

MINUTES
Virginia Port Authority Board of Commissioners
Special Meeting
Capitol Building
House Room 3
1000 Bank Street
Richmond, Virginia

Wednesday, August 22, 2012

The following were in attendance:

Commissioners:

Michael J. Quillen, Chairman
James M. Boyd, Vice Chairman
Jennifer D. Aument
Scott R. Bergeron
Juliann J. Clemente
The Hon. William H. Fralin, Jr.
Frank E. Laughon, Jr.
John N. Pullen
Robert M. Stanton
Jeffrey D. Wassmer
Ting Xu
Manju S. Ganeriwala, State Treasurer

Staff:

Jerry A. Bridges, Executive Director
J. J. (Jeff) Keever, Senior Deputy Executive Director, External Affairs
Rodney Oliver, Deputy Executive Director and CFO
Jeffrey Florin, Deputy Executive Director, Operations and COO
Russell Held, Deputy Executive Director, Development
David James, Director, Contracts and Real Estate
Gregory Edwards, Director of External Affairs
Carla Welsh, Manager, Creative Services
Joe Harris, Media/Public Relations Manager
Debra J. McNulty, Clerk to the Board
Jodie L. Asbell, Deputy Clerk to the Board

Guests:

The Hon. Sean Connaughton, Secretary of Transportation
David Tyeryar, Deputy Secretary of Transportation and CFO
Matthew Strader, Assistant Secretary of Transportation
Jeffrey R. Allen, Sr. Assistant Attorney General, Chief-Transportation Sector
Norman Thomas, Assistant Attorney General-Transportation Sector
Timothy Oksman, Portsmouth City Attorney
Tony Kinn, Director, Office of Transportation-Public Private Partnerships (OTPPP)
Ryan J. Pedraza, Program Manager, OTPPP

Guests (continued):

G. Paul Nardo, Clerk of the House of Delegates and Keeper of the Rolls of the Commonwealth

John Vickerman, Vickerman & Associates

Michael Corey, Allied Barton Security Services

John Crowley, APM Terminals

Joseph A. Dorto, President and CEO, VIT

Joseph P. Ruddy, Executive Vice President and Chief Operating Officer, VIT

Regina P. Brayboy, Vice President, Administration and Financial Services, VIT

Robert Nestor, Manager, Pricing and Strategic Planning, VIT

Robert McCabe, The Virginian-Pilot

Michael Shapiro, The Daily Press

Pursuant to call by Chairman Quillen, the VPA Board of Commissioners convened an open session on this date at 10:00 a.m., in House Room 3 at the Capitol Building, 1000 Bank Street, Richmond.

Chairman Quillen announced that the next regularly-scheduled meeting of the VPA Board is on September 25, 2012. The Chairman reported that July was the best month in the history of the Port for TEUs with year-over-year tonnage up by 10.5%, from the prior three months, and up 17.6% in rail business. Chairman Quillen advised that the Port's containerized levels are reaching pre-recession numbers and that, over the last six months, the financial picture is increasingly improving and is approaching the Board's direction to profitably break-even.

Chairman Quillen commended the staff for their efforts in light of everything that has recently taken place with the announcement of the PPTA proposals and he mentioned that it was a distraction for the employees in addressing the demands for information. The Chairman remarked that it was much better to deal with congestion at the port and trains backing up due to the increased business rather than having to reduce the workforce and other issues that were addressed due to the economic downturn.

Chairman Quillen announced that VPA is working to finalize the MOU with the Virginia Economic Development Partnership (VEDP), regional economic development entities, and the railroads to generate freight and additional business for the Commonwealth. He advised that additional information would be provided as VPA progresses.

The Chairman expressed his apologies to the press with regard to the number of closed sessions scheduled. He announced that the Board would combine two closed sessions to discuss business at PMT as they both fall under the same Virginia Code exemption (Items #2 and #6). The representatives from the Attorney General's office concurred.

