

# LYNX Board Audit Committee Agenda

Central Florida Regional Transportation Authority

Board Date: 9/22/2005

455 N. Garland Ave.

Time: 10:30 AM

2nd Floor Board Room



Orlando, FL 32801

## 1. Call to Order

## 2. Approval of Minutes










-  Approval of the August 25, 2005 Audit Committee Meeting Minutes (pg. 2-4)

## 3. Audit Agenda Items

- A.  LYNX Operations Facility Update (pg. 5-5)
- B.  Functional Assessment and Eligibility Process Update (pg. 6-6)

## 4. Review of Board Package: 9/22/2005

### Information Items (For Review Purposes Only - No action required)

- C.  Amalgamated Transit Union Local 1596 Pension Plan Update (pg. 7-15)  
- Attachment    
- D.  Sick Leave Cash In Program (pg. 16-17)
- E.  Review of the Disadvantaged Business Enterprise (DBE) Program (pg. 18-21)
- F.  Review of the Equal Employment Opportunity (EEO) Program (pg. 22-24)
- G.  Update from General Counsel on SIB Loan Restrictions (pg. 25-26)

**LYNX**  
**Central Florida Regional Transportation Authority**  
**Monthly Board Audit Committee Meeting**

**PLACE:**     **LYNX Central Station**  
              **455 N. Garland Avenue**  
              **Board Room, 2<sup>nd</sup> Floor**  
              **Orlando, FL 32801**

**DATE:**       **August 25, 2005**

**TIME:**       **10:30 a.m.**

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**Audit Committee Members in Attendance:**

Osceola County Commissioner Atlee Mercer, Chair  
Seminole County Chairman Carlton Henley, Vice Chair  
FDOT District 5 Secretary George Gilhooley  
Roger Neisweinder, City of Orlando  
Fred Winterkamp, Orange County

**Not in Attendance:**

Orlando Mayor Buddy Dyer  
Orange County Mayor Richard Crotty

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**1. Call to Order**

Vice Chair Carlton Henley called the meeting to order at 10:40 a.m.

**2. Approval of Minutes**

**Motion:** Vice Chair Henley moved to approve the minutes of the June 23, 2005, Audit Committee Meeting, District Secretary Gilhooley seconded, and the motion passed unanimously.

**Motion:** Vice Chair Henley moved to approve the minutes of the July 28, 2005, Audit Committee Meeting, District Secretary Gilhooley seconded, and the motion passed unanimously.

**3. Audit Agenda Items**

**A. LYNX Transportation Regional Incentive Program (TRIP) Funding and Capital Improvement Program** – Linda Watson, Chief Executive Officer, informed the Audit Committee of a deadline LYNX must comply with in order to apply for any of the \$30M available in TRIP funds for FDOT District 5. LYNX plans to submit a TRIP request for the procurement of 50 buses in FY06 and FY07, which amounts to \$8.25M each year. TRIP funds at the 50% level, so LYNX must find a match for these funds. Since Federal funds cannot be utilized for this purpose, Ms. Watson suggested that LYNX apply for a State Infrastructure Bank (SIB) loan as the local match and then repay the SIB loan with Federal funds.

LYNX recently discovered that there is a September 16, 2005, deadline to apply for a SIB loan. As this deadline is before the next LYNX Board Meeting, Ms. Watson recommended

adding or “blue-sheeting” an Agenda Item to the Board Meeting agenda authorizing the CEO to apply for a SIB loan, which will be used as a match for the TRIP funding. In turn, LYNX will utilize Federal funds to repay the SIB loan. A discussion ensued as to whether this is circumventing the intent of the TRIP legislation, in which Federal funds cannot be used as a match. Legal counsel, Albert Bustamonte said he would look into this issue.

FDOT added that 25% of the loan repayment must be local funds or XU funds from Metroplan Orlando. It was also noted that the SIB loan application is non-binding and can be drawn down like a line of credit.

The Committee commented that they would like to see a pro-forma spreadsheet with all of LYNX’ SIB loan obligations, including this one, to ensure that the debt is not too much for the agency to bear.

- B. LYNX Financial Position** – Blanche Sherman, Manager of Finance, provided an overview of the key revenues and expenses and year-end accruals and adjustments expected to impact the agency’s financial position this fiscal year. Ms. Sherman also discussed the actions LYNX has taken to eliminate the anticipated budget deficit.

The Committee discussed the impacts that the Client Services advertising contract default and sick leave buy-out program would make on our bottom line, and asked that dollar figures be attributed to the actions that have been made to eliminate the deficit.

Ms. Watson asked if a presentation could be made on Information Item E and the Audit Committee gave their approval.

#### **Information Item**

- E. Update on Meetings with Dialysis Centers** – Lisa Darnall, Interim Chief Operations Officer, gave a summary on a meeting that took place with the local dialysis centers to discuss emergency preparedness and ask for their assistance in working with LYNX to address the issue of providing service to the closest dialysis center, instead of the preferred dialysis center. LYNX can require that those utilizing Medicaid funding go to the closest dialysis facility, however clients could avoid doing so by booking the trip as an ADA trip. It is estimated that this change could save the agency \$341,000 annually across the three-county service area.

