

SUMMARY MINUTES
DULLES CORRIDOR COMMITTEE
MEETING OF MARCH 19, 2014

Mr. Davis thanked the Finance Committee Co-Chairs for allowing the Dulles Corridor Committee to meet before the Finance Committee. He then called the March 19 Dulles Corridor Committee Meeting to order at 10:40 a.m. A quorum was present – Mr. Griffin, Co-Chair, Mr. Carter, Mr. Gates, Ms. Lang, Mr. McDermott, Mr. Williams and Mr. Conner, *ex officio*. Mr. Adams, Mr. Chapman, Mr. Curto, Ms. Hall, Mr. Session, Ms. Wells and Mr. Williams were also present.

Dulles Corridor Metrorail Project Monthly Cost Summary for Phases 1 and 2 (As of January 31, 2014). Pat Nowakowski, Executive Director of the Metrorail Project, was joined by Ginger Evans, Vice President for Engineering, and Anne Field, Metrorail Project Controller. Mr. Nowakowski began his presentation with the day's monthly report, which now included cost information for Phases 1 and 2. He reported that the total contingency for Phase 1 totaled \$462.3 million. Contingency funds obligated through December 2013 had been \$435.6 million. In January, an additional contingency of \$400,000 had been used, bringing the total contingency obligated through January to \$436 million with a remaining contingency of \$26.3 million.

Mr. Davis expressed concern that Dulles Transit Partners, LLC (DTP) would use more contingency funds as a result of the delays. He inquired about the date when the Authority could seek liquidated damages. Mr. Nowakowski explained that under the terms of the contract, liquidated damages could be sought on April 9, which marked seven months after the completion of the contract on September 9.

Mr. Nowakowski noted that changes had been made to the contract, and the Authority would enter into discussions with DTP on the validity of whether those changes affected the date. Mr. Davis stated that a legal case should be prepared for April 9 in the event it was needed. Mr. Nowakowski stated that it was part of a normal process at the end of any contract to close out a litany of issues that had arisen during the contract period. He noted that he believed that changes to the contract had been addressed in a thorough, aggressive manner during the last six months and that remaining issues would most likely be associated with delay claims.

Ms. Evans stated that the Authority is carefully preserving its rights based on the merits of the contract. While continuing in this manner, the Authority is working collaboratively with DTP and the Washington Metropolitan Area Transit Authority (WMATA) at an increased level of activity and focus to complete remaining issues.

Mr. Session inquired about the timeline when WMATA could begin its ridership once DTP had declared substantial completion and the Authority believed substantial completion had been achieved.

Mr. Nowakowski explained that since the Authority had not accepted DTP's declaration of substantial completion, DTP would need to notify the Authority again when it declared substantial completion. He noted that that the Authority and DTP are working collectively to involve WMATA and all the project partners to ensure that once substantial completion is declared again, it is achieved.

Mr. Nowakowski also indicated that the Airports Authority's agreement with WMATA included an operational readiness date, at which time WMATA would determine if the Metrorail tracks and stations are suitable to assume control. He reported that while the operational readiness date would require WMATA's independent assessment, it had always been the Authority's expectation that it would be closely tied to achieving substantial completion. Mr. Nowakowski noted that WMATA has never waived its right of an independent determination with respect to its operational readiness date.

For clarification purposes, Mr. Davis inquired about subsequent actions if WMATA did not accept operational readiness after the Authority had agreed that substantial completion had been achieved. Mr. Nowakowski explained that if the Authority accepted substantial completion from DTP and WMATA did not accept operational readiness, the Project would become the Authority's responsibility. He noted that the desired result is to have the care, custody and control of the Project to be transferred directly from DTP to WMATA with no interim time period by the Authority.

Mr. Davis asked about the process that the Authority would use to recover funds from DTP if WMTATA did not reach operational readiness and repairs were required once the Authority had determined that substantial completion had been achieved. Mr. Nowakowski stated that staff would outline a manner to resolve the issues. He noted that

Authority staff, DTP and WMATA meet multiple times daily to ensure all participants are aware of the Project's details. At those meetings, WMATA representatives had been in agreement with the actions taken thus far by the Airports Authority to reduce those liability issues that Mr. Davis had previously mentioned.

