

ODOT Performance Management Oversight Committee
Somerville Meeting Room, 775 Court Street, Salem
July 28, 2016 3:30 – 5:00 pm

OPENING:

The meeting was called to order at 3:36 pm on Thursday July 28, 2016 by Chair Susan Morgan. Chair Morgan changed the agenda to: Introductions, Purpose, Emails, Public Comment and Deliberation.

PRESENT:

Advisory Members: Susan Morgan (Chair), Sean O’Holleran, Vicki Berger, Terry Beyer (phone), Mike Hollern, George Naughton, Bruce Starr (excused)

Staff: Robert Underwood

Interested Parties: Sen. Lee Beyer, Sen. Jackie Winters, Rep. Caddy McKeown, Rep. Cliff Bentz (phone), Craig Campbell, Paris Achen, Bob Russell, Marshall Coba, Steven Winn, Bryan Hockaday (phone)

PURPOSE:

Chair Morgan stated that the purpose of the meeting was to talk about the current status of the ODOT review and the potential for a useful concise review. The end result of the meeting should be for the members to make a decision about the future of the project.

INTRODUCTION:

Attendees introduced themselves.

EMAILS:

Chair Morgan read emails to the committee:

From Tammy Baney: Noted concerns about the credibility of the outcome of the current process, aggressive timeline and view of contractor as not neutral. Recommendation to not proceed. Thanks to the committee for their work.

From George Naughton: Confirmed that selected contractor, John Craig, had worked as a contractor for ODOT, but not as an employee. This was disclosed during the procurement process but did not preclude him from bidding. Requesting recommendation for how to proceed.

From Tammy Baney: Request for review made by legislators, OTC and Governor, critical that it is completed. Depending on today’s outcome, Baney intends to work with Governor’s office and DAS to rework process to meet goals and timeline.

From Bruce Starr: Unable to attend, will support decision of committee.

PUBLIC COMMENT, DISCUSSION AND DELIBERATION:

Chair Morgan invited comments on the option to continue or reset the process. Morgan has misgivings about quality of resulting report due to timeline before legislative session. Rich depth of information needed to complete report, how complete will report be in time allowed.

Sen. Beyer: Important to have quality information in a credible, independent report. Legislature wanted study due to concerns about oversight of ODOT. Concerned that report will be

questioned. Would like to see a recognized consultant, possibly through a sole source agreement. Timeline is less important than credibility.

Sen. Winters: Concurs with Sen. Beyer, integrity is important. Product should bear scrutiny of legislators and public.

Rep. McKeown: Report should be above reproach, would be helpful in '17 session to have this work product but is not critical. Issues raised today outweigh legislative timing.

Bob Russell: Foundational part of moving transportation forward, review must be above reproach to be worthwhile to public, legislators and industry. Supports committee starting the process over.

Craig Campbell: For public to increase taxes for transportation system the expectation is that money is well managed. This audit gives certainty. Delays have limited time to be thorough. Supportive of committee's direction.

Marshall Coba: Key to a successful transportation package is that this review is done well and timely. Concerned that if there is a significant package, which the American Council of Engineering Companies in Oregon support, public needs to trust that the review is credible. Washington passed a significant package, due in part to trust that the funds would be well spent. This review does not seem to be it, hopeful that something timely can be produced.

Paris Achen: Question about how this impacts the transportation package if postpone review?

Sen. Beyer: No direct impact on discussion on size of package. Legislative Committee and OTC are gathering opinion on needs around the state and have assumption that money will be well spent. Legislature will look to see ODOT operates efficiently and effectively. Request came in part from ODOT director to assist in managing department.

Hollern: Can we meet the timeline in a way that gets the product credibly?

Naughton: Concern is not quality of product but acceptability, even if the consultant meets the timeline. In a compressed timeframe we limit the number of consultants, if the timeline is longer we may have a different outcome.

Hollern: What new process do we recommend? Should committee make selection, or governor, or legislature, or a new committee? How important is it that this be done in '17 session?

Rep. McKeown: How much time is needed if a new RFP is put out, could this be done by the end of session.

Naughton: Sole source would be quicker, RFP could be 3-4 months process.

Sen. Beyer: Can we do a sole source based on limited respondents? Suggested coming up with credible people and negotiating a contract with them. Another RFP may not get very far.

Berger: There have been issues with the process from the beginning. Suggest ask Governor if this group and process is correct for this work. Another RFP is likely to bring same issues again, let Governor and Legislative leadership make decision rather than OTC. Lose credibility when OTC runs review of OTC agency.

Rep. Bentz: Credibility is everything, supports that we stop and move forward with someone that is beyond reproach.

O'Holleran: Objective is to look at ODOT's decision making process, financial transactions and transparency, focused on processes within department and if the OTC is in a proper oversight role. Regardless if review is completed before transportation package, as was intent so could address issues within legislative package if needed, there will be other opportunity to address issues. Federal agencies have Inspector General to review practices, decisions, budgets and contracting with transparency. We do not have this at the OTC or ODOT so we need to do this work periodically to see what we do well, could do better and highlight improvements. The need for the work remains, to restore credibility when we talk about how OTC oversees ODOT.