At the request of the Chairman, at 10:05 a.m., Mr. Bergeron read a motion to go into closed session, seconded by Ms. Clemente, pursuant to the requirements of the Virginia Freedom of Information Act and in accordance with Virginia Code §2.2-3711(A)(5), to hear a presentation by Mr. Rodney Oliver,

Deputy Executive Director and CFO, to review a lease between VPA and ecoFUELS Pellet Storage, LLC at Portsmouth Marine Terminal (PMT) and to also review business prospects for PMT.

At 11:00 a.m., upon motion by Mr. Bergeron, seconded by Ms. Clemente, and having certified that the matters discussed in the preceding closed session met the requirements of §2.2-3712 of the Code, the Board reconvened in open session.

The resolution certifying the closed session was read and passed by a roll call vote of the Board as follows:

Ayes: 12 (Aument, Bergeron, Boyd, Clemente, Fralin, Ganeriwala, Laughon, Pullen, Quillen, Stanton, Wassmer, Xu)

Nays: 0

Absent During Vote: 0

Absent During Meeting: 0

Chairman Quillen reported that the Board had agreed to approve Resolutions 12-7 and 12-8, after discussion in closed session, and he asked for a motion from the Board at this time.

ACTION: Upon motion by Mr. Fralin, seconded by Mr. Bergeron, the Board unanimously approved **Resolution 12-7**, authorizing the Virginia Port Authority's long-term lease of approximately thirteen and one-tenth (13.1) acres located at Portsmouth Marine Terminal to ecoFUELS Pellet Storage, LLC; and approved **Resolution 12-8**, approving a security surcharge amendment for bulk cargo.

The Chairman reported that the Board also discussed business opportunities for PMT and he mentioned that, with the Skanska and ecoFUELS footprint, VPA can now proceed with long-term planning for the facility. Chairman Quillen spoke on behalf of the Board and said that Commissioners were very encouraged by the progress that VPA staff have made on these recent developments considering the length of time that PMT has been empty. He advised that the ecoFUELS lease should generate positive revenue for VPA after capital improvements are completed and the company begins operations.

At 11:05 a.m., and at the request of the Chairman, Ms. Clemente read a motion to go into closed session, seconded by Mr. Bergeron, pursuant to the requirements of the Virginia Freedom of Information Act and in accordance with Virginia Code Sec. 2.2-3711(A)(28), to discuss, consider and make appropriate determinations regarding protection of VPA's financial interests and/or bargaining position with respect to possible disclosure of the memoranda, staff evaluations or other records prepared by VPA, its staff, outside advisors or consultants for evaluation and negotiation of proposals filed under the Virginia Public-Private Transportation Act (PPTA).

At 11:37, upon motion by Ms. Clemente, seconded by Mr. Bergeron, and having certified that the matters discussed in the preceding closed session met the requirements of §2.2-3712 of the Code, the Board reconvened in open session.

The resolution certifying the closed session was read and passed by a roll call vote of the Board as

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follows:

Ayes: 12 (Aument, Bergeron, Boyd, Clemente, Fralin, Ganeriwala, Laughon, Pullen, Quillen, Stanton, Wassmer, Xu)

Nays: 0

Absent During Vote: 0

Absent During Meeting: 0

Chairman Quillen asked for a motion to approve Resolutions 12-9 and 12-10, which were reviewed during the closed session.

ACTION: Upon motion by Ms. Clemente, seconded by Mr. Bergeron, the Board unanimously approved **Resolution 12-9**, authorizing Virginia International Terminals, Inc. to make available certain due diligence information needed as part of the Public-Private Partnership Transportation Act (PPTA) proposal evaluation process; and **Resolution 12-10**, regarding confidentiality of memoranda, staff evaluations and other records prepared by VPA staff, outside advisors, consultants exclusively for the evaluation and negotiation of proposals received by VPA and the Office of the Secretary of Transportation as part of the PPTA proposal evaluation process.

Chairman Quillen reported that the Board received a briefing from counsel with regard to confidentiality throughout the PPTA process and the type of information that the Board receives from VIT that is protected from public disclosure through the Freedom of Information Act (FOIA).