The Committee requested an itemized list be provided to each county showing how much money this enhanced service costs and allow them to make their own decision on whether to continue. Ms. Watson suggested educating the clients that going to the closest dialysis center may be in their best interests, reducing trip and wait times, and see if some will volunteer to make this change. Chairman Mercer also suggested contacting AHCA for an opinion on this issue.

#### **4. Review of 08/25/05 Board Package**

- Consent Agenda E.** – Vice Chair Henley asked that this item be pulled from the consent agenda for discussion due to concerns over choosing an out-of-state firm when there are

capable local firms. It was requested that more information be provided in the Board Report, such as copies of the evaluation forms and the names of those making the evaluations. Chairman Mercer asked if this detail could be provided for the Board Meeting and directed staff to supply the requested information.

**Consent Agenda F.** – Chairman Mercer also recommended pulling this item from the consent agenda pending more information, i.e. evaluation forms and the names of those making the evaluations. It was requested that this information be included in all future board items involving the awarding of a contract.

Chairman Mercer asked for any other issues before adjourning and Fred Winterkamp sought clarification from District Secretary Gilhooley as to whether capital and operating costs for the 30-31 buses included in the FDOT Commuter Rail Proposal were built into their cost estimates. A discussion ensued on accounting for the “commuter rail” buses under a separate budget or sub-fund.

The meeting adjourned at 11:53 a.m.

# LYNX Board Audit Committee Agenda

## Audit Committee Agenda Item #3.A

**To:** LYNX Board Of Directors

**From:** **Linda Watson**  
CHIEF EXECUTIVE OFFICER  
**Edward Johnson**  
(Technical Contact)  
**Ellisa Darnall**  
(Technical Contact)

**Phone:** 407.841.2279 ext: 3017

**Item Name:** LYNX Operations Facility Update

**Date:** 9/22/2005

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Dave Gorden, Vice President, EarthTech, will provide an overview of the LYNX Operations facility.

# LYNX Board Audit Committee Agenda

## Audit Committee Agenda Item #3.B

**To:** LYNX Board Of Directors

**From:** **Peggy Gies**  
INTERIM DIR OF GOVT AFFAIRS  
**Barbara Parker**  
(Technical Contact)  
**Maria Colon**  
(Technical Contact)  
**William Hearndon**  
(Technical Contact)

**Phone:** 407.841.2279 ext: 3020

**Item Name:** Functional Assessment and Eligibility Process Update

**Date:** 9/22/2005

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Due to an increase in applications for ACCESS LYNX Service, we are currently not in compliance with ADA standards for determining eligibility of our Paratransit applicants. We are receiving on average 42 applications per business day. ADA requires a determination to be made within 21-days of receipt of a completed application. At present this is now requiring 54 days and increasing daily.

Staff will be presenting our current situation, actions we have taken and possible future solutions.

# LYNX Board Audit Committee Agenda

## Audit Committee Information Item #.C

**To:** LYNX Board Of Directors

**From:** Sylvia Mendez  
CHIEF ADMINISTRATIVE OFFICER  
Desna Hunte  
(Technical Contact)

**Phone:** 407.841.2279 ext: 3129

**Item Name:** Amalgamated Transit Union Local 1596 Pension Plan Update

**Date:** 9/22/2005

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**Background:** LYNX employees participate in one of two Pension Plans. Administrative employees participate in the Money Purchase Plan while employees who are members of the collective bargaining agreement with the Amalgamated Transit Union (ATU) local 1596 participate in a Defined Benefit (DB) Plan.

The DB Plan is funded by a negotiated agreed amount of payroll between LYNX and ATU local 1596. A six member Board of Trustees oversees the Plan. LYNX appoints three representatives and ATU appoints three. The pension trustee chair is currently Tom Lapins.

### **Plan Update:**

Board of Trustees Meeting: The last meeting was held in July, 2005. The Trustees at that time chose to issue a request for proposals (RFP) for Third Party Administrative services. These services are currently provided by Pension Resource Center, whose contract is scheduled to expire in September 2005. The pension's legal advisor (Hanson, Perry & Jensen) is assisting the trustees in drafting the specifications.

**Board of Trustees Appointments:** Staff was notified in July that Mr. Brian Anderson's term was scheduled for reappointment consideration in September 2005. Staff requested and received authorization from the Board of Directors to appoint Mr. Bert Francis, Chief Financial Officer, as a replacement for Mr. Anderson. Mr. Francis will officially replace Mr. Anderson in October but will attend any meeting scheduled before October 1, 2005.

Staff understands that the current chairperson, Tom Lapins will be stepping down in October, 2005. Mr. Lapins will be replaced by Union representative Mr. Bob Doane. Mr. Doane served as Pension Trustee Chairperson prior to Mr. Lapin's term.

