



Virginia Chapter

Jim Stamer
Chairman

Prospect Waterproofing Co.

Brent Wells

First Vice Chairman

Southland Concrete Corp.

Carol Curtis

Second Vice Chair

Noah Enterprises, Inc.

Jeff Davoud

Secretary

Old Dominion Abatement
& Demolition

David R. Malcolm

Treasurer

Lanigan, Ryan, Malcolm & Doyle, PC

Steve Daves

Immediate Past Chairman

R. W. Murray Co.

Board of Directors

Dan Cook

Rutherford

Curt Damico

RCD, Inc., Electrical Services

Dennis Darling

Clark Construction Group, LLC

John Ennis

Ennis Electric Co., Inc.

Todd Hammond

Capital Interior Contractors, Inc.

Rick Heath

N.B. Handy Co.

Dan Hugeback

Diamond Glazing, Inc.

Scott Kowalski

Petty, Livingston, Dawson & Richards, PC

Richard Lee

KBS, Inc.

Keith Maddox

Vantage Construction Corp.

J.J. McCarthy

JJMC, LLC

Bill McIntosh

Balfour Beatty Construction

Bob Rucks

L.F. Jennings, Inc.

Steve Skinner

DPR Construction, Inc.

Greg Terry

KADCON Corp.

Karl Wolpert

ColonialWebb Contractors

Patrick J. Dean

President, ABC-VA

42680 Trade West Drive, Dulles, VA 20166
(703) 968-6205, Fax: (703) 968-6861, www.abcva.org

April 21, 2011

Mr. Charles D. Snelling, Chairman
Metropolitan Washington Airports Authority
1 Aviation Circle
Washington, DC 20001

Dear Mr. Snelling:

On behalf of Associated Builders and Contractors (ABC)¹ of Virginia's 660 merit shop contractors and subcontractors and their employees, I am writing you and the Metropolitan Washington Airports Authority (MWAA) board members to express concerns about the resolution passed April 6 that directs the MWAA Dulles Corridor and Business Administration Committees to mandate a project labor agreement (PLA) in procurement documents for Phase 2 of the Dulles Corridor Metrorail Project.

If MWAA should mandate a PLA in the specifications of Phase 2 bidding documents, I am confident the PLA will harm local and Commonwealth taxpayers, increase costs for Dulles Toll Road users, and discourage competition from Virginia's qualified construction firms and their skilled employees.

Because the PLA resolution passed quickly without an opportunity for public comment, I suspect MWAA board members have not been properly educated about the negative aspects of PLA mandates and the subtle, yet critical, differences between

¹ ABC is a national construction trade association representing 23,000 individual employers in the commercial and industrial construction industry, including general contractors, subcontractors and material suppliers belonging to 75 local ABC chapters throughout the United States. ABC and its members promote the merit shop construction philosophy, which ensures that public works contracts are procured through fair and open competition that encourages a level playing field for all qualified contractors and their skilled employees, regardless of whether they belong to a union. Experience demonstrates that the merit shop philosophy helps construction customers like MWAA receive the best possible construction product at the best possible price.

Conservatively, ABC's members employ more than 2 million skilled construction workers whose training and experience span all of the 20-plus skilled trades that comprise the construction industry. The majority of ABC member companies, known as *merit shop contractors* in the industry, are not signatory to a construction trade union and they have a core workforce of experienced and qualified employees that do not belong to a construction trade union. The Bureau of Labor Statistics' (BLS) Jan. 2010 report states that nonunion employees in the U.S. construction industry comprises 86.9 percent of the total construction industry workforce. In Virginia, 96 percent of the private construction workforce does not belong to a union.

a Phase 2 PLA *mandate* and the Phase 1 PLA *voluntarily* entered into by Dulles Transit Partners (DTP) *after* they were awarded the contract.

The Phase 1 PLA specifically exempted merit shop subcontractors from signing the agreement.² As a result, a number of quality merit shop subcontractors and their skilled employees contributed to the success of Phase 1.