Chairman Quillen announced that Resolution 12-11, which was added to the agenda late yesterday afternoon, would be taken off the table and that there was no action needed by the Board with regard to the two alternative proposals that were recently received by the Secretary. The Chairman advised that he would report after the next closed session.

At 11:50 a.m., and at the request of the Chairman, Ms. Clemente read a motion to go into closed session, seconded by Mr. Wassmer, pursuant to the requirements of the Virginia Freedom of Information Act and in accordance with Virginia Code Sec. 2.2-3711(A)(28), to hear a status report by the Office of the Secretary of Transportation regarding alternative proposals under the PPTA, and discussion of same.

The Chairman asked VIT staff to leave the meeting at this time.

At 1:34 p.m., upon motion by Ms. Clemente, seconded by Mr. Fralin, and having certified that the matters discussed in the preceding closed session met the requirements of §2.2-3712 of the Code, the Board reconvened in open session.

The resolution certifying the closed session was read and passed by a roll call vote of the Board as follows:

Ayes: 12 (Aument, Bergeron, Boyd, Clemente, Fralin, Ganeriwala, Laughon, Pullen, Quillen, Stanton, Wassmer, Xu)

Nays: 0

Absent During Vote: 0

Absent During Meeting: 0

The Board took a short lunch break at this time.

Chairman Quillen reported that the Board was advised by the Secretary's office that they have accepted two alternative proposals who have met the criteria for PPTA and that they would be considered for further review. The Chairman acknowledged that there is a lot of information to review and questions to be answered when the Board considers all of the proposals for operating rights to VPA's terminals. The Chairman explained that Resolutions 12-9 and 12-10 allow the Board to be recipients of confidential information. He announced that Mr. Ryan Pedrazza would present additional information on the two new proposals.

Mr. Ryan Pedrazza, Program Manager, Office of Transportation Public-Private Partnerships (OTPPP), presented an overview of the two alternative PPTA proposals (a copy of the presentation is attached). Mr. Pedrazza announced that the two proposals were accepted by the Secretary and would be made public on OTPPP's website later today.

http://www.vappta.org/unsolicited_conceptual_ppta_proposal_brto_operate_port_of_virginia.asp

In response to the unsolicited proposal offered by APM Terminals, Mr. Ryan announced that the OTPPP received two alternative proposals in response to a Request for Alternative Proposals that was submitted by the Secretary of Transportation, in accordance with PPTA. The two additional proposers are:

- Carlyle Infrastructure Partners, L.P., the dedicated infrastructure investment team of The Carlyle Group; and
- RREEF America L.L.C., a division of the RREEF Infrastructure private investment business of Deutsche Bank AG ("DB"),

Mr. Pedrazza also provided an overview of the proposal submitted by Virginia International Terminals, Inc. and concluded with the following tentative schedule:

VPA Board Meeting Acceptance of Alternative Proposals	August 22, 2012
Notify Proposers of Alternative Proposal acceptance	August 22, 2012
Proprietary meetings and begin negotiations	September 2012
Update VPA Board	September 25, 2012
Detailed Proposals due	October 5, 2012
Update VPA Board	October 15, 2012
Announce Preferred Proposer	October 15, 2012
Brief VPA Board on major business terms	November 27, 2012
PPTA Audit complete	Late 2012/Early 2013
Financial Close	Late 2012/Early 2013

Mr. Pedrazza announced that, at any time, the Commonwealth can terminate its review of the proposals.

Chairman Quillen advised that the Board wants to move with some expediency so that there could be closure to this decision as there are a lot of customers, employees, and others who are concerned about the outcome. The Chairman advised that the Board is not tied to the projected time-line for review of proposals and that it could end at any point as they receive more information.

Chairman Quillen explained that there are a lot of unanswered questions and there will be lots of information that will come out of the assumptions made in order for the Board to make an intelligent comparison. He advised there are other matters to consider such as tax income for the jurisdictions, VIT's pension fund, and VPA's relationship with its bonding companies and debt.

