



Finance, Administration and Oversight Committee

Action Item III-B

June 14, 2007

Dulles-Incorporate Cost Associated with Inter-Governmental Agreement into Metro's Capital Budget

**Washington Metropolitan Area Transportation Authority
Board Action/Information Summary**

Action
 Information

MEAD Number:
99745

Resolution:
 Yes No

PURPOSE

To obtain Finance, Administration and Oversight Committee concurrence and Board approval for:

1. A reimbursable Intergovernmental Agreement with Metropolitan Washington Airports Authority (MWAA) for WMATA's role on the Phase I Dulles Corridor Metrorail Extension,
2. Authorization for the General Manager to execute the Intergovernmental Agreement (IGA) contingent on no reduction in the IGA Project scope of work, and after all prior Board conditions have been satisfied,
3. Establishment of a \$272,850,000 budget to cover all costs associated with the Reimbursable Intergovernmental Agreement with MWAA, subject to the availability of funds and execution of a Full Funding Grant Agreement, and Amend the FY08 - 12 Reimbursable Budget,
4. Authorization of the on-call consultant to provide specialized support.
5. Initiation of contract procurement in accordance with MWAA project schedule and availability of funds. Staff will seek Board approval prior to contract award on the Capital Equipment Design, Procurement & Commissioning for:
 - a. Communication backbone (\$11,469,000)
 - b. Rail operations computer upgrades (\$8,607,000)
 - c. Automatic fare collection equipment (\$8,482,000)
 - d. Systems graphics updates (\$2,730,000)
 - e. 64 rail vehicles (\$189,490,000)
 - f. Non-revenue vehicles (\$10,076,000)
 - g. Art in Transit (\$1,721,000)

DESCRIPTION

Metro and MWAA have completed negotiations on an Intergovernmental Agreement to provide for WMATA's role in the Dulles Corridor Metrorail Project. Metro's role in final design, construction, testing, inspection, safety certification

and final acceptance has been satisfactorily addressed under the Agreement and is divided into four major categories:

- A. Capital equipment design, procurement, installation and commissioning including: 64 rail vehicles, communications backbone, ROCS upgrades, automatic fare collection equipment, system graphics updates, non-revenue vehicles and Arts-in-Transit (\$230,854,000)
- B. Technical Advisor (\$26,498,000)
 - (1) Provide technical advisory services during the pre-final design notice to proceed phase
 - (2) Provide technical advisor services during final design review and approval
 - (3) Provide oversight services during the construction phase
 - (4) Provide personnel and equipment support for integration testing and system performance demonstration
 - (5) Provide personnel and equipment in support of systems commissioning
- C. As intended Owner and Operator of the Dulles Extension (\$13,777,000)
 - (1) Provide technical assistance to MWAA
 - (2) Perform certain tasks necessary to accept the project into the ARS
- D. Arts-in-Transit (\$1,721,000)
 - (1) To the extent that MWAA incorporates artwork into the project, the artwork will be selected pursuant to WMATA Arts-in-Transit Program.
 - (2) WMATA will manage the Arts-in-Transit Program as part of Technical Advisor responsibilities.
 - (3) The Design - Build contract contains provisions and allowances for coordinating and incorporating the artwork into the project.

On November 16, 2006, the Board of Directors adopted the Supplemental Public Hearing Report on the Preliminary Engineering Design Refinements and approved the modifications to the General Plans. The Board approved the addition of an eighth condition to be added to the seven Adopted Regional System Contingencies. The Board authorized the General Manager to negotiate an Amendment to the Second Agreement with the Virginia Department of Rail and Public Transportation for the design and construction of facilities within the WMATA Existing System (WES). Subsequent to the November meeting events negated the need to advance specific WES work, and Virginia Department of Rail and Public Transportation decided not to amend the Second Agreement. The Board authorized the General Manager to negotiate an agreement with MWAA and other appropriate agencies for all aspects of the Project.

On January 25, 2007, the Board of Directors approved resolution 2007-04 which set conditions for approval of the final financial plan for the Dulles Corridor Metrorail Project and affirm the role of Metro in the project.

Two of the eight conditions in prior Board resolutions are complete: satisfactory completion of the Final Environmental Impact Statement and Issuance of a Record of Decision by FTA. The Board approval of the Project Financial Plan is an action before the Board today. The remaining five (5) conditions are satisfactorily addressed in the Agreement.