### Briefings:

An educational briefing was held in July for LYNX Pension Trustee representatives. Nadine Schall, LYNX Pension legal counsel, provided the LYNX representatives with information

## LYNX Board Audit Committee Agenda

regarding the establishment of the Plan. The Chief Administrative Officer now meets with each LYNX representative individually to review proposed agenda items prior to scheduled meetings. In addition the HR Manager is attending the meetings, and the Chief Administrative Officer also attends as necessary.

### Disability Provision:

In July, in response to Board Concerns, staff issued a letter to the Pension Chairperson, requesting clarification of several provisions in the revised disability language provisions. A response was received on August 23, 2005 (please see attached) from the Pension's legal counsel. LYNX legal counsel contacted Ms. Jill Henson for further clarification. A summary of this discussion is included. Ms. Schaal will be attending the Audit Committee to answer any further questions.

### FY 2006 Contributions:

LYNX received notice from the Plan Actuary that the required contribution rate in 2006 will be 10.97% of payroll as opposed to 11.04% in 2005. The proposed 2006 budget incorporates the new rate for calendar year 2006.

### **Miscellaneous:**

September Meeting: The Chairman of the Board of Trustees has called a special meeting for September 16, 2005. This meeting was originally scheduled for August 26 but was canceled due to weather issues. A copy of the Preliminary Agenda as proposed by the Chairman is enclosed. This meeting will be attended by the LYNX Management trustees as well as by Desna Hunte, the Manager of Human Resources, Sylvia Mendez, the Chief Administrative Officer and Bert Francis, Chief Financial Officer and incoming management representative. Nadine Schaal, legal counsel to LYNX for pension matters will also be attending. The meeting is a public meeting.

Staff will provide the Board with an update of the results of this meeting in October.





Fort Lauderdale  
Jacksonville  
Miami  
Orlando  
Tallahassee  
Tampa  
Washington, DC  
West Palm Beach

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255 South Orange Avenue  
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Post Office Box 231 *mail*  
Orlando, Florida 32802-0231

[www.akerman.com](http://www.akerman.com)

407 843 7860 *tel* 407 843 6610 *fax*

September 6, 2005

Ms. Sylvia Mendez  
Chief Administrative Officer  
LYNX  
445 West Amelia Street, Suite 800  
Orlando, FL 32801

**Re: ATU 1596 Pension Plan - Disability Amendment No. 6**

Dear Sylvia:

At the request of the Audit Committee, you sent a letter to Mr. Thomas Lapins, Chairman of the Board of Trustees of the ATU Pension Plan with regard to Amendment No. 6. The inquiry related to clarifying eligibility for a disability pension benefit and administrative implementation of the Amendment. The attorney for the plan, Jill Hanson, responded to the letter on August 23, 2005. You asked that I review the letter with Ms. Hanson to clarify several points. This letter will summarize my telephone conversation with Jill Hanson regarding her August 23, 2005 correspondence with regard to the disability pension benefit, as amended.

Ms. Hanson explained the reasoning of the Board of Trustees of the ATU Pension Plan, believing the amendment was necessary to prevent inequities between different ATU Pension Plan participants. The Board of Trustees is concerned that union members who are injured while performing their duties for LYNX may have differing eligibility for disability pension benefits, depending on the circumstances and other job openings available at LYNX at the time the individual is able to return to work.

Thus, she explained, the definition of a disability which would qualify for pension benefits, as defined under Section 8.06(C), which states in part "unable to engage in any substantial, gainful employment for any occupation for which he or she are qualified by reason of age, education or work experience..." means an individual is not required to accept a position other than the one in which he or she was engaged prior to the injury at a lower rate of pay. All such ATU union members would be eligible for a

disability pension if the disability qualified, regardless of whether the individual was able to perform other occupations at LYNX and had medical clearance to do so.

Under Section 8.06(D)2, an individual who has opted for additional disability insurance coverage offered through LYNX at the 60% level for 24 months may apply for a disability pension benefit without first applying for disability benefits under the LYNX long-term disability program. If the individual does not have the 60% level of disability insurance coverage, he or she must apply for disability coverage under the LYNX insured benefit program before applying for a disability pension benefit. The Board of Trustees is concerned that members carefully consider their options in determining whether to apply for ATU Pension Plan disability benefits. By limiting this option to those individuals who have the 60% insurance disability coverage, members will generally be required to first apply for 36 months of LYNX's insurance disability before applying for disability pension benefits. Since the LYNX long-term disability benefit would be reduced by any disability pension benefit, the pension benefit is delayed for 36 months, until the LYNX long-term disability benefit is exhausted.

There is a requirement in 8.06(D) (the second paragraph (D), which requires an individual to apply for a disability pension while still employed although the individual will not be eligible for the benefit for 36 months from the date of disability. The concern is that an individual must be an employee to be eligible for a disability pension benefit. Since the individual is not likely to still be classified as an employee at the end of the 36-month period, the individual must apply for a disability pension benefit prior to the expiration of 36 months. Since this scenario has not yet occurred, in practice it may require an operational revision regarding how the Board of Trustees addresses such a scenario.

