

**Southside Network Authority  
Summary Minutes  
November 12, 2021**

The November 12, 2021 meeting of the Southside Network Authority (SNA) was called to order by Chair Susan Vitale at 2:06 PM with the following in attendance:

**Southside Network Authority Voting Members in Attendance:**

Susan Vitale, Chair, CH	Albert Moor, SU
Andria McClellan, Vice-Chair, NO*	Daniel Jones, PO
Rosemary Wilson, VB	

**Other Participants:**

Steven DeBerry, SNA Executive Director	Catheryn Whitesell, Alternate NO
Robert Crum, HRPDC Executive Director	Matthew DeHaven, CTC Technology & Energy
Regina Chandler, Alternate SU	Kevin Rotty, PFM
Scott Fairholm, Alternate CH	Mary Francoeur, PFM
Peter Wallace, Alternate VB	Mike Garber, PBMares
Mike Lockaby, Guynn, Waddell, Carroll & Lockaby, PC	

\*Indicates late arrival or early departure

**Others Recorded Attending:**

Ellen Bergren (City of Chesapeake); Andrew Fox (City of Norfolk); James “Trey” Burke and Kelsey Swieringa (City of Portsmouth); Karla Carter (City of Suffolk); and Kelli Arledge, Rob Cofield and Chris Vaigneur (HRPDC Staff).

Chair Susan Vitale thanked everyone for their attendance at today’s meeting and requested Mr. Robert Crum, HRPDC Executive Director, call the roll to determine Authority members’ attendance and asked that others attending the meeting introduce themselves.

**Approval of the Agenda**

Chair Vitale called for a motion to approve the agenda. Ms. Andria McClellan Moved to approve the agenda as presented; seconded by Ms. Rosemary Wilson. The Motion Carried.

**Public Comments**

Chair Vitale invited members of the public to address the Southside Network Authority. There were no public comments.

**Submitted Public Comments**

There were no submitted comments.

## **Approval of the Minutes**

Chair Vitale called for a motion to approve the Minutes of the September 10, 2021 meeting of the Southside Network Authority. Mr. Daniel Jones Moved to approve the minutes; seconded by Ms. McClellan. The Motion Carried.

## **Presentation of Audit Results**

Chair Vitale introduced Mr. Mike Garber of PBMares, LLP to present the results of the annual financial audit of the Southside Network Authority.

Mr. Garber reported that this year's audit was for 13 months since there were some transactions in June of 2020. He noted the Independent Auditors' Report states that the statements present fairly, in all material respects, the basic financial statements of the SNA. There were no material weaknesses or deficiencies identified in any of the internal controls or processes of the financial activity, and all information was free of any material misstatements. Mr. Garber made mention of one minor compliance finding that was reported to management and subsequently fixed within 24 hours. He directed the Authority's members to a second separate document that describes the audit standards and procedures PBMares follows. The document also makes note that the auditors had no issues with performing the audit; all inquiries were addressed and all documents requested were provided to the audit team.

Chair Vitale called for a motion to approve the financial statements. Ms. Wilson Moved to approve the FY 2021 Audited Financial Statements; seconded by Mr. Albert Moor. The Motion Carried.

## **Regional Connectivity Ring Project Update**

Mr. Steven DeBerry, SNA Executive Director, provided a project update and status report on the Regional Connectivity Ring (RCR). Mr. DeBerry reminded Authority members that the Board decided upon a dual strategic path – one in which the SNA would fund the construction and then outsource operations, and the other was a public-private partnership (P3) turnkey option where the RCR would be funded and operated by a private entity.

Over the past year, the SNA went through a very detailed process facilitated by CTC, the Authority's legal counsel and the cities' Chief Information Officers. A number of business case analyses were reviewed. Mr. DeBerry recapped that the SNA prequalified seven vendors and then released an Invitation for Bid (IFB) looking for actual construction bids. Six bids were received. Cox Communications was the lowest bid for construction with a total construction and material bid of just under \$18 million. Danella Construction was the second lowest with a bid of approximately \$24.5 million. Mr. DeBerry reported the proposal review team is ready to make a recommendation to issue a Notice of Intent to Award to Cox Communications and a second to Danella Construction as a back-up. Additionally, it is requested that the Board authorize the executive director to negotiate an extension of bids, as they expire at the end of November.