As a follow up to Mr. Session's inquiry about the timeline for WMATA to begin its ridership, Mr. Nowakowski reported that once WMATA declared operational readiness, it would have 90 days to conduct its familiarization training, run simulated service, conduct other testing and drills required with emergency responders and to certify that the system is safe for it to accept. He noted that although the Authority would certify the safety of the system, WMATA must also conduct its own safety certification for the Tri-State Oversight Committee (TOC), which has responsibility for the oversight of WMATA's safety. Once the TOC completed its review, the Federal Transit Administration (FTA) would also be charged to certify the Project's safety. Mr. Nowakowski noted that the certification by TOC and FTA would be completed during WMATA's 90-day period. Mr. Davis inquired whether WMATA anticipated using its entire 90 days, to which Mr. Nowakowski responded that WMATA is very motivated to keep the time period as short as possible.

With respect to the timeframe, Mr. Potter reported that representatives from TOC and FTA had indicated that their safety certification tests could be done in parallel. He noted that these activities would likely last eight weeks, which would not present much flexibility if problems were discovered.

Mr. Davis inquired about the proximity of reaching substantial completion, to which Mr. Nowakowski responded that staff is very much focused on completing the remaining items as expeditiously as possible. While he was unable to confirm a date, Mr. Nowakowski stated that substantial completion is expected to be declared in the near future. Mr. Davis referenced the April 9 date, on which liquidated damages could begin, and stated that he believed that the Authority should consider all of its legal options if DTP is unable to deliver by such date. The April 9 date is long past the date the Project was scheduled to be completed.

Mr. Potter reported that he believed there is a mutual goal among the Authority, DTP and WMATA to achieve substantial completion prior to the April 9 date.

Mr. Davis stated that from the Board's perspective, he believed that the Board felt strongly about achieving substantial completion prior to April 9.

Ms. Evans stated that substantial progress had been made on completing remaining issues in recent weeks. She noted that all parties had agreed on an administrative list of items that needed to be completed, as well as five super critical issues, for which solutions had been identified for the majority. Ms. Evans stated that great progress is being made and it is important to remain focused and motivated with the intention of achieving substantial completion as soon as possible.

In an effort to be transparent to the public with regards to the delay, Mr. Davis inquired about the issues that could be shared at the day's Meeting. Mr. Nowakowski stated that some of the remaining issues are technical in nature. For example, he noted that operable speakers had been installed in all Metrorail stations, but a code official had identified the speakers as non-compliant with the existing building code. Therefore, DTP staff is required to buy new speakers, change the design, and reinstall them. Mr. Nowakowski said that staff is working through similar issues that require resources, lead times for acquiring materials, and the labor to complete the tasks. Another testing process would also be required for the speakers and similar issues. Mr. Davis inquired whether the speakers were a contract item, to which Mr. Nowakowski responded affirmatively; DTP would be responsible for the purchase and installation of the replacement speakers. Ms. Evans noted that the original speakers were similar to those currently installed throughout all WMATA stations but it is within the building official's rights to require the speakers for Phase 1 to be an upgrade from the existing system. Since it is the contractor's responsibility to get the Certificate of Occupancy, DTP is required to purchase and install the replacement speakers.

Mr. Davis asked Mr. Potter whether he would like to offer a timeframe as to when substantial completion is expected to be achieved. Mr. Potter stated that the Authority, DTP and WMATA are working to achieve substantial completion before April 9, when the Authority would be entitled to seek liquidated damages. As Mr. Nowakowski had reported, meetings were being held daily with DTP regarding outstanding issues. Mr. Potter noted that staff had met with WMATA representatives the prior Monday. He stated that the meeting had been productive and that the level of progress on the Project had really accelerated in the last couple of

weeks. Mr. Potter stated that because all partners are collectively trying to avoid liquidated damages, a concerted effort is being made to achieve substantial completion. Rather than debate about the actions that would need to occur with respect to liquidated damages, Mr. Potter suggested that they not be considered at the day's Meeting. He affirmed that he is very pleased with the level of progress, but because of the unresolved issues he is not able to provide a date when substantial completion will be declared.

Mr. Nowakowski reported that staff would present a sole-source contract to replace a communications system on Phase 1 of the Project at next month's meeting. The system used for communications between the train control system installed throughout the length of the entire Project and WMATA's headquarters has not had the reliability that is needed. While an interim solution has been identified to get the Project to substantial completion with the existing communications system, the Authority has made a commitment to WMATA that it will implement a long-term permanent solution to produce the required results. Mr. Nowakowski reported that substantial completion and an operational readiness date could still be achieved despite the reliability concerns of the existing communications system.