The Chairman advised that the Board would not be taking any questions from the audience at this time but that he and the Secretary would be available after the meeting to speak with anyone. He explained that all of the proposals are interesting enough to spend the time and resources to go forth and continue to evaluate them as well as continue discussions with VIT.

At 1:55 p.m., and at the request of the Chairman, Ms. Clemente read a motion to go into closed session, seconded by Ms. Ganeriwala, pursuant to the requirements of the Virginia Freedom of Information Act and in accordance with Virginia Code Sec. 2.2-3711(A)(38), and pursuant to §62.1-132.4, to hear a presentation by Mr. John Vickerman, Vickerman & Associates LLC, and to review information and data furnished to the Virginia Port Authority in confidence, including but not limited to ship tally sheets, ship manifests, information relating to tonnages and cargoes, information, and annual budgets furnished to it by any entity, including but not limited to any entity operating a terminal on behalf of the Virginia Port Authority.

At 3:15 p.m., upon motion by Ms. Clemente, seconded by Mr. Bergeron, and having certified that the matters discussed in the preceding closed session met the requirements of §2.2-3712 of the Code, the Board reconvened in open session.

The resolution certifying the closed session was read and passed by a roll call vote of the Board as follows:

Ayes: 12 (Aument, Bergeron, Boyd, Clemente, Fralin, Ganeriwala, Laughon, Pullen, Quillen, Stanton, Wassmer, Xu)

Nays: 0

Absent During Vote: 0

Absent During Meeting: 0

Chairman Quillen reported that the Board heard a report from Mr. Vickerman on projections for the future and that there was a significant question and answer session with the Commissioners in order to evaluate the continuation of VIT as an operator.

The Chairman announced that there was one registered speaker for comment and he introduced Mr. G. Timothy Oksman, Portsmouth City Manager. Mrs. McNulty distributed a copy of Mr. Oksman's speech to the Board members and staff. Mr. Oksman addressed the Board on behalf of the City with regard to the potential loss of tax revenue for Portsmouth with regard to APMT's unsolicited proposal. A copy of Mr. Oksman's remarks is attached.

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Chairman Quillen thanked Mr. Oksman and he assured the City of the Portsmouth that the VPA Board would continue to be as transparent as possible throughout this process and would review the proposals with due diligence. He also mentioned the news that was presented today for additional business at PMT that will provide good opportunities for Portsmouth.

The Chairman announced that the next VPA Board meeting is scheduled for September 25, in Norfolk. He also noted that the Governor's legislative meeting is scheduled for Friday, August 24th, at the Capitol, at which time they will also receive an overview of the proposals.

At this time, Chairman Quillen announced late breaking news that the ILA withdrew from their negotiations today and are threatening to go on strike October 1.

At 3:23 p.m., and at the request of the Chairman, Ms. Clemente read a motion to go into closed session, seconded by Mr. Bergeron, pursuant to the requirements of the Virginia Freedom of Information Act and in accordance with Virginia Code Sec. 2.2-3711(A)(1), "...Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; ..."

At 4:30 p.m., upon motion by Ms. Clemente, seconded by Mr. Fralin, and having certified that the matters discussed in the preceding closed session met the requirements of §2.2-3712 of the Code, the Board reconvened in open session.

The resolution certifying the closed session was read and passed by a roll call vote of the Board as follows:

Ayes: 12 (Aument, Bergeron, Boyd, Clemente, Fralin, Ganeriwala, Laughon, Pullen, Quillen, Stanton, Wassmer, Xu)

Nays: 0

Absent During Vote: 0

Absent During Meeting: 0

There being no further comments the meeting adjourned at 4:30 p.m.