Ms. Hanson believed that all but one of the individuals currently eligible for a disability pension had received a social security disability finding. Hence, all would have satisfied the definition of disability for a disability pension benefit under the existing document prior to the adoption of Amendment No. 6. However, Amendment No. 6 will not require an individual to accept a position with lower pay and then not be eligible for a disability pension benefit.

This summarizes the conversation I had with Ms. Hanson. Please call if you have any further questions on this matter.

Sincerely,



Nadine E. Schaal

NES/jes

July 20, 2005

Mr. Thomas Lapins  
Chairman of the Board of Trustees  
of the Amalgamated Transit Union Local 1596 Pension Plan  
LYNX  
455 North Garland Avenue  
Orlando, Florida 32801

**Re: ATU Pension Plan Disability Benefit**

Dear Tom:

The Audit Committee for Central Florida Regional Transportation Authority ("LYNX") was provided with a copy of proposed Amendment No. 6 to the ATU Pension Plan. This amendment replaces the existing provisions regarding disability pension benefits to eligible participants. After reviewing this proposed amendment, the Audit Committee has a number of questions for the Board of Trustees of the ATU Pension Plan.

Please provide clarification regarding the following items for the benefit of the Audit Committee and the Employer, LYNX, who is responsible for maintaining the plan:

There are two items in numerated D, which makes it a little confusing in requesting clarification. This letter will refer to the first D and the second D as they appear in order in the proposed amendment.

The first 8.06 (D) describes methods of proving disability entitlement.

1. D1 requires that an individual had a condition that continued for at least 36 months. However, the second D requires an application be made at the time of disability or prior to the termination of employment with LYNX. If disability must continue for 36 months, employment with LYNX will already have terminated and the individual is unlikely to know at the time of an incident that the injury may be permanent. Please explain how this will be administered.

2. The first (D) 2 disability entitlement requires an individual to have enhanced their long-term disability benefits to the 60% level with LYNX for at least 24 months preceding the disability, but not apply for these benefits. Please explain the intent of this definition of eligibility as it is unclear to the Audit Committee how this is to be implemented administratively.

3. The definition under the first (D) 4 states that the impairment must continue for at least 90 days and is likely to be permanent. However, the definition of disability in 8.06(C) requires the disability to have continued for 36 months. Please explain the seeming inconsistency of the timing of these two provisions and the administrative application of this definition.

4. The first (D)5, which does not relate to disability entitlement, relates to continuing physical examinations by medical experts selected by the Trustees of the ATU Pension Plan. This paragraph is duplicated in 8.06(E) and contradictory. Item subparagraph 5 states that the refusal to submit to an examination **may** (emphasis added) be grounds for disqualification from the disability pension and paragraph E states that **no** (emphasis added) participant is entitled to continue receiving disability benefits if the participant declines to be examined by a physician elected by the Trustees. Please clarify the contradictions in these two paragraphs and explain how this will be administered.

The proposed amendment received was not dated; hence the Audit Committee has referred to it as a proposed amendment. Please provide details as to when the Trustees may adopt this amendment, or if it has already been adopted, indicate the date of such adoption.

I appreciate you taking your time to answer these questions and provide clarification for the Audit Committee and for LYNX.

Sincerely,

Sylvia Mendez  
Chief Administrative Officer

CC: Linda S. Watson, Chief Executive Officer

**HANSON, PERRY & JENSEN, P.A.**  
**400 EXECUTIVE CENTER DRIVE - SUITE 207**  
**WEST PALM BEACH, FL 33401-2922**  
**561-686-6550**  
[MJHANSON@HPJLAW.COM](mailto: MJHANSON@HPJLAW.COM)

August 23, 2005

Via e-mail and regular U.S. Mail

Sylvia Mendez  
Chief Administrative Officer  
LYNX  
455 North Garland Avenue  
Orlando, FL 32801-1518

RE: ATU 1596 Pension Plan - Disability Amendment No. 6

Dear Ms. Mendez:

I am writing in response to your letter dated July 25, 2005. First, a little background on the amendment: the topic of "fixing" the plan's disability provisions has been on the trustees' agenda for a number of years. The trustees have sought to keep LYNX management (and not just the LYNX-appointed trustees) informed of their actions on this issue. It is my recollection that LYNX representatives were present when the trustees executed the adopted Amendment No. 6, in May, 2005. The actuary has stated that the amendment will have no actuarial impact on the plan.

Let me preface my answers to your specific questions by saying that the trustees have discussed this issue many times over the course of the years. At the meeting in March, where they actually adopted the changes, the trustees made changes to the proposed Amendment at the meeting, in order to compromise and reach a resolution of their concerns. As Ms. Jensen indicated to you, however, it was their intent that where appropriate, the LYNX long term disability plan would be primary during the initial period of disability, and the pension disability would cover longer term disabilities.

