

Louisiana Transportation Authority
Meeting
Louisiana State Capitol
House Committee Room 6
Baton Rouge, LA
Thursday, November 13, 2014

MINUTES

I CALL TO ORDER

Rep. Karen St. Germain

II ROLL CALL

Board Members Present:

Senator Robert Adley
Secretary Sherri LeBas
Rep. James Morris
Senator Norby Chabert for Senator Alario
Jackie Adcock

Board Members Absent:

Ruth Johnson
Paul Sawyer

We have a quorum.

III READING AND APPROVAL OF MINUTES OF October 11, 2013

Rep. St. Germain motioned to approve the minutes and Sherri LeBas seconded the motion.

IV OLD BUSINESS

None

VI NEW BUSINESS

Rep. St. Germain: PPP Guidelines – unsolicited proposal fee

Cheryl Duvieilh – Executive Counsel for the Secretary of Department of Transportation. I am here today to briefly discuss with you a limited issue. Back in 2009 the LTA was given authority to approve and enter into contracts for public private partnership. Back then the statute required that the LTA promulgate guidelines which it did so in the latter part of 2009. What we are here

to discuss today is that a portion of the guidelines with regards to unsolicited proposal when someone can just come forward on their own and present a proposal to the authority. The guidelines stated that there would be a fee that had to be attached to this proposal and the LTA would review yearly what this fee should be and post. The LTA has never posted a fee and every year we hear about PPP's so I think it is really important that today we look at that issue and that LTA adopt a fee and DOTD will post it with the guidelines on the LTA website. Now the fee according to the PPP and as well as industry the fee is going to defer the cost of the actions of the LTA has to take in the event of an unsolicited proposal comes before the LTA. You will have to review the proposal, you have to advertise and you will have to conduct a feasibility study, so if you look at this the fee is also a good faith tender by the person submitting the fee. Now DOTD did go and look at other states such as, Nevada, Arizona, California and Virginia. Half of these states have a flat fee of \$50,000 the others have an initial fee of \$15,000 but then if they decide to take a step further then the fee goes up to \$35,000, \$45,000 or \$50,000. DOTD would recommend the LTA adopt the flat \$50,000 fee. The statute provides that if it is submitted you have to go through certain steps and therefore you don't have the deference of turning it away. You have to certain action. In light of the fact that the LTA does not have a staff and DOTD has a limited amount of employees that do innovative procurement and all those instances we have used private consultant. A private consultant would be necessary. So that is the fee that we recommend is \$50,000.

Rep. St. Germain: Have we turned down anybody because we didn't have that fee?

Cheryl Duvieilh: No. We haven't lost any. But at this point, if there is not a fee somebody submits then you will be hard pressed to turn it away because you did not see the fee and then we won't have any initial money to start the review process.

Senator Adley: At this point no one has offered up or have not received any unsolicited PPP. Is that correct?

Cheryl Duvieilh: That is correct. We have not received one to date.

Senator Adley: The other states that set the \$50,000 can you give us an example of something that someone walked in the door and said here a proposal I want to make and an example of what we may be talking about.

Cheryl Duvieilh: According to the ones I have looked at, like New York and Arizona and they are the big turnpike jobs they have now. So that is when someone can walk in and submit a proposal. The LTA has the jurisdiction of any transportation facility throughout the State of Louisiana. So it could be a port job, bridge job or huge road job.

Senator Adley: I guess what I am trying to figure out, is that, under the law of Louisiana our fees cannot exceed the cost of providing a service. So if you fix it at the flat fee of \$50,000, so are you saying, that you are taking the \$50,000 and giving it to a third party to analyze for you? How do you establish the cost to be the \$50,000?

Cheryl Duvieilh: The cost we establish it is supposed to help defer but it doesn't necessarily pay for everything. But we looked at other states that have PPP Guidelines.

Senator Adley: If someone makes an offer you are convinced that the cost will be greater than \$50,000?

Cheryl Duvieilh: Definitely. When you are looking at the average cost of a consultant or an engineer you are talking about a salary anywhere between \$230-\$250 an hour. It would far exceed the \$50,000.

Senator Adley: What's confusing here is generally when you are dealing with PPPs you are dealing with something that is beneficial to the taxpayer. I don't want to be encouraging something that is discourages people.

Eric Kalivoda, Deputy Secretary: The cost of analyzing this will be more than \$50,000. We are not trying to recoup the whole cost but at the same time we don't want people just throwing stuff at us that doesn't have much validity to it or they haven't put much of their own thought into it.