Even if subcontractors are exempted from signing a similar Phase 2 agreement, a pre-award PLA mandate will discourage competition from Phase 1 subcontractors, as well as new teams of merit shop prime contractors and their subcontractors, that may be interested in competing for Phase 2 construction contracts. Simply exempting merit shop subcontractors from signing the PLA will not create conditions for full and open competition because prime contractors that self-perform work with their own employees will be discouraged from competing for contracts because of the anti-competitive and costly terms in typical PLAs.

Areas of Concern in a Typical PLA

I understand the terms of the Phase 2 are not finalized, but I have reviewed the attached National Heavy & Highway Coalition's Heavy and Highway Construction Project Agreement recently circulated to MWAA board members. If it is used as the basis for the mandated Phase 2 PLA, the merit shop contracting community has serious concerns. Although typical PLAs are replete with provisions that can needlessly reduce competition and increase costs, there are seven provisions in this specific PLA that are common in typical PLAs and are particularly objectionable to qualified merit shop companies and their skilled employees:

1. PLAs force nonunion employees to join a union as a condition of employment. It is unclear if this provision is even legal in Virginia, as the Commonwealth is subject to Right to Work laws. However, the PLA could be modified to comply with Virginia's Right to Work law but still force merit shop companies to obtain most, or all, of their Phase 2 trade employees from union hiring halls. This means a merit shop company is prevented from using their own workforce and/or has limits on the number of existing employees they can use. New and unfamiliar union tradespeople dispatched from union hiring halls are of unknown quality and may delay time and cost-sensitive construction schedules dependent on the efficient use of familiar labor trained and skilled in multiple crafts. It would be similar to asking the Washington Redskins to play a football game with a new defensive line supplied by the Dallas Cowboys. This provision results in

² See paragraph 8 of Dulles Corridor Metrorail Project Labor Agreement Final Addendum, Heavy and Highway Construction Project Agreement, Construction of Phase 1 – Fairfax County, Virginia.

“Subcontracting:...It is further understood that in the event any covered work is awarded to a merit shop contractor the contractor shall not be required to sign this agreement or sign any other agreement as a condition of performing work on this project.”

additional uncertainty that might impact the ability of a contractor to deliver a quality, on-time and on-budget construction project to MWAA. (See Section 4.5 on p. 18).

2. Nonunion employees must pay nonrefundable union dues and/or fees on a PLA project, even though they have decided to work for a nonunion employer.³ (See Section 4. on p. 19). However, because Virginia is a Right to Work state, it is unclear if nonunion workers would be required to pay a portion or all of the union dues and fees .
3. PLAs require nonunion companies to pay their workers' health and welfare benefits to union trust funds, even though these companies have their own benefit plans. (See Section 4.1 C. on p. 13). Workers cannot access any of their union benefits unless they decide to leave their nonunion employer, join a union and remain with the union until vested.⁴ Few nonunion employees will join a union after working on a PLA project, so in order to ensure nonunion employees have retirement and benefit plans, companies have to pay benefits twice: once to the union plans and once to the existing company plans. In addition, paying into underfunded and mismanaged union pension plans may expose merit shop contractors to massive pension withdrawal liabilities. Depending on the health of a union-managed multi-employer pension plan affiliated with the local trade unions dispatching labor to Phase 2 of the project, signing a PLA could bankrupt a contractor or prevent it from qualifying for construction bonds needed to build future projects for MWAA and other customers.⁵
4. PLAs require contractors to follow union work rules, which change the way they otherwise would assign employees to specific job tasks—requiring contractors to abandon an efficient labor utilization practice called “multiskilling” and instead assign work based on inefficient and archaic union jurisdictional boundaries defined in union collective bargaining agreements (See Section 5.4 on p. 23). Merit shop contractors achieve significant labor cost savings and deliver

³ See www.TheTruthAboutPLAs.com, *Understanding PLAs in Right to Work States*, 07/20/09.