Respectfully Submitted,

Debra J. McNulty
Clerk to the Board

Commonwealth of Virginia

**PPTA Proposals Relating
to the Virginia Port Authority**

August 24, 2012



**OFFICE OF
TRANSPORTATION
PUBLIC - PRIVATE
PARTNERSHIPS**

Introduction

- In response to APM Terminals, Inc. (“APMT”) Unsolicited Conceptual PPTA Proposal, OTP3 received two Alternative Proposals:
 - Carlyle Infrastructure Partners (“Carlyle”), a division of the Carlyle Group
 - RREEF America L.L.C. (“RREEF”) a division of RREEF Infrastructure, a subsidiary of Deutsche Bank AG
- This presentation covers:
 - A review of the process
 - An overview of APMT’s Unsolicited Conceptual PPTA Proposal
 - An overview of the Alternative Proposals
 - An overview of VIT’s Business Plan
 - A review of the next steps

Process Update

- April 4 – Received Unsolicited Conceptual PPTA Proposal from APMT
- April 30 – Received addendum to APMT Unsolicited Conceptual PPTA Proposal
- May 23 – Accepted APMT Unsolicited Conceptual PPTA Proposal and issued Request for Alternative Proposals
- July 11 – Request for Alternative Proposals addendum was issued to extend deadline for submission of Alternative Proposals to August 13
- July 23 – Received second addendum to Unsolicited Conceptual PPTA Proposal from APMT which addressed concerns expressed by port customers
- August 13 – Received two Alternative Proposals (Carlyle and RREEF)
- August 13 – Received VIT conceptual business plan

Overview of APMT Unsolicited Conceptual Proposal

- APMT to operate facilities at POV for 48 years
 - Ownership of APMT-V transferred to VPA at beginning of concession
- APMT will make the following payments:
 - Fixed concession payments
 - Revenue sharing payments
 - Taxes

Values \$ million (NPV at 5%)

Payments:	
Fixed	1,100 – 1,300
Revenue Sharing	380-600
Other Considerations:	
Tax Payments	350-450
Capital Spend	650 – 830
Terminal Transfer	540
Residual Value	192
Total Value	\$3,162 - \$3,912

- All capital expenditures and most maintenance costs for all facilities
- Capital investments include construction of APMT-VA Phase II and other improvements that will be evaluated at a later time based on cargo needs

Overview of Carlyle Alternative Proposal

- Carlyle proposes to operate NIT, PMT, NNMT, VIP and APMT-VA for 48 years
 - Terminal operator to be indentified as process continues
- Carlyle’s proposal includes the following payments:
 - Upfront payment of \$250 - \$300 million
 - Annual payments of \$35 - \$45 million (indexed)
 - Annual profit sharing of 20% - 30%
- Capex and O&M plans to be discussed as more information becomes available

Values \$ million (NPV at 5%)

Payments:	
Upfront Payment	250 – 300
Fixed Payments ¹	920 – 1,183
Variable Payments	617 – 630
Total Payments	1,787 – 2,113
Other Considerations:	
Tax Payments	Not included
Capital Spend	Not included
Terminal Transfer	N/A
Residual Value	Not included

1) Assumed 2.0% inflation rate since not specified in proposal

Overview of RREEF Alternative Proposal

- RREEF proposes to operate NIT, PMT, NNMT, VIP and APMT-VA for 50 years
 - Proposal includes the purchase of VIT shares
 - Maher Terminals will operate port facilities
 - Includes first right to operate CIMT
- RREEF's proposal includes the following payments:
 - Upfront payment of \$400 million
 - Annual variable payments to cover rent payments
 - \$10 million annual services payments that grow as certain investment hurdles are achieved
 - Fixed payments that could be used to service debt
- Capital investments include improvements at PMT, NIT and development of APMT-VA Phase 2
 - Subject to APMT lease

Values \$ million (NPV at 5%)

Payments:	
Upfront Payment	400
Rent Reimbursement Payments	1,964
Services Payments ¹	824
Debt Coverage Payments ²	160
Total Payments	3,348
Other Considerations:	
Tax Payments	372
Capital Spend	942
Terminal Transfer	N/A
Residual Value	Not included

- 1) Services Payments composed of fixed and variable payments (combination of \$10 million (inflated at 2.6%) for entire concession term, additional \$10m (inflated at 2.6%) once upfront payment paid back with 2% compounded inflation and 15% of free cash flows once 10% IRR achieved
- 2) Debt Coverage Payments to service debt for 2010 Port Facility Revenue Bonds, 2011 CPF Revenue Bonds and equipment leases