Senator Adley: I remember after Hurricane Katrina, we had a lot of proposals coming at us on the Senate floor and the House floor, people were walking in the door, etc. Some of them may have been pretty good ideas but if I looked at them and said we like to look at your idea but you have to give me \$50,000.... I don't think I will ever see that idea again.

Eric Kalivoda: I remember a lot of those too and none of those people were ever willing to put up any of their money up front. They all wanted up front public investment and no private risk, and they claimed they had all this private money waiting to be invested but they wouldn't put up and participate in any of the studies. I found that kind of strange.

Cheryl Duvieilh: You do bring up a good point, in other states, the law provides that they take an initial fee of \$15,000 and then if they go forward with certain actions that is when they collect more money.

Senator Adley: I clearly understand why you need something on the books. I don't like the flat fee of \$50,000. I prefer something much more like what you are talking about. If you have something that looks reasonable to take the first step at some reasonable cost. Take that step and if it looks like something that has

some possibility then you can take it to the next level and increase whatever that cost is to get there. That make more sense.

Rep. St. German: Having that written into a contract where if they go that step further then automatically they need to come up with more.

Senator Adley: Take some initial approach. If it looks like it has potential then we move forward, then at that point, there is an additional cost. It doesn't look real good when you say we are going to charge you \$50,000 to look at an idea you might have.

Cheryl Duvieilh: Unfortunately, when someone submits an unsolicited proposal the law says you shall advertise, you shall review and you shall have a committee.

Senator Adley: You ought too. If we have a cost associated with it then let's start out with a small amount and take it to a limited review is all I am suggesting to you in lieu of some flat big fee up front. Let's take it in steps.

Cheryl Duvieilh: I think the least you would have to do is a feasibility study to justify whether to do it or not. Unfortunately, I would have to look to the engineers. But I believe a feasibility study would cost more than \$50,000.

Eric Kalivoda: Our intent was not to recover full cost.

Senator Adley: I like the idea of the phase in. I support that and I will support the cost of the phase in all the way to what the cost is and doesn't bother me. I think you need to start out at a smaller level.

Rep. St. Germain: If they are really serious about it and it's an endeavor and they will be making money on later, I don't think they are going away if they are serious. They will find a way to work that fee and that is what the bigger companies do every day. A few of our interested parties that would be minuscule to them and that would be the ones that will be most qualified, have a vision and that are some of the ones I have spoken too.

Sen. Chabert: Going through your testimony, these are just the unsolicited proposals you are speaking of?

Cheryl Duvieilh: That is correct.

Sen. Chabert: For example, the LA 1 Coalition, they are going out to solicit a PPP on the Golden Meadow/Leeville Portion of the highway. Who would pay the fee? Will it be the LA 1 Coalition or each individual participant, because it is a coalition outside of the LA 1 Coalition of donors that donate to this particular project?

Eric Kalivoda: They are soliciting private contributions for Phase 2 and that is not quite the same as what we are talking about.

Sen. Chabert: I'm not saying that it would apply, this is the scenario, let's play it out... Let's say they just came to you unsolicited who in that scenario would pay the \$50,000. Would it be the coalition or would it actually be the donors who are contributing to that collective match.

Eric Kalivoda: In order for them to come in and make a proposal they would have to have a firm that would design this, build it, operate it, collect tolls, etc. That would be the entity that we charge the fee to.

Sen. Chabert: Ok, so in this hypothetical ABC Consulting is hired by whom.

Eric Kalivoda: So I guess it would be hired by the coalition.

Sen. Chabert: So LA 1 Coalition would be responsible for the \$50,000 fee via ABC Consulting.

Eric Kalivoda: Yes, I think that would be correct

Sen. Chabert: I didn't know if that applied to every particular participant. What happens if the public private, as we know, we are talking about a project that is broken up into phases and I believe we are going to match for each different phase, so would that have to be reapplied in another scenario?

Eric Kalivoda: I don't think it would be. If someone comes in with a project and they may have broken it into 10 different phases. Once you do the evaluation on the whole thing, I wouldn't think you would keep doing it on each phase.

Rep. St. Germain: I am looking for the verbiage that you would need for us to vote on this today to set it in place because I do not think we need to go much than today, unless you think it can.