Mr. Davis reported that he thought it necessary to convey the Authority's sense of disappointment with the delay, as well as to inform DTP that the Authority is prepared to proceed with the collection of liquidated damages if substantial completion is not declared by April 9.

Ms. Wells inquired whether all design changes that resulted from Phase 1 are being seamlessly incorporated into Phase 2, to which Mr. Nowakowski responded affirmatively. Ms. Wells also inquired whether the contractor could get the code requirements prospectively instead of being concerned about retroactive application of code infringement. Mr. Nowakowski stated that while the contractor is aware of the code requirements at the time design is undertaken, the final inspection results are sometimes different than what are expected.

As a follow-up, Mr. Griffin inquired whether the speakers that required replacement had been approved in the previously-submitted plans. Mr. Nowakowski responded affirmatively and noted that they had not been UL-listed, as required by the code.

Mr. Carter inquired whether the Phase 1 delay would restrict or impact the start-up of Phase 2. Mr. Nowakowski responded that the design work on Phase 2 had already begun. He noted that the bidding process for the yard site for Phase 2 is underway. Mr. Nowakowski reported that once staff presented its recommendation for the yard site to the Dulles Corridor Committee in the spring, both major contracts would then be in place. He noted that later in the day's Meeting, he would present a staff recommendation for Committee approval for a smaller contract associated with Phase 2.

Mr. Conner stated that although the Board is increasingly frustrated, the key concern is to get Phase 1 completed timely and safely. From his perspective, he preferred that the focus be on achieving substantial completion as opposed to posturing for litigation. He provided another example associated with the delay, which involved cables throughout the tunnels that serve a communications function. A code official had determined that the wrong cables are being used although these same cables are being used throughout the WMATA system. While these types of issues can be frustrating, they likely occur on a routine basis with very large-scaled projects. Mr. Conner implored all to focus on getting the Project completed, notwithstanding the litigation posture, which would be addressed, if necessary.

Mr. Gates closely associated himself with Mr. Conner's comments regarding the sense of urgency. He referenced a public comment from a DTP representative who had suggested a lack of clarity with regard to the Authority's requests to finalize the punch list for Phase 1. Mr. Nowakowski responded that the statement had been made, at which time a three-hour meeting was underway with the executives from DTP. He stated that he was unsure why the statement had been made and that Authority and WMATA representatives had attended the meeting and continued to work cooperatively. Mr. Nowakowski reported that all partners are aware of the urgency and the sole focus is to achieve substantial completion.

With respect to Phase 2, Mr. Nowakowski reported that expenditures in January totaled \$6.8 million, bringing the total expenditures to date to \$193 million. The forecast at completion is \$2.227 billion, and the total budget is \$2.778 billion.

The total of contingency funds for Phase 2 is \$551.5 million. Mr. Nowakowski reported that \$700,000 in contingencies had been used thus far.

Recommendation to Award a Contract for Special Inspection and Testing Services for Phase 2 of the Dulles Corridor Metrorail Project. Mr. Nowakowski presented a staff recommendation to award a contract to Professional Services Industries, Inc. (PSI) of Fairfax, Virginia. He reported that the Virginia Code and International Building Code require independent firms to be hired to perform special inspections of construction and structural testing of materials used. Ten proposals had been received as a result of the Request for Proposals issued in December 2013. Mr. Nowakowski reported that separate price proposals had been solicited from the five firms in the competitive range, and PSI had been the lowest bidder with an amount of \$7,998,416.48. PSI had been determined to be responsive and responsible to the terms of the solicitation, and its submittal had met the Disadvantaged Business Enterprise requirement of 15 percent for the Project. The Committee unanimously approved the award of a four-year contract with two one-year options to PSI.

Mr. Adams inquired whether PSI had been involved with the contract for Phase 1 of the Metrorail Project, to which Mr. Nowakowski responded negatively.

In response to Mr. Carter's inquiry about the highest bidder for the contract, Mr. Nowakowski stated that while he was unaware of that amount, the Authority had continued to receive competitive bids with respect to its Phase 2 contracts.

The Meeting was thereupon adjourned at 11:15 a.m.