Mr. Moor asked Mr. DeBerry if he saw any chance for, or expectation of, protest from other bidders. Mr. DeBerry noted that, yes, that is a possibility. However, the process was very

straight-forward in that the vendors were prequalified and the SNA would be responsive to the lowest bid.

Ms. McClellan asked under what circumstances would it be necessary to go to the number two bidder. Mr. Mike Lockaby, SNA Counsel, noted once the Authority issues the notice of intent to award, the contractor has 10 days to undertake certain actions, and the Authority has 10 days to respond to that. If nothing happens within the required timeframe, the Authority would then move to the next bidder. Mr. Lockaby stated it was clear that Cox was the number one bidder, and it is recommended to proceed with them; however, if negotiations breakdown with Cox, it is recommended that the SNA move to Danella.

Mr. Jones inquired if there had been any conversations with the bidders regarding price increases or would today's action by the SNA authorize that conversation. Mr. DeBerry confirmed that he would initiate those conversations after today's meeting.

Mr. DeBerry continued with his presentation stating that beyond building and operating the fiber network, there is also marketing, accounting, etc., which was the second part of the dual-path strategy. That process was to look specifically at entering into a public-private partnership arrangement (P3) whereby the SNA would receive qualifications and conceptual proposals from outside contractors who would actually design, build, finance, operate, manage, and market some or all of the fiber ring. Four conceptual proposals were received. After interviews and follow-up questions of one potential partner, the selection committee is recommending the SNA enter into the detail phase of negotiations with GTS to maintain, operate and market the fiber ring. As a contingency process, Mr. DeBerry noted that if the negotiations do not work with GTS, the SNA would release an operations and marketing RFP.

Chair Vitale thanked Mr. DeBerry and the SNA members for their work over the past three to four years to accomplish what was put forth in today's recommendations.

### **Status Update Regarding Cost-Sharing**

Chair Vitale introduced Ms. Catheryn Whitesell, City of Norfolk Deputy City Manager, to provide an update of the cost-sharing options.

Ms. Whitesell noted that she had been working closely with the city budget directors to determine potential financing strategies for the fiber network. The group wanted to identify straightforward options for paying for not only the construction of the ring itself, but that it could also be scalable and repeatable as the SNA adds other cities in additional phases of the project going forward. The team then looked beyond the construction phase into options for cost-sharing for operational issues and revenue sharing. Ms. Whitesell pointed out that they wanted to avoid the SNA issuing debt.

Continuing, Ms. Whitesell noted that all of the five cities currently have some unique opportunities that may make cash funding the project possible. However, each budget director was adamant that the SNA leave it up to the locality to determine how to pay for its respective share. It was also recommended by the budget directors that the SNA provide for a "sinking fund" to address long-term replacements and upgrades to the fiber network so that the SNA does not have to go back to the cities for funding.

The two options proposed by the budget directors were 1) equal partners; and 2) investors. In the equal partners option, the five Southside cities would share equally in control, construction, operations and revenues. With the second option – investors – each city would buy “shares” in the SNA. Control, construction, operations, access to fiber and revenues would be allocated based on the shares purchased. In looking at the five equal partners (cities), it would require a contribution of approximately \$5 million to \$6 million. Ms. Whitesell noted that with the Cox bid coming in so low, the SNA may want to have some cushion for change orders and similar issues going forward. In both options, she reported there may some opportunity to do in-kind infrastructure contributions.