Cheryl Duvieilh: It's just an adoption of the fee and the guidelines I don't think there needs to be a formal resolution just that the LTA has to adopt the fee. The fee \$50,000, but to what Sen. Adley stated, if you wanted to do that. I know the law requires certain things to be done and if you wanted to perhaps you can set a lower fee, but say in the event of an official feasibility study is conducted you will owe us another \$30,000, if you want to do something like that.

Senator Adley: I believe the action that we should take would be some motion to authorize you to establish a progressive fee depending on what is required to analyze it. The flat \$50,000 when you walk in the door, to me, sounds high. I think you need some progressive schedule.

Rep. St. Germain: So maybe you can share with us, like in general, increment amounts to be set by....

Cheryl Duvieilh: The states that have increment amount they base it on the value of the project. So all of them have \$50,000 for preliminary evaluation greater than \$100 million add another \$35,000. \$100-200 million add another \$60,000. \$250-\$500 million project another \$85,000.

Cheryl Duvieilh: Preliminary fee could be \$15,000 and if project is \$100 or less they would have to pay \$35,000 and that would be your \$50,000 right there.

Senator Adley: It may be less than a \$100 million. I can clearly see that and I don't object to that. I like the idea that you want to begin at \$15,000 and work through some progression like that. That makes sense. At the end of the day it makes more sense for the department in my view.

Rep. St. Germain: Do we have a motion?

Cheryl Duvieilh: California & Arizona have the graduated scale. Virginia, Nevada and Florida have the flat \$50,000.

Senator Adley: I like the \$15,000 and moving up.

Rep. St. Germain: We like your suggestion Senator Adley.

Secretary LeBas: Just to be clear you were talking about different amounts and it seems like you went above the \$50,000 with everything that you were talking about. I just want to make sure that was clear.

Rep. Morris: Before we take a vote on this, give me an instance like the \$15,000 what would kick them into the next step.

Cheryl Duvieilh: By law you have to do the feasibility study. They have the authority to take a preliminary look and reject it. Under our statute is states that if someone submits an unsolicited proposal the LTA shall do these things. That is why our position that you should charge the flat \$50,000 because you don't have the deference to turn it away.

Eric Kalivoda: We could have a 2 tiered feasibility study. Personally, I would like to look at some of these up front without spending a lot of time on it and just throw them out if they are no good.

Rep. Morris: Would that be something you would do and bring back to us?

Eric Kalivoda: Yes.

Rep. Morris: But what you are saying is that most of the feasibility studies regardless of being \$100 million or just \$1 million could cost more than \$50,000 anyway.

Eric Kalivoda: Our intent was never to try to charge them the full cost because we don't want to discourage people from submitting proposals. It was to try to prevent people from throwing ideas out there and not have any financial investment at all. The DOTD has to go through a lot of work at taxpayers' expense to analyze it so if they have to put up some money, like \$15,000 up front, and that is going to prevent some of these.

Rep. St. Germain: We don't want to miss any opportunities.

Cheryl Duvieilh: We have some pretty tight deadlines under the statute. You have to advertise for 90 days, within 30 days you have to give an idea of a schedule, advertise in 90 days and you have to take comments within 60 days. You have a tight schedule for unsolicited proposals.

Rep. St. Germain: Since the general public didn't get some of the stuff we were doing this year, we definitely we need start the process with the private people coming in to invest. That is something they don't need legislation on but we do need to do this.

Cheryl Duvieilh: Every year you are supposed to review the fee. That is what the guidelines say. The LTA will annually review the unsolicited fee and consider it and set it. So whatever you choose today, next year you can change it.

Secretary LeBas: I want to get the terminology right and I want to put forth the motion. So we can call the \$15,000 a limited feasibility and it goes into a full feasibility it would go into the \$50,000. It is my understanding that the tiers that you read are what will follow even though it eventually goes beyond the \$50,000?

Cheryl Duvieilh: Correct. Less than \$100 million it will be \$35,000. \$100-250 Million will be \$60,000, and \$250-500 Million will be \$85,000. \$500 million to 1 Billion will be \$110,000. Greater than \$1 billion will be \$135,000.

Secretary LeBas: I move to go with go with the graduated scale starting at \$15,000 a limited feasibility review and moving \$50,000 for a full feasibility review and then continuing forward with the scale that you just read into the record and put forward.

Rep. St. Germain: Secretary LeBas has motion on the floor. I have one more question.

Senator Adley: I don't have a problem with the limited review and I don't know how you establish that. What I heard it was based on the size of the project.

