the ROW acquisition process for the identified corridor to the FHSRA rather than placing the requirement on the vendor. Ms. Eddins questioned whether the FHSRA would want to legally obligate the Authority to accomplish something that it may not be able to accomplish. Mr. Dockery replied that it transfers the responsibility for something that is expected from the vendor to the Authority. He further stated that he thinks the FHSRA will be able to accomplish this at a lower overall cost. Discussion continued and Mr. Share recommended more clarification for this section.

Mr. Bottcher stated that the group should clarify the intended concept so that staff may provide the appropriate language. Mr. Dockery explained that he intended to have the FHSRA acquire the needed ROW as identified during the NEPA process and that the vendor be responsible for acquiring additional ROW if needed to support their respective proposal. Discussion continued and Ms. Eddins commented that this might make it difficult for the FHSRA to provide a “hard” number to the Legislature since the FHSRA will be estimating a ROW value on top of a fixed bid. She also stated that she would like to see the statement “subject to applicable federal law,” added. Mr. Share further commented that they should address the risk to impacting the schedule that they assume when taking on this responsibility.

Mr. Haddad explained that the changes to section K, pages 17 through 20 would require additional consideration and detail. For example he said, the bid bond adopted during the last meeting was not well received by the vendors and should probably be reconsidered. Mr. Dunn agreed and stated that although he made the recommendation for a bid bond, after further consideration he believes it is inappropriate for this RFP. Vice Chairman Browning directed staff to remove the requirement and to continue working to refine this section of the document.

Mr. Haddad presented the language added to page 21 regarding contract duration and members discussed the recommended duration of an operations contract for 60 years as presented. Several members expressed their opposition to a 60-year duration based on information presented during the Strategic Planning session. After a brief discussion, the FHSRA members decided not to accept the proposed change to this section.

The review continued and Ms. Eddins asked FHSRA staff if they had received input from Amtrak regarding the O&M Criteria presented on page 30 and 31. She commented that this section does not appear to have sufficient detail. Mr. Share replied that more detail is expected before the document is finalized.

Mr. Haddad then explained that a section pertaining to performance standards was added to page 41. However, he stated that this section would require further revisions. Ms. Eddins commented on a sentence at the top of page 42 regarding operating speed and stated that the word “sustained” should be removed. FHSRA members agreed.

FHSRA members then discussed Chapter 7, section 1 regarding project cost estimates. Mr. Dockery presented an alternative for proposers to present a “firm fixed price” or

“lump sum figure” rather than an annual installment figure as presented during the previous meeting. FHSRA members supported the alternative language presented by Mr. Dockery. Vice Chairman Browning directed staff to incorporate that version into the next draft and present any additional recommendations they may have at the next meeting. Discussion continued and Mr. Dockery expressed his opinion that this will be the most politically successful way to secure funding for HSR.

Mr. Dockery explained that his recommendation on page 48 states that an overview of the finance plan will not be necessary. Ms. Eddins questioned whether the wording in the proposed section implies that the contractor will finance the project. Staff agreed that some editorial changes would be needed to ensure consistency throughout the document as changes occur.

Mr. Fowler questioned the reference to tax exempt financing in paragraph 3 on page 49 and Mr. Bottcher replied that the sentence begins with the words “if applicable.” Minor discussion continued and Mr. Haddad commented again that staff acknowledges editorial changes must be made. Ms. Eddins replied that removing it would take away information that the proposers were originally expected to provide. Mr. Dockery stated that he expects to see that information and Mr. Bottcher further explained that sections 1 and 2 under the Sources of Capital Funding section remain.

Mr. Haddad then explained that the FRA has suggested removing associated developments as a source of revenues since they are not going to be included in the NEPA review process. As such, he stated, lines 1 through 25 should be removed. FHSRA members agreed after minor discussion.

As the review continued, Vice Chairman Browning called the FHSRA members attention to a change regarding the Rolling Stock section on page 51. Ms. Eddins commented that she is opposed to the change because it does not specify the terms of the agreement. Members agreed to reject the alternative language and leave the section as it was.

On page 52, Mr. Dockery explained that he recommended deleting the section on equity costs to give the proposers more flexibility in their proposals. Mr. Beck recommended checking with the FRA on this change. Mr. Fowler questioned whether this was a disclosure issue and Mr. Dockery replied affirmatively. Discussion continued and members agreed to delete the section as suggested by Mr. Dockery. Further discussion clarified that the changes require additional editorial changes to page 53, subsection 3 regarding associated development and a deletion of the last sentence on page 53, subsection 4 regarding public sector subsidies.

Mr. Haddad pointed out that the changes recommended on page 55 regarding the evaluation methodology was based on a decision made by the FHSRA at the previous meeting to use a more qualitative decision making process. He wanted to remind the FHSRA however that comments made by several vendors express their preference for a more qualitative approach to the selection process. Mr. Dockery commented that those opinions were included in the letters presented to members earlier in the meeting and he

recommended further discussion of this matter occur during the vendor meetings. FHSRA members agreed to defer accepting any change at this time

Ms. Eddins questioned whether the language in this contract assures a “walk away” right for the FHSRA. Mr. Bottcher replied that this is very clear in several areas of the document. Vice Chairman Browning allowed time for each member to make a final statement regarding the review of the RFP and then he explained that the potential proposers have requested that they meet with FHSRA consultant staff and board members on September 17, 2002 at HNTB offices in Orlando to discuss their concerns regarding the RFP. Vice Chairman Browning directed Lee Chira to represent the FHSRA Board at this meeting. Additional discussion clarified that any Board member that could attend is welcomed and encouraged to participate in the vendor sessions.

On a motion made by Mr. Dunn and seconded by Mr. Dockery, the FHSRA unanimously agreed to adopt the draft RFP based on the discussion that occurred during the meeting.

B. Letter from Washington Group/Siemans

Discussed previously.

C. Public Comments

Mr. Daryl Oster, CEO of ET3 addressed the board to offer several suggestions regarding HSR. He first suggested that the bonding capacity not be required to exceed the amount of the bid in the event that it is less than \$500 billion. He then recommended that the requirement for restroom facilities be waived for trip lengths less than 20 minutes. Mr. Oster also recommended that the FHSRA consider changing the passenger capacities to a peak hour capacity or daily capacity rather than a seating requirement.

Mr. Gary Brosch, Executive Director of the Coast-to-Coast Rail Consortium addressed the board regarding the potential for securing federal funding. To this end he recommended that the FHSRA join as a member of the High Speed Ground Transportation Association. In addition, Mr. Brosch recommended that the FHSRA work with the FDOT to ensure that, under the TEA 21 reauthorization, if there is federal funding for high speed ground transportation, Florida gets its fair share.

Mr. Fowler asked if Mr. Brosch was aware of any other high speed rail projects in the nation that would compete with Florida for federal funding. Mr. Brosch commented that a project is being developed in California and Mr. Share stated that there is another project in the mid-west that could also be a competitor for federal funding.

6. Next Meeting

Mr. Haddad stated that the next meeting of the FHSRA Board is scheduled for October 3, 2002 in the Greater Orlando Aviation Authority (GOAA) boardroom located at the Orlando International Airport. After minor discussion, board members agreed to start that meeting at 10:00 a.m.

7. Other Business

No additional business was discussed.

8. Adjourn

Vice Chairman Browning asked for additional comments and hearing no further business, adjourned the meeting at 3:30 pm.