Overview of VIT Proposal

- VIT was asked to submit a proposal addressing its plans to grow the Port of Virginia – not a formal PPTA proposal
- Proposal includes the immediate implementation of recommendations included in the three most recent evaluations of VIT organization and operations
- Proposal pledges to grow container volumes by an average of 6.5% over the next five years; however, does not provide plan for achieving this growth
- VIT will measure volume growth mid-year each year and adjust costs and expenses to meet budgeted cash transfers
- VIT proposal will be weighed against APMT Unsolicited Proposal and Alternative Proposals

Next Steps

Milestones	Date
VPA Board Meeting Acceptance of Alternative Proposals	August 22, 2012
Notify Proposers of Alternative Proposal acceptance	August 22, 2012
Proprietary meetings and begin negotiations	September 2012
Update VPA Board	September 25, 2012
Detailed Proposals due	October 5, 2012
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**COMMENTS OF PORTSMOUTH CITY ATTORNEY
G. TIMOTHY OKSMAN TO
THE VIRGINIA PORT AUTHORITY**

August 22, 2012

- Portsmouth has previously gone on record as determining that the APM Conceptual Proposal to lease the Port of Virginia would result in a loss of tax revenue to Portsmouth of approximately \$4,500,000 per year.
- Portsmouth is one of the most financially stressed cities in the Commonwealth, and this tax revenue loss - - if it occurs - - will have nothing short of devastating consequences on public safety, public education, the quality of life, and tax burdens on already overtaxed working families. It will adversely affect business retention and business attraction, and it will materially affect the City's overall financial condition, as evaluated by the rating agencies.
- This catastrophic revenue loss will be the result of one particular element of the APM proposal: transfer of ownership of the APM Portsmouth terminal from APM - - which is taxable private ownership - - to the Port Authority - - which would be non-taxable public ownership. The transfer of ownership would occur at the beginning of the lease, meaning that the revenue loss would also start at the beginning of the lease.
- While the Conceptual Proposal clearly indicates that there will be outright transfer *in toto* of the APM terminal to the Port Authority, information that we have received informally from APM indicates that this is not the case, and that only the subsurface land will be transferred to the Port Authority, with APM retaining ownership of all improvements above ground.
- Information about what property will remain owned by APM is vitally important to Portsmouth, in order to know what the tax revenue loss will be under the APM Conceptual Proposal (as presently structured), and the information is thus needed to lay the foundation for discussions of how the Conceptual Proposal needs to be amended in this regard.
- Portsmouth respectfully requests the Port Authority to assist in the following ways, to the extent that the Port Authority finds it appropriate to do so:
 - Call upon APM to make disclosure to Portsmouth and to the Port Authority of what property is proposed to be transferred to Port Authority ownership, and what property is to be retained under APM ownership.

- Seek revisions to the Conceptual Proposal that would make the transaction no worse than revenue-neutral for Portsmouth.
- Continue to exercise the Port Authority's power and fiduciary duty to review the APM proposal, as well as other competing proposals, carefully, deliberately, and impartially before the Port Authority decides whether to enter into any long-term arrangement for management of the Port of Virginia.
- Cause to be disclosed to Portsmouth as soon as may be practicable all other competing proposals, so that they may be properly evaluated by Portsmouth.
- Portsmouth reaffirms its previously stated official determinations that the APM Terminal is a state-of-the-art facility that has exceeded every operational, efficiency, and environmental goal, and that APM has been a model corporate citizen and has contributed in numerous ways to improving the quality of life for Portsmouth citizens.
- Portsmouth expresses its gratitude to the Commissioners of the Port Authority and to Secretary of Transportation Sean Connaughton for the great professional skill and vision they are exercising in evaluating these critically important proposals.
- Portsmouth will gladly participate in further discussion of these matters with APM, the Port Authority, and or Secretary Connaughton.