⁴ An October 2009 report by Dr. John R. McGowan, "The Discriminatory Impact of Union Fringe Benefit Requirements on Nonunion Workers Under Government-Mandated Project Labor Agreements," finds that employees of nonunion contractors that are forced to perform under government-mandated PLAs suffer a reduction in their take-home pay that is conservatively estimated at 20 percent. PLAs force employers to pay employee benefits into union-managed funds, but employees will never see the benefits of the employer contributions unless they join a union and become vested in these plans. Employers that offer their own benefits, including health and pension plans, often continue to pay for existing programs as well as into union programs under a PLA. The McGowan report found that nonunion contractors are forced to pay in excess of 25 percent in benefit costs above and beyond existing prevailing wage laws as a result of “double payment” of benefit costs.

See www.TheTruthAboutPLAs.com, *New Report Finds PLA Pension Requirements Steal From Employee Paychecks, Harm Employers and Taxpayers*, 10/24/09

⁵ See www.TheTruthAboutPLAs.com, *Required Reading on Multi-Employer Pension Plan Crisis*, 03/13/10.

quality projects through multiskilling, in which workers possess a range of skills that are appropriate for more than one work process and are used flexibly across multiple trades on a project or within an organization. This practice has tremendous labor productivity advantages for contractors, but is forbidden by typical union work rules and, by extension, PLAs.⁶

5. PLAs require nonunion companies to obtain apprentices exclusively from union apprenticeship programs. Participants in federal and state-approved nonunion apprenticeship programs and community or employer training programs cannot work on a job covered by a PLA. This means young people enrolled in Virginia's qualified apprenticeship programs could be excluded from work in their community because these training programs are not run by unions.⁷ (See Section 4.7 on p. 19).
6. PLAs require unions to be the exclusive bargaining representative for workers during the life of the project. The decision to participate in a PLA project, which is also the decision to agree to union representation, is made by the employer rather than the employees.⁸ Nonunion construction employees often argue forced unionization and/or representation—even for one project—is an infringement of their workplace rights and runs contrary to their intentional decision not to join a union.
7. This specific PLA requires contractors to pay to a Construction Industry Labor-Management Trust (CILM) \$375 for every \$1 million of the project's award amount, with a contribution cap of \$50,000 per project (See Section 2.2 on p.5). These CILM funds pay for a variety of tactics and programs designed to put merit shop contractors out of business and to help create jobs for union contractors and employees. Merit shop contractors object to being forced to subsidize their competitors and support programs that may lead to less work and opportunity for their company and employees as a condition of winning Phase 2 contracts. This PLA specifies the payments made to the CILM must be paid to an address that also is the address of MWAA board member Dennis Martire's employer: The Laborer's International Union of North America (LiUNA).

⁶ See www.TheTruthAboutPLAs.com, *Understanding the Merit Shop Contractor Cost Advantage*, 05/17/10.

⁷ See www.TheTruthAboutPLAs.com, *Op-Ed: ABC Fights to Preserve Apprenticeship Training Opportunities for Future Construction Work Force*, 06/01/10

⁸ Workers normally are permitted to choose union representation through a card check process or a federally supervised private ballot election. PLAs are called pre-hire agreements because they can be negotiated before the contractor hires any workers or employees vote on union representation. The National Labor Relations Act generally prohibits pre-hire agreements, but an exception in the act allows for these agreements only in the construction industry. In short, PLAs strip away the opportunity for construction workers to choose a federally supervised private ballot election or a card check process when deciding whether union representation is right for them.

All of these provisions will increase costs and/or reduce the number of qualified merit shop contractors and subcontractors interested in bidding on Phase 2 construction contracts, resulting in waste, discrimination and special interest favoritism taxpayers cannot afford.

Provisions in this PLA and other typical PLAs related to safety, drug testing, scheduling, strike prohibitions, and wage and benefit rates are already standard practice in most construction contracts. MWAA can require all of these provisions and federal Davis-Bacon prevailing wage and benefit rates without the anti-competitive and costly provisions of a PLA which is adamantly opposed by merit shop contractors.

