

Playing Around with the PLA

The Metropolitan Washington Airports Authority's cursory decision to mandate a union workforce for Phase 2 of Metrorail-to-Dulles potentially exposes the project to hundreds of millions of dollars in higher costs.

By James A. Bacon

How much will the Project Labor Agreement add to the cost of Phase 2 of the Metrorail-to-Dulles project? That's the \$64 (million) question. Supporters of the PLA, which requires contractors to hire a union workforce, say it will reduce the risk of cost overruns by ensuring that the \$3 billion-plus construction project runs smoothly. Critics charge that it would add 10% or more to the cost – as much as \$300 million -- almost guaranteeing that expenditures exceed projections.

Finding a credible answer is all the more urgent now that the board of the Metropolitan Washington Airports Authority (MWAA), which is managing construction of the heavy rail project, has voted to build an underground Metro station at Dulles airport costing some \$330 million more than an above-ground alternative.

The board doesn't have much leeway for error. Escalating costs could derail the complex project financing, which relies upon a combination of special tax districts in Fairfax and Loudoun counties, revenues from massive toll hikes on the Dulles Toll Road and a contribution from MWAA itself. If bond buyers lose confidence in the cost projections and the stability of the funding sources, they may balk at issuing the bonds needed to fund the construction.

Given the fragility of the Metrorail-to-Dulles financing in the face of mounting cost projections, one would think that the MWAA board would have given careful attention to the question of how much the PLA would affect cost projections. But the board treated the issue very much as an after-thought, deliberating for no more than a few minutes before kicking the matter over to the MWAA staff for execution. The cursory handling of that decision calls into question the suitability of the board as a steward of the Metrorail extension project.

Here is the background. Phase 1 of the project, extending the rail line from the existing Metrorail system to Tysons Corner and somewhat beyond, was contracted to Dulles Transit Partners (DTP), a partnership of construction giants Bechtel Corp. and URS. Both companies do business nationally, which means they work with labor unions on many projects. After winning the Phase 1 contract, DTP voluntarily entered into a Project Labor Agreement to provide a reliable, stable supply of labor, resolve disputes and eliminate the threat of strikes or other work actions in the event of a disagreement. PLAs make sense for companies that choose to use union labor.

But there was one very important provision that different from conventional PLAs: It exempted sub-contractors from the requirement to hire union labor. Therefore, DTP was free to hire non-union subs accounting for roughly 80% of the work.

By all accounts, the PLA covering Phase 1 construction has worked out well so far. DTP had good things to say about the agreement during a meeting of the Dulles Corridor Committee, which considered the measure before it was forwarded to the full board.

“Dulles Transit Partners has recommended to the Authority that a project labor agreement much like the one employed in Phase 1 also be utilized in Phase 2,” asserted the formal resolution passed by the MWAA board in April. The Minutes of the April 6, 2011, board meeting also stated that “Dulles Transit Partners ... could not have been more pleased” with the PLA. “They have appeared before the Committee to testify how the agreement had assured both labor peace and a ready supply of the trained and skilled construction craft workers, for substantial savings over the life of the project.”

Michael A. Curto, an attorney with lobbying powerhouse Patton Boggs and appointee of the governor of Maryland, introduced the resolution for the board of directors to approve the PLA. He gave a brief presentation which, according to attendees in the audience, generated minimal discussion. The board adopted the resolution in an 11-2 vote. Only former Virginia Congressman Tom Davis and former North Carolina Congressman William W. Cobey voted against the measure. Among those casting a vote in favor was Dennis L. Martire, a senior executive with the Laborers International Union of North American (LiUNA).

Martire’s union, which represents semi-skilled construction laborers, stands to gain significantly from an agreement that requires the use of labor workers. The contractor would be required to hire from LiUNA hiring halls, workers would pay 5% union dues, the contractor pay into a Construction Industry Labor-Management Trust Fund, which provides unspecified “[services](#)” to union members or employees, and the contractor pays into union pensions which its employees may never benefit from. Martire has been a vocal advocate of PLAs, fighting to put one into place in Montgomery County, Md., and penning a paper on the subject.

Martire did more than vote in favor of the PLA agreement, says Ben Brubeck, director of labor and federal affairs for Associated Builders & Contractors, an association of non-union or “merit shop” contractors opposed to the PLA. Martire spoke in favor of the PLA proposal during the Dulles Corridor Committee hearing, and he backed up Curto during his presentation to the full board. In vivid proof that Martire had more than a passing interest in the outcome, LiUNA bused in three busloads of unruly protestors to make their sentiments known during an April press conference called by Rep. Frank Wolf, R-10, to address the escalating costs of Metrorail-to-Dulles. (See a [video](#) of the protest.)