Beginning with No. 4, on your list, the requirement for physical examinations: the reference in D, 5 is to an initial required physical examination, which may be required to establish the existence of a qualifying disability. The reference in E, Proof of Continuing Disability, means that the trustees may require persons receiving a disability pension to submit proof that they are still disabled.

No. 1, 2 and 3: the plan offers different methods to qualify for a disability

pension. Thus, a person may qualify if they have failed to qualify for the LYNX disability insurance and failed to qualify for social security disability. In that case, however, ((D) 4) the individual must provide "clear and convincing medical proof" of a disability which has continued for at least 90 days. A person may also qualify for a disability pension, even if they do not qualify for the employer's long term disability coverage, if they show that they've been found to be entitled to social security disability (D 3).

Under D, 2., again, an individual may opt to apply for a disability pension without also applying for the LYNX LTD benefit, but they have to show 1) that they had the 60% LTD coverage for at least two years before applying for the disability pension; and 2) again, unless they have qualified for social security disability, must provide clear and convincing medical evidence of disability. The reason for requiring the 60% LTD coverage as I understand it was to provide inducement to participants to make the LTD primary, and also, to encourage individuals to act prudently in planning for their futures. If an individual had not elected the 60% LTD, they will not be eligible for the disability pension unless they either qualify for social security, or can produce clear and convincing medical evidence of disability.

I am not quite sure I understand your first question. An individual is required to apply for the disability pension either at the time of disability, or prior to termination of employment. What the trustees were trying to do here is to ensure that an individual made application no later than the time of termination of employment. That could be before the thirty-six month period ends. If an individual would then recover prior to the end of the thirty six months, then the trustees could deny the disability. Or the trustees could conditionally grant the disability, based on the evidence before them, subject to completion of the 36 months. Again, the aim of the trustees was to ensure that an individual made application for the pension while they were still considered employed by LYNX. To date, however, we have not had a problem with disability applicants not recognizing that their condition was, or was likely to become, long-term.

I appreciate your inquiries, and if there is any further information I can provide, please do not hesitate to contact me. We of course are always open to clarifying language, if it is deemed necessary.

Yours truly,

Jill Hanson

Copies to: Board of Trustees

**ATU LOCAL 1596 PENSION FUND  
(Special Meeting)  
September 16, 2005**

**LOCATION:** LYNX/ATU Local 1596  
South Street Conference Room, Room 109 (Preliminary)  
1200 West South Street  
Orlando, FL 32805

**PHONE:** 407-841-2279 EXT 3522

**TIME:** 10:00 A. M. – 12:00 P.M., 1:00 P. M. – 4:00 P.M.

**PRELIMINARY AGENDA (Morning Session)**

1. Call Meeting to Order
2. Annual Actuarial Valuation: Theora Braccialarghe (Gabriel Roeder Smith & Company)
3. Roundtable With Lynx Management
  - a. Implementation of Future Benefit Increases
  - b. Members Promoted to Management

**PRELIMINARY AGENDA (Afternoon Session)**

4. Attorney Report
  - a. Response to LYNX Board (Sylvia Mendez Letter Dated July 25, 2005)
  - b. IRS Determination Letter
  - c. Beneficiary Designation Form Revisions
  - d. Payment of Plan Administration Expenses (Based on Settlement Agreement)
  - e. Updates to Summary Plan Description
  - f. JP Morgan Real Estate Management Contract
5. Next Meeting Date
6. Adjournment

**PLEASE NOTE:**

Should any interested party seek to appeal any decision made by the Board with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings, and for such purpose he may need to insure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. In accordance with the Americans With Disabilities Act of 1990, persons needing a special accommodation to participate in this meeting should contact the Pension Resource Center (800-206-0116) no later than seven days prior to the meeting.

# LYNX Board Audit Committee Agenda

## Audit Committee Information Item #.D

**To:** LYNX Board Of Directors

**From:** Sylvia Mendez  
CHIEF ADMINISTRATIVE OFFICER  
Desna Hunte  
(Technical Contact)  
Blanche Sherman  
(Technical Contact)

**Phone:** 407.841.2279 ext: 3129

**Item Name:** Sick Leave Cash In Program

**Date:** 9/22/2005

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**Background:** The following information regarding the agency's Sick Leave "Cash In" program is provided in response to questions, which arose during the Audit Committee of August 2005.

### **Program Overview:**

Administrative Employees: Full and Part time employees have the option to cash in sick leave hours that have been accumulated in excess of 480 hours for full time employees and 240 hours for part-time employees. Hours must be cashed in segments of 8 hours to a maximum of 96 hours. The cash in program is activated in October of each year and payments are issued in November.

Collective Bargaining: Section 9 of the current labor agreement with ATU local 1596 states "unused accumulated sick time in excess of three hundred (300) hours may be sold back to the Authority in one (1) block of twelve (12) days per year." This means that individuals must have 396 hours to qualify for this program by September 30<sup>th</sup>. This program is activated in November of each year and payments are issued in December.