Metro's role in final design, construction, testing, inspection, safety certification and final acceptance has been addressed in the Agreement.

Financial coverage for risks due to warranty coverage different from WMATA's standard warranties, limitations on indemnification obligations and latent defects have been addressed in the Intergovernmental Agreement, as has WMATA's right to control access to its operating system.

The Intergovernmental Agreement provides adequate funding to carry out WMATA's obligations in the Agreement.

FUNDING IMPACT

Budget: FY08 - 12 Reimbursable Budget
Project Title: Dulles Corridor Metrorail Project
Approved Budget: \$0
Additional Budget: \$272,850,000
This Action: \$272,850,000
Prior Approval: \$0
Remaining Budget: \$272,850,000

RECOMMENDATION

That the Board Finance, Administration, and Oversight Committee concur and the Board approve the WMATA-MWAA Intergovernmental Agreement for WMATA's role on the Phase I Dulles Corridor Metrorail Project including:

Authorize the General Manager to execute the Agreement as a reimbursable project agreement, contingent on no reduction in the IGA Project scope of work, and after all prior Board conditions have been satisfied.

Amend the Metro Reimbursable Budget to cover the cost of the cost associated with the WMATA – MWAA IGA, subject to the availability of funds and the execution of a Full Funding Grant Agreement.

Authorize the on-call consultant to provide specialized support.

Initiate contract procurement in accordance with MWAA project schedule and subject to the availability of funds. Staff will seek Board approval prior to contract award on the Capital Equipment Design, Procurement and Commissioning.

SUBJECT: DULLES CORRIDOR METRORAIL PROJECT – GENERAL MANAGER APPROVAL TO EXECUTE THE WMATA-MWAA INTERGOVERNMENTAL AGREEMENT FOR PHASE I OF THE PROJECT, AMEND THE WMATA BUDGET AND AUTHORIZE THE ON-CALL CONSULTANT TO PROVIDE SPECIALIZED SUPPORT

PROPOSED
RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, WMATA and the Metropolitan Washington Airports Authority (MWAA) have negotiated an Intergovernmental Agreement (IGA) defining WMATA's role on the Dulles Corridor Metrorail Project (Project) and providing funding for WMATA personnel and the acquisition of capital equipment for the Project; and

WHEREAS, The WMATA role under the IGA is divided into three major categories:

1. Capital Equipment: WMATA will design, procure, install and commission certain capital equipment;
2. Technical Support: WMATA will perform as technical advisor to MWAA to ensure that the Project is constructed according to WMATA criteria;
3. Tasks Associated with Acceptance: WMATA will perform certain tasks necessary to accept the Project into the Adopted Regional System ("ARS"); and

WHEREAS, This is the first time in WMATA's history that the construction of an extension of the ARS is not directly under WMATA's control. Therefore, the WMATA Board of Directors (WMATA Board) conditioned acceptance of the Project into the ARS upon the fulfillment of the following conditions identified as the "ARS Contingencies" listed below with status in parenthesis:

1. Satisfactory completion of the Final Environmental Impact Statement (FEIS); (complete)
2. Issuance of a Record of Decision by FTA; (complete)
3. WMATA Board approval of a final financial plan for the construction, acquisition and operation of the new facilities; (pending)
4. Execution of implementing financial commitments between DRPT and funding sources in the form of local funding agreements and the federal full funding grant agreement; (to be executed)
5. WMATA determination that the Project has been completed in accordance with the FEIS, the approved General Plans, all WMATA system requirements, and that the Project, as built and tested, is suitable for acceptance into the ARS;

- (ongoing throughout construction of the Project with final acceptance by the WMATA Board)
6. Conveyance to WMATA by DRPT of a property interest in the Project property adequate to assure WMATA of continuing control of the Project property throughout the useful life of the Project; (to be done prior to WMATA acceptance)
 7. Any indemnification obligation from WMATA to Toll Road Investors Partnership II (TRIP II), MWAA, or any other entity associated with the Project is subject to WMATA Board approval, and any indemnification obligation provided by DRPT to TRIP II, or MWAA, or any other entity associated with the Project will be subject to a determination by WMATA that such indemnification does not create a liability or potential liability for WMATA; (no such indemnification have yet been identified); and
 8. All land use and permitting approvals from any federal, state, or local regulatory agency shall be complete and final before WMATA's acceptance of the Project in the ARS, to ensure that jurisdictional stakeholders do not impose additional requirements upon transfer of interests to WMATA for operational purposes (ongoing); and