Additional components of the “equal partners” option include:

- Operations would be set with each year’s budget with an equal split among the five cities
- A sinking fund would be created and funded equal to 25% of the value of the fiber ring which would be funded through annual operating funds for five years until it reaches 25% of the value and prior to any distribution of revenues
- Revenues after all expenses would be shared equally by each city
- Each of the five cities have an equal vote on the SNA board

Moving to the “investor model,” Ms. Whitesell described this where each city can buy shares of the ring. For illustrative points in the presentation, the shares were set at \$1 million and the model described as follows:

- Shares would be sold in \$1 million increments with the initial maximum number of shares bought by a city equaling six. Shares can be split in half but no further.
  - Purchase of less than 20% of the shares available will subject the city to access fees to the fiber ring at market rates or access to a limited number of fiber strands
  - In-kind contribution of physical pieces of the ring’s design subject to agreement of the SNA board may be considered toward purchase of shares
  - If all shares are not purchased initially, the cities may buy additional shares at the same cost, up to the maximum number of shares authorized by the Board
- Number of shares bought determines the proportionate share of ongoing operating costs, including funding of the sinking fund
- Number of shares bought would determine the distribution of revenues from the ring after all expenses and the sinking fund obligation have been met
- Number of shares bought equals the weight of votes on the board

Ms. Whitesell reported that the cost-sharing review team is recommending the “investor model” whereby each city can contribute based on what they see is the value and their long-term possibility. It also allows other cities to provide a larger contribution and gain more control. Ms. Whitesell stated that they are requesting the SNA authorize staff to work with each city attorney and each city manager to finalize a cost-sharing agreement. The SNA board will need to adopt a resolution requesting action by each city by mid-January on the recommended cost-sharing agreement and the appropriation of sufficient funding to purchase shares.

Chair Vitale thanked Ms. Whitesell and called for questions from the board.

Mr. Moor noted as a point of clarification that the City of Suffolk has appropriated \$5 million from their ARPA funds. Ms. Whitesell noted that the City of Norfolk's appropriation will be in 2025; however, they are looking at reallocating funding to move the appropriation forward. It was reported that the City of Chesapeake's appropriation is also in 2025, and Virginia Beach had not yet appropriated any funding.

Ms. Wilson asked for clarification on the definition of a "sinking fund." Ms. Whitesell stated that it is monies set aside to make large repairs so that the SNA does not need to go back to each city to request additional monies. The SNA would have the capacity within its own operations to make big repairs. This would not be for the day-to-day operations.

Ms. Wilson asked about the role of insurance in the case of someone causing damage to the fiber ring. Ms. Whitesell said that could be explored. Mr. Jones noted that in the case of an emergency, while the SNA would certainly file an insurance claim, it would be necessary to get the ring back up and operational as soon as possible; having money in a sinking fund would allow the SNA that ability.

Chair Vitale asked what would happen if one city purchased all of its shares, another city purchased only two shares, and no one purchased the remaining shares. Would the price of the shares be adjusted? Ms. Whitesell answered that there are two options: 1) the board could change the price of the shares; or 2) the SNA could look at debt financing to bridge that gap.

Ms. McClellan inquired about the risks of the current supply chain situation. Mr. DeBerry noted that the SNA would need to discuss this should it pose a problem.

Ms. McClellan asked if most of the engineering work had been done and if we are farther along in the process than others. Mr. DeBerry noted that although there is still some design work to be completed, the SNA project is essentially shovel-ready. Mr. Matt DeHaven, CTC consultant to the Authority, reported the SNA is at the 50% - 60% design phase, and there is still engineering and permitting work that must be done. Most of that can be done in conjunction with the beginning of construction. Permitting will depend on the type. Municipal permitting can happen very quickly, but the process is longer for water crossings and bridges.

Now that the SNA has bids, Mr. Moor asked about the funding costs for construction given the increase in supply chain demand and materials and labor costs. Would this require a change order? Mr. Lockaby answered affirmatively, as it would be required by the Public Procurement Act.

Ms. Wilson asked, with regard to the cost-sharing model, when would the cities need to make a decision? Ms. Whitesell noted the recommendation is for the board to authorize working with the city attorneys and the city managers' offices to begin ironing out the details of the cost-sharing agreement.

Mr. Jones asked if the "investor model" included both public and private investors. Ms. Whitesell replied affirmatively. It would allow for a third option to bridge any funding shortages by

allowing institutional investors to buy shares. The SNA board really needs to make that decision. Mr. Lockaby noted that it is something he could look into. He cautioned the SNA about running into Dylan Rule and security law issues.