You don't think using the size of the project is a good way to do it? If the project is really large you will end up with fees much more than the \$50,000. Which in my view makes sense. If you have someone with a \$1 billion deal the \$50,000 will not cover the cost. I am also very concerned about the smaller transaction. I think you started at the \$100 million was like \$15,000 and then you jumped up after that. So if you passed under the fee schedule you are proposing you are going to have a limited view and a cap.

Rep. St. Germain: I misunderstood. I thought the \$100 million was \$50,000.

Eric Kalivoda: The way it was proposed it was \$15,000 for preliminary review regardless of the size of the project. The second more detailed review will be a graduated scale based on the cost of the project.

Senator Adley: Okay. That makes sense.

Rep. St. Germain: I think all is understood and under agreement and Secretary LeBas has a motion and do I have a second? Senator Adley seconds the motion so hearing no objection, so moved. Any other business.

VII PUBLIC COMMENTS

Rep St. Germain: Any public comments?

Bob Schmidt: I just wanted to say that I think this is a great thing that the LTA is taking the action to set a fee as called for by legislation that enables private sector to participate in the program for all these projects. Speaking from the private side and the things we look at, one of these things is the certainty of investment about potentially investing and risking investment of public private partnership. So the idea of a graduated scale makes sense but it is a little contrary of having certainty of whatever that investment is when the private company would be making investment decision. I would like to say when the graduated scale is adopted that is reasonable and it doesn't have any unintended consequence of setting a low fee in the beginning of perhaps some larger fee as things go along when the private company and they would say there is too much uncertainty of what is may ultimately cost us and therefore we will be a little hesitant to invest. That is contrary side to just having a flat fee where you would know what it is and you know it is not going to change along the way.

Rep. St. Germain: You have that first \$15,000 to decide if it's an worthwhile project or not and then you go to the next which is \$50,000 and by that time the ownership of that company and the people who are looking at it really should know if they want too. If it's a \$1 billion project and the \$110,000 fee they should know if they are going to get a return on that money before they ever go that far. We want the graduated for that reason. The first \$15,000 is not a deterrent. It's a worthwhile investment in something to make money. It's hard to get public

private partnerships now because we don't have a lot of things in place like we just did today. This helps move it forward.

Bob Schmidt: One of the things to consider as the rules are established, as the graduated scale kicks in, at what point in the process does the graduated fees apply. In some cases and unsolicited proposal may be for a \$5 billion project but the proposal is just to try to see if the project is worthy to get through the planning phase. So somebody is not likely to say, I would be willing to risk a \$500,000 investment because it's a \$5 billion project when we are not even sure we can get into the planning phase so that it could go to construction. Does that make sense?

Rep. St. Germain: I will let Eric or Cheryl answer that.

Eric Kalivoda: The highest scale we would have will be \$150,000 for projects that are \$1 billion or more. So that would be the top.

Rep. St. Germain: So they would know the caps already?

Eric Kalivoda: Yes

Rep. St. Germain: So do you have that Bob?

Bob Schmidt: Yes.

Rep. St. Germain: Cheryl, did you want to add something?

Senator Adley: The goal is that you can walk in the door and for \$15,000 you can get some preliminary deal and if it looks like it is worthwhile you will have a definitive idea of what it is going to cost. It is definitive to the investor and I think that part is important. So it wasn't unlimited.

Rep. St. Germain: So \$150,000 is the cap.

Cheryl Duvieilh: Yes.

Rep. St. Germain: On no matter what after \$1 billion?

Senator Adley: You spend the \$15,000 and then everyone says it is a good idea on a \$5 billion project and it will most probably cost us \$300,000 on a feasibility study and you will pay the \$150,000. I don't think that will mess up the investors. I really don't.

Rep. St. Germain: Bob, do you have any other comments.

Boy Schmidt: No.

Rep. St. Germain: Thank you for your comments. It helps to look at it from another level and just making sure we are doing the right thing. I believe we are.

Bob Schmidt: I think that's great that they are setting these rules.

Senator Adley: We think it is extremely good that someone from the private sector would show up and voice their opinion about this. That is very important.

Rep. St. Germain: Any more comments?

VIII ADJOURNED at 10:45 a.m.

Rep. St. Germain: Senator Adley moves to adjourn.

Respectfully submitted,



Sherri LeBas
Secretary-Treasurer

DATE APPROVED 1/15/2015