WHEREAS, On January 25, 2007, the WMATA Board approved Resolution #2007-04, which set conditions for approval of the final Financial Plan for the Project and affirmed the role of WMATA in the Project. The Resolution stated that Fairfax County and WMATA are integral to the Project and that their increased involvement in significant decisions relating to the Project is essential to the ultimate success of the Project; and

Additionally, the WMATA Board adopted the policy that in order to successfully meet the ARS Contingencies, WMATA, as the ultimate owner/operator of the Project, must have a role in reviewing and concurring in significant project-related decisions and agreements before the agreements are finalized and must be an active participant in the development, negotiation, and execution of IGAs, prior to MWAA's execution of the design-build agreement for the Project; and

The WMATA Board further resolved that as implementation of the Project proceeds, it is essential to have transparency and accountability so that the WMATA Compact Jurisdictions and their constituents are assured the Project will be built for the best possible price and value without assuming undue risk and that the effects of construction on local communities and the operating cost of the aerial option will be taken into consideration when deciding between the tunnel and aerial options; and

Finally, the WMATA Board resolved that approval of the Financial Plan and related agreements will occur only after staff provides a status report affirming that (1) all conditions in prior WMATA Board Resolutions, including the eight (8) conditions have been or will be satisfied by the time WMATA accepts the Project into the ARS; (2) WMATA's role in final design, construction, testing, inspection, safety certifications, and acceptance of the Project has been memorialized in an Agreement between MWAA and WMATA; and (3) the post-construction issues related to liability, latent defects and warranties are addressed in a manner similar to other WMATA extensions; and

WHEREAS, Conditions for approval of the Agreement have been met including the completion of the negotiations on the IGA, Approval of the Financial Plan for the Project Development and incorporation of the eight (8) ARS Contingencies into the IGA; and

WHEREAS, Staff provided a staff report affirming that (1) all conditions in prior WMATA Board Resolutions, including the eight (8) "ARS Conditions" listed above have been or will be satisfied by the time WMATA accepts the Project into the ARS; (2) WMATA's role in the final design, construction, testing, inspection, safety certifications, and acceptance of the Project has been memorialized in an Agreement between MWAA and WMATA; and (3) the post-construction issues related to liability, latent defects, and warranties are addressed in a manner similar to other WMATA extensions; now therefore be it

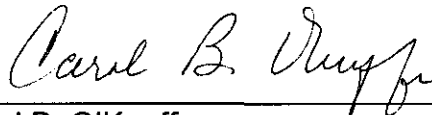
RESOLVED, That the WMATA Board of Directors approves the IGA with MWAA and authorizes the General Manager to execute the IGA; and be it further

RESOLVED, That the WMATA Board of Directors increases the FY 2008 On-Call Consultant Work Program by \$250,000 and increases the FY 2008 through 2012 WMATA Budget by \$272,850,000 for WMATA's role as defined by the IGA, subject to the availability of Federal and non-federal funds through the Agreement; and be it further

RESOLVED, That the WMATA Board of Director's acceptance and approval of the Intergovernmental Agreement between MWAA and WMATA is contingent on the scope of the project as defined in the IGA and that any future changes to this project scope will require a reconsideration and further approvals by the WMATA Board, and be it finally

RESOLVED, That this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,



Carol B. O'Keeffe
General Counsel

Dulles Corridor Metrorail Project

Dulles-Incorporate Cost Associated with Inter-Governmental Agreement into Metro's Capital Budget

Presented to the Board of Directors:

**Finance, Administration and Oversight
Committee**

June 14, 2007





Purpose

To obtain:

- 1. Board approval of a reimbursable Intergovernmental Agreement with the Metropolitan Washington Airports Authority (MWAA) for WMATA's role on the Phase I Dulles Corridor Metrorail Extension,**
- 2. Authorization for the General Manager to execute the Intergovernmental Agreement (IGA) contingent on no reduction in the IGA Project scope of work,**
- 3. Authorization to establish a \$272,850,000 budget to cover all costs associated with the Reimbursable Intergovernmental Agreement with MWAA, subject to the availability funds and the execution of a Full Funding Grant Agreement, and Amend the FY2008 through FY2012 WMATA Budget,**