In addition, "qualified" collective bargaining employees may trade two (2) sick days for one (1) personal day per calendar year. In order to be "qualified" the employee must not have used more than six (6) sick leave days in the previous calendar year.

### **Financial Impact:**



# LYNX Board Audit Committee Agenda

Staff reviewed the cost of this program for 2003 and 2004 and compiled estimated costs as of August 30, for 2005. The following table shows the results.

Year	ATU Local 1596	Administrative	Total Budget Impact
2003	\$196,603	\$95,540	\$292,143
2004	\$161,124	\$86,750	\$247,874
Estimated 2005	\$159,818	\$96,439	\$256,257

# LYNX Board Audit Committee Agenda

## Audit Committee Information Item #.E

**To:** LYNX Board Of Directors

**From:** **Linda Watson**  
CHIEF EXECUTIVE OFFICER  
**Robert Grossi**  
(Technical Contact)  
**Edward Johnson**  
(Technical Contact)

**Phone:** 407.841.2279 ext: 3017

**Item Name:** Review of the Disadvantaged Business Enterprise (DBE) Program

**Date:** 9/22/2005

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The Office of Internal Audit has performed a review of the Disadvantaged Business Enterprise (DBE) program. The purpose of the review was to determine if the DBE program is functioning in accordance with LYNX and FTA Policies & Procedures, meeting its established objectives, and that controls over disbursements and awards are adequate and being followed. The review focused on vendor certification issues, reporting requirements, and general program organization. The scope of the review did not include examining payments to individual vendors.

The Disadvantaged Business Enterprise policy states LYNX shall never exclude any person from participating in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by the LYNX DBE Program on the basis of race, color, gender or national origin. LYNX provides information regarding its contractual needs, organization, procurement procedures and general solicitation requirements to businesses (including DBEs) interested in performing work on its contracts.

### **BACKGROUND**

The Disadvantaged Business Enterprise Program is mandated for all Federal Transit Administration (FTA) recipients that receive \$250,000 or more in FTA planning, capital and/or operating assistance in a fiscal year. A DBE is a for-profit small business concern with at least 51% socially and economically disadvantaged ownership. The DBE program provides a vehicle for increasing the participation of disadvantaged businesses in the Authority's procurement.

# LYNX Board Audit Committee Agenda

Each DOT-assisted local transportation agency is required to establish annual DBE goals, and review the scopes of anticipated large prime contracts throughout the year and establish contract-specific DBE subcontracting goals. The goal for DBE participation in FY 2004/2005 is 12.25%. LYNX DBE goals are revised annually, and are calculated using a base figure and adjusted for several variables including past performance. The goal percentage for a forthcoming fiscal year is established in advance and is published for notice and comments in the Orlando Sentinel.

Annual goals were exceeded in both FY 2002-2003 and FY 2003-2004. Additionally, LYNX will exceed its annual DBE goal in the current FY 2004-2005.

	<u>Annual DBE Goal</u>	<u>Actual DBE</u>
<b>FY 2002-2003</b>	11.15%	12%
<b>FY 2003-2004</b>	11.75%	16%
<b>FY 2004-2005</b>	12.25%	19% (6 mo.)

Participating firms must be certified under existing certification requirements. According to DOT the main objectives of the DBE Program are:

- To ensure that small disadvantaged business enterprises (DBE) can compete fairly for federally funded transportation-related projects.
- To ensure that only eligible firms participate as DBE's.
- To assist DBE firms in competing outside the DBE Programs.

Recipients of Federal assistance must submit a semi-annual Uniform Report of DBE Commitments/Awards and Payments. The reports provide all relevant details about the annual DBE goals, contracts awarded and contracts completed.

The DBE Officer is involved with several community groups in an effort to reach out to organizations that may have members who are disadvantaged businesses, including: African American and Hispanic Chambers of Commerce, the Minority Advisory Board, and the Minority Business Enterprise Group. The LYNX DBE Officer also hosted a DBE conference on-site for the African American Chamber of Commerce, and also attends regularly held trade fairs in the LYNX service area.

## ISSUES AND RECOMMENDATIONS

During our review, we identified certain procedures and management practices that could be improved. Our review was not designed or intended to be a detailed study of every procedure or transaction. Accordingly, the findings and recommendations presented in this report should not be considered as all-inclusive of areas where improvements may be needed.

# LYNX Board Audit Committee Agenda

**Objectives** The objectives of the review were to determine if the DBE program is functioning in accordance with LYNX Policies & Procedures, meeting its established objectives, and that controls over disbursements and awards are adequate and being followed.

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**Scope** The review focused on vendor certification issues, reporting requirements, and general program organization. The scope of the review did not include examining payments to individual vendors.

**Methodology** We reviewed relevant LYNX policies and procedures and interviewed the DBE manager. We also reviewed the available documentation and reports generated by the DBE manager. In addition, we reviewed the FTA requirements for DBE compliance.