Sen. Beyer: It is important to ODOT, legislature, public and the future of transportation that we do this review right. Value in changing timeline to do this well.

Naughton: Important to do review. If we go to another RFP we could have same concern of credibility, how do we set up the review panel to ensure credibility?

Rep. Winters: To get through legislature the review needs credibility, very important to Ways and Means that the review is credible and has no cloud.

Hockaday: The governor is confident that a thorough and independent review of ODOT will be helpful as we continue to have conversations about the transportation package.

O'Holleran: Can we go back to the runner up?

Chair Morgan: 7-9 companies showed up to pre-bid conference, only 2 bid due to compressed timeframe. The goal of a credible product in time for the next session is receding, complexity of questions being asked and audience goals being met may need systemic discussion before can solicit responses.

Sen. Beyer: OTC and ODOT are most important audiences, to help make management decisions and ensure credibility with the public and legislators.

Chair Morgan: Hearing strong consensus to stop and reset the process *(agreed by members)*.
Decision made to reset the process and not continue with current path.

What are the goals and audience and how do we make the review most useful for the public and legislators in addition to ODOT and OTC, we need to meet needs of all through clear process. Discussion of who will lead and be responsible for this review. What is the role of Governors office, DAS, Legislature, OTC, these have been unclear.

Sen. Beyer & Rep. McKeown: See this as an Executive and not a Legislative function.

Sen. Winters: This is between the OTC and the Governor's office.

O'Holleran: There are options within potential vendors, we should assess in consultation with Governor's office then reconvene. Questions we want to have answered remain the same.

Hollern: Are there more options with a longer timeline? Governor needs to appoint a credible committee, which may be this one, and the committee should make the decision on the contractor using DAS support services, independent of the OTC. There should be more opportunity for public input in the review, did not see it in the work plan. The public needs to have an opportunity to speak to this.

Chair Morgan: ODOT is present across the state, to get a good amount of feedback on how it is doing on accountability, decision making, correct use of money, listening to stakeholders, will take a big outreach effort. Balance between timeliness and quality of feedback, input and analysis needs to be thought about. Have a problem with quickness of review and depth of analysis.

Sen. Winters: Heard from State of Washington at a conference about their ability to pass a transportation package, did they have an audit and who did it? This is worth looking into.

Naughton: Hearing a desire to pursue sole source option, and the unselected proposer to complete a product before the end of the legislative session. If neither is viable is it preferred to not do a review, or take more time? Another option is to scale back the review to save time. Consultants are balancing option of doing review as they want to take on contracts after the review.

Hollern: Can a sole source lead to a credible outcome?

Sen. Beyer: The question is can it be done legally and do we have time and how much will it cost.

O'Holleran: Catalogue options: can we sole source, can we go back to second choice. If we extend timeline will we attract more bidders? Need to know options before comeback together and make a decision.

Chair Morgan: Proposal: Transcribe minutes, which will be report to chair of OTC, and the Governor's office. Request that DAS answers questions where we want more information. Reset process and continue forward, do not want to waste time.

O'Holleran: We want a credible product in the most expeditious timeline possible to get that product. Don't want to sacrifice credibility to be expeditious.

Chair Morgan: The structure of the process is part of the conversation between DAS, OTC and Governor.

Rep. Bentz: Review is extraordinarily important to the transportation package, legislators working on the transportation package are supportive of the effort. Not enthusiastic about taking legislators out of the process as they are left in the position of taking the Governor's word that the review is good enough.

Sen. Beyer: Disagree, legislators are limited in involvement. Have asked Governor to make an independent review of ODOT, and offered a list of questions. The process of selecting a review is an executive function.

Rep. Bentz: Agreed, the transportation package should have something in it to assure the voters that the suggestions of the independent auditor are being incorporated. Not suggesting legislators be involved in the review, but need to figure out the nexus between this process and the transportation package.

Sen. Beyer: This is resolved if there is a process underway when we go into session.

Rep. Bentz: Perhaps.

Rep. McKeown: The review and transportation package are on parallel paths, they are important to one another but where they cross, before or after bill, the work will get done, credibility will be demonstrated and agency will make adjustments needed.

Naughton: We can look at options in the next week, sole source and other contractors, opening to a broader group of contractors will take more time.

Chair Morgan: Caution against going with another vendor before we get systemic questions figured out. If we can take things off the table that won't work we can focus on what is possible.

Coba: Sen Ferrioli's email to me expressed concern in who was chosen and not in the process. How cold is the trail, can we go to the number two proposer, was the score close.

Chair Morgan: Let's take a look at that as part of the analysis.

Sen. Winters: We have options, Naughton will come up with options around sole source and second place bidder. Important to go forward in a way that doesn't shorten product, and give us something we can be proud of and that the credibility is there. Tax increases are easier to talk about with credibility.

Chair Morgan: Thanks to participants for their input. Report will go to DAS, OTC and Governor's office with our plans.

CLOSING

The meeting was adjourned at 4:55pm.