



RESOLUTION NO. 12-16

**Eliminating the Workforce Credit Factor
from the
Procurement of Design-Build Construction Services
For Phase 2 of the Dulles Corridor Metrorail Project**

WHEREAS, The Airports Authority is constructing, in two Phases, the Dulles Corridor Metrorail Project, a 23-mile extension of the existing Metrorail system from East Falls Church through Washington Dulles International Airport and west to Ashburn ("Project");

WHEREAS, Construction of Phase 1 of the Project, from East Falls Church to Wiehle Avenue, is now approximately 70 percent complete, and the process for procuring Phase 2 design-build construction services is about to begin;

WHEREAS, The Authority has approved a two-step process for selecting a design-build contractor for Phase 2 in which (i) in step one, a Request for Qualifications Information ("RFQI") will be issued and, at its conclusion, a short list of qualified offerors will be established, and (ii) in step two, a Request for Proposals ("RFP") will be issued to the shortlisted offerors and, at its conclusion, a design-build contract will be awarded to the selected offeror;

WHEREAS, As part of the RFQI, the Authority has approved the use of a ten-percent workforce credit factor that would be awarded to any offeror who committed to entering into a project labor agreement ("PLA"), modeled after the one applying to Phase 1 of the Project, in the event the offeror is selected as the Phase 2 design-build contractor;

WHEREAS, In December 2011, the United States Department of Transportation, the Commonwealth of Virginia, Fairfax and Loudoun Counties, the Washington Metropolitan Area Transit Authority, and the Airports Authority executed a Memorandum of Agreement relating to Phase 2 of the Project, in which, among other things, the Commonwealth of Virginia agreed to contribute an additional \$150 million toward the Project, if appropriated by the Virginia General Assembly, and following execution of a funding agreement, to be used by the Airports Authority to pay interest on Dulles Toll Road revenue bonds, unless a different use were approved by the Commonwealth;

WHEREAS, In a June 4, 2012, letter to the Secretary of the U.S. Department of Transportation, a copy of which is attached, the Governor of Virginia has stated that "legal issues" arising from PLA-related legislation enacted during the 2012 session of the Virginia General Assembly need to be resolved before the Commonwealth can fulfill its pledge to contribute this additional \$150 million to the Project. In this letter the Governor has also stated that, if "no PLA bonus or preference, or requirement, [is] included in the procurement documents for Phase [2], . . . the Commonwealth will provide the \$150 million in additional funding, without any further conditions, when it is due in 2013";

WHEREAS, in lieu of the credit factor, and in order to ensure an exceptionally safe working environment for all Phase 2 workers and a highly effective and efficient management of Phase 2 labor resources, the Authority has considered inserting language in the RFQI that calls upon offerors to submit an effective plan for the management of workforce issues without specifically incentivizing the use of a project labor agreement;

WHEREAS, The Authority wishes to ensure that the Project does not lose any funding from the Commonwealth that, except for the credit factor, would be made available to the Project and would assist in reducing tolls on the Dulles Toll Road; and

WHEREAS, the Authority also wishes to ensure that the presence of the credit factor in the procurement for Phase 2 design-build construction services does not affect the upcoming decision of the Loudoun County Board of Supervisors whether Loudoun County will participate in Phase 2 of the Project; now, therefore, be it

RESOLVED, That the credit factor shall be eliminated from the Phase 2 RFQI, and the RFQI shall not award, or fail to award, any predetermined points to any offeror based upon its willingness or unwillingness to commit to a project labor agreement or any other agreement with labor organizations. In addition, no such credit factor, other form of project labor agreement bonus or preference, or project labor agreement requirement shall be included in any other part of the procurement for Phase 2 design-build or other construction services. In lieu of the credit factor, the RFQI will request offerors to submit a plan for the management of workforce issues;

2. That the President and Chief Executive Officer is authorized and directed to begin discussions immediately with the Commonwealth of Virginia regarding the funding agreement for the additional contribution of \$150 million to the Project that is called for by the 2011 Memorandum of Agreement, and to execute such agreement following its review by the Chairman, after consultation with the Board;

3. That the funding agreement shall be executed by the parties before September of this year, when the Board expects to begin consideration, through its committees, of staff recommendations on future toll rates for the Dulles Toll Road; and

4. That the Secretary is directed to cause a copy of this resolution to be delivered to the Governor of the Commonwealth, the Secretary of the U.S. Department of Transportation, the Chairman of the Fairfax County Board of Supervisors, the Chairman of the Loudoun County Board of Supervisors, and the General Manager of WMATA.

Adopted June 6, 2012



Quince T. Brinkley, Jr., Secretary

Attachment



COMMONWEALTH of VIRGINIA

Office of the Governor

Robert F. McDonnell
Governor

June 4, 2012

The Honorable Ray LaHood
Secretary of Transportation
U.S. Department of Transportation
1200 New Jersey Avenue, SW
Washington, D.C. 20590

Dear Secretary LaHood:

I write you in follow up to our recent conversation regarding Phase II of the Dulles Corridor Metrorail Extension Project ("Phase II"). During our conversation, we discussed the Commonwealth's pledge of an additional \$150 million in funding for Phase II to help mitigate the impact of planned toll increases necessary to fund this project. The Commonwealth remains committed to providing this funding; however, certain legal issues must be resolved before this can occur.

As you are aware, in this past General Assembly Session, the legislature adopted new laws regarding Project Labor Agreements (PLAs). House Bill No. 33 and Senate Bill No. 242, which I signed into law earlier this month, prohibit state entities from either prohibiting or requiring PLAs on projects partially or wholly funded with state funds. This new law will go into effect on July 1, 2012.

Additionally, amendments to the 2010 – 2012 Appropriation Act (Item 436 (K)) and the 2012 – 2014 Appropriation Act (Item 430 (M)) prohibit inclusion of a PLA bonus or preference in the procurement documents for any project partially or wholly funded with state funds. Last week, I signed into law the 2010 – 2012 Appropriation Act, which goes into effect immediately.

Given these changes, it is necessary that no PLA bonus or preference, or requirement, be included in the procurement documents for Phase II. If MWAA acts to ensure that this is the case, the Commonwealth will provide the \$150 million in additional funding, without any further conditions, when it is due in 2013.

The Honorable Ray Lalood
June 4, 2012
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I look forward to continuing to work with you and the Funding Partners as we advance this critical project. I ask that you continue efforts with the Commonwealth to expeditiously resolve any remaining issues related to implementation of the recent changes to federal and state law regarding appointees to the Authority.

Please do not hesitate to contact either myself or Secretary Connaughton at your convenience should you wish to discuss this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert F. McDonnell". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Robert F. McDonnell

cc: The Honorable Sharon Bulova
The Honorable Scott York
Mr. Michael Curto