## **FINDINGS**

**Delays in implementing the new State of Florida Unified Certification Program (UCP) have necessitated the continued reliance on the existing internal vendor and DBE databases.**

Plans for the Unified Certification Program (UCP) have been revised several times in the recent years. FDOT recently communicated that the Florida UCP Directory was scheduled to 'go live' on July 11<sup>th</sup>, however due to the additional modifications made at the recent gathering of the Certifying members the launch was being delayed.

The continued delays in the UCP implementation have necessitated the continued use and reliance on the existing vendor and DBE databases for administering the DBE program. According to the most recent Annual Goal presentation, as of August 2004, there were 342 DBE vendors in the LYNX registry out of a total of 3,445 total vendors. The number of vendors and DBE vendors in the DBE files was exactly the same as in the prior year. However, no information exists on how many of the DBE vendors are active or even still active businesses. The same can be said of the non-DBE vendors. The lack of updated databases increases the effort necessary to effectively and efficiently manage the DBE program. We did find that individual contract files were well maintained. We reviewed several contract files and observed a properly conducted competitive bidding process, including multiple bids and properly supported DBE vendor information.

## **Recommendation**

We recommend that the databases for both the DBE vendors and for the non-DBE vendors be updated as soon as possible with or without the implementation of the UCP. Even with the implementation of the UCP, it will be advantageous to build relationships with relevant DBE

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vendors. This will enable the DBE Officer to optimize his/her planning and communication with the UCP vendors.

## **Response**

The State of Florida Department of Transportation has fully implemented the DBE Unified Certification Program (UCP). Section 26.82 requires that all DOT recipients in the State of Florida participate in a Unified Certification Program (UCP). The UCP will follow all certification procedures and standards of 49 CFR Part 26, Section 26.61 and provide “one-stop shopping” to all applicants. The DBE/EEO Office, Procurement and IT departments are coordinating the transfer of relevant data to the LYNX vendor database, and revising the processing of contracts. Project to be completed by September 30, 2005.

## **Prior Audit Comment**

### **DBE Reports**

As noted in the Management Letter, Ernst & Young noted that during their audit procedures involving the review of the Uniform Semi-Annual Report of Disadvantaged Business Enterprises (DBE) Awards or Commitments and Achievements, the following was noted:

The DBE Officer cannot use the information from the Great Plains software to complete the required reports that are submitted. Instead, the DBE Officer must prepare the majority of work in the FoxPro software.

### **Recommendation**

We recommend that the DBE Officer work with the IT department as well as Procurement to utilize reports and other features within the Great Plains software in order to prepare reports. This will result in time-saving and may ensure more accurate and timely reporting.

### **Response**

The DBE/EEO Officer is currently working with the Procurement and IT Departments to update the vender data classifications and subsequently fully utilize the Great Plains software to complete the Uniform Semi-Annual Report. The completion date for this process is September 30, 2005.

# LYNX Board Audit Committee Agenda

## Audit Committee Information Item #.F

**To:** LYNX Board Of Directors

**From:** **Linda Watson**  
CHIEF EXECUTIVE OFFICER  
**Robert Grossi**  
(Technical Contact)  
**Edward Johnson**  
(Technical Contact)

**Phone:** 407.841.2279 ext: 3017

**Item Name:** Review of the Equal Employment Opportunity (EEO)Program

**Date:** 9/22/2005

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The Office of Internal Audit has performed a review of the Equal Employment Opportunity (EEO) program. The purpose of the review was to determine if the EEO program is functioning in accordance with LYNX and regulatory policies & procedures, meeting its established objectives, and to determine if the program demonstrates a “good-faith” effort in complying with regulatory requirements. The review focused on the proper analysis and maintenance of records including: the program guide, the EEO Statement, demographics summary, workforce analysis, hiring and promotion reports, and training records. The scope of the review did not include reviewing individual personnel files.

### **BACKGROUND**

The purpose of the LYNX EEO program is to insure the promotion of equal opportunity for all persons employed or seeking employment, without regard to race, color, creed, national origin, sex, age or handicap. LYNX policy is to provide equal opportunity to all applicants for employment and to administer all personnel practices such as recruitment, selection, training, promotions, terminations, transfers, layoffs, compensation, benefits and other terms, conditions and privileges of employment in a manner which does not discriminate on the basis of race, color, creed, age, sex, national origin or disability. LYNX has several policies designed to insure compliance with its stated objectives.

### **ISSUES AND RECOMMENDATIONS**

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**Objectives** The objectives of the review were to determine whether the EEO program is functioning in accordance with LYNX and regulatory policies & procedures, meeting its established objectives, and to determine if the program demonstrates a “good-faith” effort in complying with regulatory requirements.

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**Scope** The review focused on the proper analysis and maintenance of records including: the program guide, the EEO Statement, demographics summary, workforce analysis, hiring and promotion reports, and training records. The scope of the review did not include reviewing individual personnel files.