Mr. Fairholm asked how the investor model would work if the network was extended to the Peninsula jurisdictions. Ms. Whitesell replied that the concept of a project committee has been discussed. There would be a project committee for the Southside phase of the network. A different project committee would be for the Peninsula phase, and the cities on the Peninsula would have shares that would finance that phase of the project. As the network makes its way through the 17 Hampton Roads jurisdictions, there could be several different project committees and each city within the project would buy their share of that phase.

Mr. Moor stated that with additional projects throughout the region, the City of Suffolk may potentially be involved with several other projects within close geographic proximity. How would the project management work for the City? Mr. Lockaby explained that localities who wish to be authority board members would also pay into the shares and the articles of incorporation would be amended to include the new localities. The project committee would most likely be made up of those localities which have a direct connection to the new project and would oversee that particular project. The full board, made up of all localities, would be responsible for the Authority's strategic plan, adopting the budget, financing debt, etc. Mr. Lockaby reported that this has been done in other areas of the state.

Mr. Wallace asked if it had been determined how new member cities and counties would fund a new connection to the Southside ring. Funding, such as ARPA, may not be available in the future. Ms. Whitesell stated that the budget directors were very clear to determine that is not an SNA problem. If a city/county wishes to build/join the ring, that city/county would need to determine where the funding would come from.

Mr. Crum noted that he and Ms. Chandler are working with a group of localities in the southwestern part of the region who are pursuing funding through the Commonwealth's VATI program. There is a significant amount of money for rural broadband in Virginia. Each geographic area – urban, suburban, rural - may require a different strategy.

## **Closed Session**

Chair Vitale called for a closed session and asked Mr. Lockaby to read the appropriate language to proceed.

*Motion to move to convene a closed session pursuant to subsection A.28 of § 2.2-3711 of the Code of Virginia, 1950, as amended, for the purpose of discussion or consideration of information subject to the exclusion in subdivision 11 of § 2.2-3705.6 by a responsible public entity; pursuant to subsection A.33 of § 2.2-3711 for the purpose of discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and trade secrets subject to the exclusion in subdivision 19 of § 2.2-3705.6; further pursuant to subsection A.29 of § 2.2-3711 for the purpose of discussion of the award of a public contracting involving the expenditure of public funds, and discussion of the terms or scope of such contract, where discussion in open session would adversely affect the bargaining position or negotiating strategy of the public body; and*

*pursuant to subsection A.6 of § 2.2-3711 for the purpose of discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected. The specific subject matter of this closed session would be a confidential briefing regarding resolution of the dual-path strategy and financial considerations involved in construction and delivery of the Southside Regional Connectivity Ring.*

Mr. Jones asked if others would be staying for the closed. Mr. Lockaby noted that in addition to the SNA members, the SNA consultants, city attorney representatives and Mr. Burke of the City of Portsmouth Budget Office would participate in the closed session.

Ms. McClellan Moved to proceed into closed session; seconded by Mr. Jones. The Motion Carried.

The Authority proceeded into closed session.

### **Return to Open Session**

*Ms. McClellan departs*

The Authority reconvened into open session. Mr. Lockaby read the following motion into the record:

*Move to reconvene in open session and to certify by roll call vote, pursuant to subsection D of § 2.2-3712 of the Code of Virginia, that (i) only public business matters lawfully exempted from the open meeting requirements of the Freedom of Information Act and (ii) only such public business matters as were identified in the motion by which the closed session was convened were heard, discussed, or considered in the closed session.*

Ms. Wilson Moved to certify that only public business matters lawfully exempted from open meeting requirements as were identified in the motion were heard, discussed or considered in the meeting; seconded by Ms. Whitesell.

Roll call vote:

Ms. Vitale	Yes
Ms. Whitesell	Yes
Mr. Jones	Yes
Mr. Moor	Yes
Ms. Wilson	Yes

The Motion Carried.

Mr. Lockaby directed the Authority members' attention to two resolutions for the following actions:

Motion #1

- the Board intends to construct the RCR upon securing sufficient financing as expeditiously as practicable
- the Board authorizes the Executive Director to negotiate an extension of the validity of the bids from Cox and Danella
- the Board authorizes and directs the Executive Director to issue a Notice to Intent to Award the contract for SNA-IFB-2021-01
- the Executive Director is authorized to enter into negotiations for an agreement to carry out post-construction maintenance based on the scope of maintenance work advertised in SNA-IFB-2021-01

Southside Network Authority Resolution 2021-02 is attached for reference.