Brubeck suggests that Martire should have recused himself from voting in order to avoid a conflict of interest. The MWAA’s Code of Ethical Responsibilities is ambiguous on the point, however. On the one hand, it states that “a director shall avoid any action that is likely to result in ... giving undue preferential treatment to any person ... losing independence or impartiality ... or affecting adversely the confidence of the public in the integrity of the Authority.” It is difficult to imagine that Martire was impartial in his advocacy of a PLA that would benefit the LiUNA, and it likewise could be argued that his advocacy could “affect adversely the confidence of the public in the integrity of the authority.”

On the other hand, the Code of Ethical Responsibilities does allow some wiggle room. Martire does not “hold” a direct or indirect financial interest in “an enterprise” seeking a contract or agreement with the airports authority, which the Code prohibits. He is merely a salaried employee (a handsomely compensated one) of a labor union that seeks an agreement with the authority, so, it could be argued that the code technically does not prohibit his advocacy. In any case, according to MWAA spokesperson Courtney Mickalonis, “Mr. Martire consulted both with his own counsel and with the Board’s counsel and was advised his vote would not conflict with his responsibilities under the Code.”

The resolution approved by the board ordered the MWAA president to include a PLA agreement, “based as much as is practicable on the agreement used so effectively in Phase 1 of the Metrorail project,” in the procurement documents for Phase 2 of the project.

In other words, while Dulles Transit Partners adopted a project labor agreement voluntarily for Phase 1, MWAA made the agreement mandatory for bidding on the project for Phase 2. While the PLA does not exclude non-union contractors from bidding on the prime contract, it puts them at an enormous competitive disadvantage because their business models are organized around building teams of employee-workers rather than taking workers dispatched from the union hiring hall. Hamstringing the non-union companies significantly increases the odds that DTP will win Phase 2 of the contract should it choose to bid.

The pros and cons of a PLA are complex. Both sides cite a raft of studies supporting their view that the agreements either save money or run up costs. There is little evidence, however, that MWAA or its Dulles Corridor Committee considered both sides of the debate. When I asked what presentations or documentation MWAA might have consulted, Mickalonis forwarded these documents:

- “Wages, Productivity and Highway Construction Costs: Updated Analysis 1994-2002,” written by the Construction Labor Research Council
- “The Use of Project Labor Agreements for Federal Construction Projects,” detailing President Obama’s executive order favoring PLAs
- “Project Labor Agreements: Advantages for Capital Construction Projects,” written by Dennis Martire
- “Heavy & Highway Construction Project Agreement,” published by the National Heavy & Highway Coalition, an organization which bills itself as having been dedicated to labor management cooperation since 1954 – and a group that Martire served as a trustee.
- A 2001 article in Cockshaw’s Construction Labor News & Opinion, “Evaluating PLA Performance”
- “Project Labor Agreements in New York State: In the Public Interest,” a 2009 study by Cornell professor Fred B. Kotler.

The Association of Builders and Contractors likewise cites a voluminous body of work documenting its charge that mandating PLAs for government projects makes costs higher than they would be if merit shops were allowed to bid on an equal playing field. If the documents supplied by Mickalonis are

representative of the information considered by MWAA, the authority reviewed none of those studies and heard only one side of the story.

When asked if MWAA had conducted a formal cost-benefit analysis of the issue, Mickalonis, replying by email, did not mention any. Her answer: “The Board examined the positive impacts the Phase 1 PLA has had on the Dulles Rail Project, including providing a reliable and trained workforce, promoting safety and quality, and allowing the delivery of a cost-effective project.”

Let’s sum up the key points: First, a union executive lobbied for the Project Labor Agreement, narrowly skirting the Code of Ethical Responsibility governing conflicts of interest. Second, MWAA’s committee and board considered only pro-PLA viewpoints. Third, the board devoted only a few minutes to discussing a measure that, by discouraging non-union contractors from bidding on the Phase 2 project, potentially could add hundreds of millions of dollars to the final tab – even as the cost of the project was escalating to the point where it could become impossible to finance.

That sounds like an organization driven by some other agenda than what’s best for the citizens and taxpayers of Virginia, or even what’s best for the Rail-to-Dulles project itself.

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