**Methodology** We reviewed relevant LYNX policies and procedures and interviewed the EEO manager. We also reviewed the available documentation and reports generated by the EEO manager. We also reviewed the findings of the most recent audit performed by the FTA.

## **FINDINGS**

**EEO information about applicants who filed employment applications via the LYNX website (GoLYNX.com) cannot be obtained using the current web application pages.**

During our review of EEO files we found the reports and supporting documentation to be readily available, organized, and accurate. Also aiding in LYNX efforts in this area is the fact that the regional demographics are very favorable to recruiting, training, promoting and maintaining a balanced and representative workforce.

In order to comply with federal laws, LYNX is required to compile demographic data from applicants including race and gender. The specific policy states “...employers should maintain and have available for inspection records or other information which will disclose the impact which its tests and other selection procedures have upon employment opportunities of persons by identifiable race, gender, or ethnic group.”

The response to the request for this information is voluntary and does not have to be included by the applicant. The information gathered in this manner by LYNX is used to prepare reports required by federal law. At the present time the ability does not exist for the applicant to include this information on a separate page that would go directly to the EEO Officer. The proper page for gathering this information is only available to persons who apply in person or for those applying via the website who are later called in for an interview.

## **Recommendation**

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We recommend that the EEO officer work with the Information Technology and Human Resources divisions to have this page linked to the LYNX website application page. The information gathered on this page would be sent directly to the EEO officer and not viewed by any other LYNX employees.

### **Response**

LYNX defines an applicant as someone who completes an application for an available position, either by appearing onsite in person, or completing an online application at [golynx.com](http://golynx.com). We also accept resume's for available positions by fax.

Staff concurs that Human Resources, Information Technology, and the EEO Officer should revise the online application to include a standardized form for submitting applications. Individuals that apply online should be able to complete and submit an online personal profile. Research to determine the best format for collecting this data will soon be conducted. The completion date for this process will depend on the availability of the web-site designer but will be completed no later than December 31, 2005. This will be fully implemented at the beginning of the plan year 2006 to provide information about the flow of minority and female workers through the workforce. From this date, we can identify any adverse effect the personnel processes.



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## Audit Committee Information Item #.G

**To:** LYNX Board Of Directors

**From:** Linda Watson  
CHIEF EXECUTIVE OFFICER  
Albert Bustamante  
(Technical Contact)

**Phone:** 407.841.2279 ext: 3017

**Item Name:** Update from General Counsel on SIB Loan Restrictions

**Date:** 9/22/2005

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## INTEROFFICE

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### Memorandum

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**TO:** Albert Bustamante, Esq.

**FROM:** Nora Miller, Esq. / Joseph B. Stanton, Esq.

**DATE:** September 9, 2005

**RE:** Lynx/General Counsel Matters (#33236/140218) – Restrictions on Use of Federal Funds for Repayment of a State Infrastructure Bank Loan

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### BACKGROUND

The Central Florida Regional Transportation Authority ("LYNX") would like to apply for a loan (the "SIB Loan") from the State Infrastructure Bank (the "SIB"). The loan proceeds would be used for the purpose of acquiring additional transit vehicles ("Buses").

### ISSUES AND ANSWERS

**1. Whether state law restrictions exist with respect to the use of Federal Funds as a repayment source?**

*Yes. The State Infrastructure Bank statute, Section 339.55(6) places a limitation on the use of Federal Transportation Regional Incentive Program ("TRIP") Funds from being used as a*

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repayment source. This conclusion was confirmed by Jennifer Weeks from the SIB program. Ms. Weeks did indicate, however, that Federal 5307 grant monies can be used as a repayment source for a SIB loan, provided that a secondary repayment source, consisting of other types of pledged revenues is also provided to secure the loan in the event that grant monies are discontinued for some reason.

**2. Do any restrictions exist under the Internal Revenue Code with respect to the use of Federal funds as a repayment source?**

*We do not believe so. SIB loans may be funded through the issuance of state and local government bonds, the proceeds of which are lent to government borrowers such as LYNX. Under Section 149(b) of the Internal Revenue Code of 1986, as amended, subject to certain exceptions set forth therein, a state and local government bond is not tax exempt if it is guaranteed through the use of federal funds. We do not believe that the use of federal grant monies constitutes a federal guaranty for the purposes of Section 149(b).*

**3. Is there a requirement or need to segregate funds into different accounts for accounting purposes?**

*We do not believe so. It is our understanding from working with LYNX that, from an accounting perspective, LYNX does not separate the various sources of funds that it receives into separate accounts, but that it is able to demonstrate through its accounting system how its funds and revenues are expended for projects and expenses. We do not believe that obtaining the SIB Loan will require any change in its accounting methods so long as LYNX can demonstrate that the SIB Loan proceeds were expended for the intended projects to be funded in an amount equal to at least the amount of the SIB loan. LYNX should confirm this with the appropriate representatives from the SIB if it is awarded a SIB Loan.*