Ms. Wilson Moved to approve the actions outlined above; seconded by Mr. Jones.

Roll call vote:

Ms. Vitale	Yes
Ms. Whitesell	Yes
Mr. Jones	Yes
Mr. Moor	Yes
Ms. Wilson	Yes

The Motion Carried.

Motion #2

- The Board elects to enter the Detail Phase of negotiations with GTS.
- The Executive Director is authorized to establish a reasonable timeline for GTS to submit the additional information required by the Guidelines at the Detail Phase

Southside Network Authority Resolution 2021-01 is attached for reference.

Ms. Wilson Moved to approve the actions outlined above; seconded by Ms. Whitesell.

Roll call vote:

Ms. Vitale	Yes
Ms. Whitesell	Yes
Mr. Jones	Yes
Mr. Moor	Yes
Ms. Wilson	Yes

The Motion Carried.

**Old/New Business**

There was no old or new business.

**Adjournment**

With no further business to come before the Southside Network Authority, the meeting adjourned at 4:09 PM.

# Southside Network Authority

## Resolution 2021-02

### A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SOUTHSIDE NETWORK AUTHORITY

### AWARDING A CONSTRUCTION CONTRACT AND AUTHORIZING CERTAIN OTHER ACTIONS PURSUANT THERETO

**WHEREAS**, on April 8, 2021, the Southside Network Authority (the “Authority”), through the Hampton Roads Planning District Commission (“HRPDC”) as its fiscal agent, issued a request for qualifications (SNA-RFQ-2021-01) to prequalify general contractors for construction and short-term maintenance of a regional fiber-optic connectivity ring (“RCR”); and

**WHEREAS**, on May 11, 2021, SNA-RFQ-2021-01 closed, and, following review, seven general contractors were prequalified to bid on construction of the RCR; and

**WHEREAS**, on July 15, 2021, the Authority, through HRPDC, issued an invitation for bids (SNA-IFB-2021-01) under the process for competitive sealed bidding under the Virginia Public Procurement Act (VPPA), Chapter 43 of Title 2.2 of the Code of Virginia, 1950, as amended, and received six bids by closing on August 31, 2021; and

**WHEREAS**, following consideration, validation, and analysis, and the Authority wishes to issue its Notice of Intent to Award a construction contract to the lowest responsive, responsible bidder in accordance with the VPPA; and

**WHEREAS**, the Authority anticipates securing funding for construction of the Project before the end of calendar year 2021.

**NOW THEREFORE, BE IT RESOLVED** by the Board of Directors of the Southside Network Authority, that:

1. The Board hereby declares that it intends to construct the RCR upon securing sufficient financing as expeditiously as practicable.
2. The Board finds that the two lowest responsive, responsible bids appear to be:

<b>Bidder</b>	<b>Construction Bid</b>	<b>Maintenance Bid (Three Years)</b>
Cox Communications Hampton Roads, L.L.C.	\$17,626,999.98	\$2,306,448.00
Danella Construction, Inc.	\$24,561,413.58	\$2,429,545.09

3. The Board authorizes and directs the Executive Director to negotiate an extension of the validity of the bids from Cox and Danella until not sooner than January 15, 2022, and shall report to the Board at its December 10, 2021, meeting if any increase in pricing has occurred.