Purpose (Continued)

4. **Authorization for the on-call consultant to provide specialized support. \$250,000 are currently in the 2008 budget in anticipation of this authorization,**

5. **Approval to initiate contract procurement in accordance with MWAA project schedule and subject to availability of funds. Staff will seek Board approval prior to contract award on the Capital Equipment Design, Procurement & Commissioning for:**
 - a. **Communication backbone (\$11,469,000)**
 - b. **Rail operations computer upgrades (\$8,607,000)**
 - c. **Automatic fare collection equipment (\$8,482,000)**
 - d. **Systems graphics updates (\$2,730,000)**
 - e. **Sixty-four rail vehicles (\$189,490,000)**
 - f. **Non-revenue vehicles (\$10,076,000)**
 - g. **Art in Transit (\$1,721,000)**



MWAA Agreement

- **In January 2007, The Board of Directors approved resolution 2007-04 affirming WMATA's role in Dulles planning, including the following provisions:**
 - **"...(1) All conditions in prior WMATA Board resolutions, including the eight conditions listed above have been or will be satisfied by the time WMATA accepts the Dulles Corridor Metrorail Project into the ARS**
 - **(2) WMATA's role in the final design, construction, testing, inspection, safety certification and acceptance of the Dulles Corridor Metrorail Project has been memorialized in an agreement between MWAA and WMATA; and**
 - **(3) the post construction issues related to liability, latent defects and warranties are addressed in a manner similar to other WMATA extensions;..."**
- **In November 2006, the Board of Directors authorized the General Manager to negotiate an agreement with the Metropolitan Washington Airports Authority and other appropriate agencies for all aspects of the project.**



MWAA Agreement

Intergovernmental Agreement

- Agreement between MWAA and WMATA regarding the execution of project activities for WMATA's role in the final design, construction, startup and final acceptance of the Dulles Corridor Metrorail Extension.
- Major Components of the agreement include:
 - Participation in project implementation decisions.
 - Review and approval of final designs for transit related components
 - Certification of minimum real property interest
 - Construction Quality Oversight
 - Procurement of rail cars, fare collection, systems graphics, etc.
 - Support to startup and systems integration
 - Escrow account to cover post construction liabilities
 - Indemnification and Insurance coverage
 - Right of Entry Agreement for work within revenue areas



Board Resolution 2007-04

Status of provisions of Board Resolution 2007-04:

- (1) Two of the eight conditions in prior Board Resolutions are complete: the completion of the Environmental Impact Statement and the issuance of a Record of Decision by the FTA. The Board approval of the Project Financial Plan is an action before the Board today. The remaining five (5) conditions are addressed in the Intergovernmental Agreement.**
 - (2) WMATA's role in final design, construction, testing, inspection, safety certification and final acceptance have been addressed in the Intergovernmental Agreement.**
 - (3) Financial coverage for risks due to warranty coverage different from WMATA's standard warranties, limitations on indemnification obligations and latent defects have been addressed in the Intergovernmental Agreement, as has WMATA's control of access to its operating system.**
- The Intergovernmental Agreement provides adequate funding to carry out WMATA's obligations in the Agreement**



Recommendations

Approve Finance, Administration and Oversight Committee Action to:

- **Authorize the General Manager to execute the Intergovernmental Agreement with the Metropolitan Washington Airports Authority for Phase I of the Dulles Corridor Metrorail Project, contingent on no reduction in the IGA Project scope of work.**
- **Amend the WMATA FY2008 through FY 2012 Budget to cover the cost associated with the WMATA – MWAA Intergovernmental Agreement, subject to the availability of funds and the execution of a Full Funding Grant Agreement. Associated project oversight cost are included in the budget.**
- **Authorize the on-call consultant to provide specialized support.**



Recommendations (continued)

- **Approval to initiate contract procurement in accordance with MWAA project schedule and subject availability of funds. Staff will seek Board approval prior to contract award on the Capital Equipment Design, Procurement & Commissioning for:**
 - a. Communication backbone**
 - b. Rail operations computer upgrades**
 - c. Automatic fare collection equipment**
 - d. Systems graphics updates**
 - e. Sixty-four rail vehicles**
 - f. Non-revenue vehicles**
 - g. Art in Transit**