So why not eliminate these provisions and therefore eliminate the controversy? The answer: Without these anti-competitive and discriminatory provisions that discourage nonunion contractors from competing for public projects, unions rarely agree to concessions regarding labor peace, work schedules and other provisions that are the cornerstones of the alleged benefits of a PLA. Union PLA proponents require these provisions because they are crucial to cutting competition and ensuring union contractors have an unfair advantage over nonunion contractors and their existing workforce. That is exactly why Dulles Transit Partners *voluntarily* entered into a PLA on Phase 1 and then *exempted* merit shop subcontractors from having to sign the agreement. Dulles Transit Partners made this move for fair and open competition *after* they were awarded the Phase 1 contract.

Our organization is willing to work with MWAA to develop fair contracting provisions to include in the Phase 2 request for proposal (RFP) that will ensure fair and open competition from all qualified contractors and their skilled employees and help build a quality, on-time and on-budget project.

Costs

Unfortunately, if MWAA moves forward with an RFP including a PLA mandate containing these provisions, Phase 2 will experience increased costs MWAA and Virginia's financial stakeholders cannot afford. Studies of public works projects (in prevailing wage states where wage and benefit rates are uniform) indicate PLAs increase the cost of construction between 12 percent and 18 percent compared to similar non-PLA projects.⁹ Can MWAA and the local financial stakeholders really afford to risk adding an additional \$250 million to \$500 million in unexpected construction costs because of a special-interest PLA mandate?

⁹ Please review the numerous PLA studies by the Beacon Hill Institute, as well as other studies, available at www.abc.org/plastudies

Stakeholders concerned about the anti-competitive and costly impact of the government-mandated PLA on Phase 2 of the Dulles Corridor Metrorail project should look at the anecdotal results and controversy surrounding other government-mandated PLAs in the Washington, D.C., area, including the Wilson Bridge project.¹⁰ The \$2.4 billion project to replace the Wilson Bridge between suburban Maryland and Virginia was temporarily subjected to a union-favoring PLA requirement by former Maryland Gov. Parris Glendening in 2000. After the PLA was imposed, only one bidder responded to the RFP for Phase 1 of the project, at a bid price more than \$370 million above the state's engineering estimates—a 78 percent cost overrun.

After President Bush issued Executive Order 13202 prohibiting PLAs on federally assisted projects like this one, the mega-contract for the Wilson Bridge project was rebid into smaller contracts without a government-mandated PLA. This time, multiple bids were received and the winning bids came in significantly below the engineering estimates. The mega-project was completed on-time and on-budget by union and merit shop contractors under prevailing wage and benefit rates, and not a government-mandated PLA.

Fair and open competition, free from PLA mandates, worked on the Wilson Bridge, the Pentagon, Phase 1 of the Dulles Corridor Metrorail Project and hundreds of other projects in the region, so why not let it work for Phase 2?

Jobs for Virginians

Are MWAA members aware a PLA will curb construction job creation for Virginia residents? Because 96 percent of Virginia's private construction workforce does not belong to a union, mandating a PLA will ensure that the majority of construction jobs created by Phase 2 will go to out-of-state union members. This is problematic because Fairfax County, Loudoun County, the Commonwealth of Virginia and Dulles Toll Road users are financing this project, yet these stakeholders most likely will be harmed by this discriminatory PLA and its increased costs.

Conclusion

ABC formally requests an opportunity to work with MWAA board members, MWAA staff and the construction community to ensure all qualified members of the construction industry are encouraged to compete for this critical \$3.5 billion construction project.

¹⁰ See www.TheTruthAboutPLAs.com *New Report Says Anti-Competitive PLAs Won't Help District of Columbia Economy*. 3/31/10.

Our organization, prime contractors, subcontractors and their employees appreciate the opportunity to share our perspective and extensive experience with PLA mandates. We believe these anti-competitive and costly agreements have no place on public construction projects and we encourage MWAA to proceed with construction procurement free from PLA mandates and in the spirit of fair and open competition. Doing so will help MWAA deliver the best possible product at the best possible price to Virginia taxpayers.

Respectfully,



Patrick Dean
President, Associated Builders and
Contractors of Virginia

cc: Gov. Robert F. McDonnell
Sean T. Connaughton, Virginian Secretary of Transportation
Fairfax County Board of Supervisors
Loudon County Board of Supervisors
Metropolitan Washington Airport Authority Board Members and Staff
United States Representative Frank Wolf