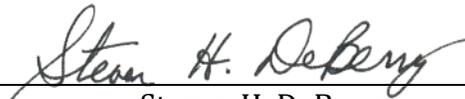
4. Upon securing financing for the RCR project, the Board authorizes and directs the Executive Director to issue a Notice to Intent to Award the contract for SNA-IFB-2021-01 in accordance with the advertised bid package to Cox Communications Hampton Roads, L.L.C. ("Cox"). After 10 days, following compliance with all terms of the Notice of Intent to Award, the Executive Director shall award the contract to Cox.
5. If Cox is unable to comply with all provisions of the Notice of Intent to Award, the Executive Director is authorized to take all steps provided under the Notice and to issue another Notice of Intent to Award to Danella Construction, Inc., and take a like course of action.
6. Upon entry of a contract with a successful bidder, the Executive Director may give Notice to Proceed.
7. The Executive Director is expressly authorized and directed to enter into negotiations, and take all other acts necessary to negotiate, an agreement satisfactory to the Board to carry out post-construction maintenance for up to three years with the winning bidder based on the scope of maintenance work advertised in SNA-IFB-2021-01, the price not to exceed the bid submitted.
8. In the event a bid protest is filed, the Executive Director and the Authority Counsel are authorized to take such administrative and legal actions as may be necessary to investigate and respond to such bid protest prior to the convening of the next meeting of the Board. They shall give a report to the Board of the status of any such protests.
9. This Resolution shall take effect upon adoption.

**APPROVED AND ADOPTED** by the Board of Directors of the Southside Network Authority this 12th day of November, 2021, by a vote of five (5) in favor and none opposed.



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Susan R. Vitale  
Chair  
Southside Network Authority



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Steven H. DeBerry  
Executive Director/Secretary  
Southside Network Authority

# Southside Network Authority

## Resolution 2021-01

### A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SOUTHSIDE NETWORK AUTHORITY

#### ENTERING THE DETAIL PHASE OF NEGOTIATIONS WITH GLOBAL TECHNICAL SYSTEMS, INC. AND AUTHORIZING CERTAIN OTHER ACTIONS RELATED THERETO

**WHEREAS**, on May 20, 2021, the Southside Network Authority (the “Authority”), through the Hampton Roads Planning District Commission (“HRPDC”) as its fiscal agent, issued a request for qualifications and conceptual proposals (SNA-RFP-2021-02, the “RFP”) for design, construction, financing, operation, maintenance, and monetization of a regional fiber-optic connectivity ring (“RCR”); and

**WHEREAS**, SNA-RFP-2021-02 closed on August 24, 2021, and the Authority received four conceptual proposals, and the Authority’s Selection Committee, staff, and consultants have analyzed and, where deemed necessary, interviewed and asked follow-up questions to proposers; and

**WHEREAS**, the Selection Committee has presented its recommendation to the Board, and the Authority wishes to enter into the Detail Phase of negotiations with one proposer under the Authority’s implementing Guidelines for Implementation the Public Private Education Facilities and Infrastructure Act of 2002, Chapter 22.1 of Title 56 of the Code of Virginia, 1950, as amended (the “Act”).

**NOW THEREFORE, BE IT RESOLVED** by the Board of Directors of the Southside Network Authority, that:

1. The Board finds that, of the public-private partnership proposals received, the proposal submitted by Global Technical Systems, Inc., and its consortium partners (collectively, “GTS”) appears to be the most responsive proposal, the best value proposal, and, based on the information submitted, is the most qualified firm or consortium that responded to the RFP, and is most likely to issue in a public-private partnership that will meet the goals the Authority established in the RFP.
2. The Board elects to enter the Detail Phase of negotiations with GTS.
3. The Executive Director shall establish a reasonable timeline for GTS to submit the additional information required by the Guidelines at the Detail Phase and shall establish one or more contact points with GTS to ensure free flow of information and proposals in the further negotiation and evaluation in the Detail Phase.
4. The Executive Director is expressly authorized and directed to enter into negotiations, and take all other acts necessary to negotiate, an agreement

satisfactory to the Board, in the best interest of the Authority, and sufficient to meet all requirements of the Act. The Executive Director shall report to the Board on progress on this task not less often than monthly.

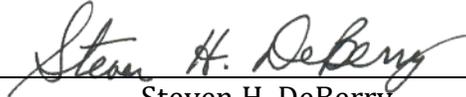
5. This Resolution shall take effect upon adoption.

**APPROVED AND ADOPTED** by the Board of Directors of the Southside Network Authority this 12th day of November, 2021, by a vote of five (5) in favor and none opposed.



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Susan R. Vitale  
Chair  
Southside Network Authority



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Steven H. DeBerry  
Executive Director/Secretary  
Southside Network Authority