

Date of Meeting: July 17, 2013

**BOARD OF SUPERVISORS
BUSINESS MEETING
ACTION ITEM**

12

SUBJECT: Loudoun County Parking Facilities for Phase 2 Dulles Corridor Metrorail Project

ELECTION DISTRICTS: Broad Run and Dulles

CRITICAL ACTION DATE: July 17, 2013

STAFF CONTACT: Donald R. Legg, Management & Financial Services
Alan Winn, Transportation and Capital Infrastructure
Ben Mays, Management & Financial Services

RECOMMENDATION:

Staff: Staff recommends that the Board of Supervisors reject the three Conceptual Proposals received to date, and that the Purchasing Agent be directed to prepare a new solicitation for the parking garages to attract broader participation from the potential offerers and with more definitive parameters as contained in the staff report.

BACKGROUND:

On November 15, 2011, the Loudoun County Board of Supervisors ("Board") jointly signed a Memorandum of Agreement (MOA) outlining commitments pertaining to Phase 2 of the Dulles Corridor Metrorail Project between the County, the U.S. Department of Transportation (USDOT), the Washington Metropolitan Area Transit Authority (WMATA), Fairfax County, the Commonwealth of Virginia, and the Metropolitan Washington Airports Authority (MWAA). Among the provisions of the MOA was the intention to reduce the Phase 2 funding level requirements by requesting that Loudoun County "use its best efforts...to secure Additional Funding Sources" (i.e., privatize) the three parking facilities planned to serve the Route 606 and Route 772 Phase 2 stations.

In discussions leading up to the approval of the MOA, the Board's support for securing additional funding for the parking facilities was based on the following:

- The County would make a reasonable and best effort to assemble a financial option for the three (3) parking facilities as defined above, thereby taking the cost of those facilities out of the project, and
- The removal of the parking facilities from the project scope would be contingent upon either: (1) a private sector partner and/or the Commonwealth guaranteeing and backing the cost of the facilities or, (2) an alternative financing option that would require no local

tax funding support, as well as, [at that time], the realization of Transportation Infrastructure and Financing Innovations Act (TIFIA) financing.

On July 3, 2012, the Board voted to opt-in to the Phase 2 Dulles Corridor Metrorail Project thereby moving forward with the Phase 2 “Silver Line” extension into Loudoun County.

On July 3, 2013, the Board discussed matters relating to the procurement process for the parking facilities and expressed concerns over the use of community development authority (CDA) financing mechanisms, the implications of request for development rights, the need for more specificity in future solicitations, control over future parking rates, and moving forward with a new solicitation effort. The Board unanimously voted to defer action on the matter until the July 17th business meeting.

Parking Facilities

The County is seeking parking facilities that are available on opening day of revenue operations for Phase 2 of the Dulles Corridor Metrorail Project, which currently is estimated to occur in 2018. Furthermore, the County must be able to make a decision regarding responsibility for managing the construction and operation of the parking facilities prior to December 31, 2014.¹

The proposed Project consists of the finance, design, development, construction and operation of up to three parking facilities in Loudoun County, along the Phase 2 Dulles Metrorail corridor. As noted above, “parking facilities” means multi-level garage or covered structures (parking facilities, specifically excluding surface parking lots) capable of accommodating the sufficient number of parking spaces set forth in the Environmental Impact Study and the Record of Decision issued by USDOT. These parking facilities include:

- a. One (1) parking facility at the Route 606 Metrorail Station with 1,965 parking spaces. This property is currently leased by MWAA from the Federal government. MWAA, in the MOA, has agreed to provide the County, at no cost and to the extent permitted by law, such real property rights as are reasonably necessary for the construction, location, and operation of, and vehicular access to and from, the parking facility that is to be constructed to serve the Route 606 Station. The County and the awarded Private Entity will work together with MWAA to acquire the necessary agreement(s) to finance, design, develop, construct and possibly operate the parking facility on this site.
- b. Two (2) parking facilities on land proffered to the County by developers of Loudoun Station and Moorefield Station, respectively, at the Route 772 Station with 1,433 parking spaces on the north side of the Greenway and 1,540 parking spaces on the south side of the Greenway. These parcels represent land as proffered by the approved Loudoun Station and Moorefield Station development projects. These

¹ The County must provide MWAA with a status report by June 30, 2014 and a final decision by the end of 2014 on whether the County will undertake the construction of those facilities.

parcels have not yet been conveyed to the County and currently are privately owned. If the County awards to an entity seeking use of the proffered land, the County will work with the awarded Private Entity to acquire the proffered land.

During November 2012, Loudoun County staff issued a Solicitation for Conceptual proposals (SCP) through the Public-Private Transportation Act of 1995 for Loudoun County Parking Facilities. The SCP requested submission of conceptual proposals from qualified entities for the finance, design, development construction, and operation of up to three parking facilities in Loudoun County. Offerors were directed to use the following key assumptions in developing their approaches to financing, designing, construction, operating and maintaining the project:

- No additional TIF measures or TIFIA funding for the garages
- Limited use of Community Development Authorities (CDA's)
- Potential for County to receive concession payments, possibly to share in potential parking facility revenues
- The County will only enter into an interim and/or comprehensive agreement with the private entity that submits the Conceptual and Detailed Proposals
- The County may require parent company guaranties
- Proffered sites are not yet under County control. The acquisition process required by each individual proffer to bring the property under County control has not yet started.

Three proposals were received in response to the County's SCP and evaluated by an Independent Review Panel (IRP) consisting of members from the Office of the County Administrator, the Office of Transportation and Capital Infrastructure, the Department of Management and Financial Services and Department of Planning. In addition, staff has contracted with Jones, Lang, LaSalle (JLL), a financial consulting firm with expertise in the area of public-private partnerships, to assist with the proposal review, evaluation and negotiations. The panel was tasked with reviewing the proposals for compliance with the solicitation guidelines and assessing each proposal for its financial merits and ability to be successfully implemented.

Since the receipt of the three proposals the IRP performed numerous activities to seek additional clarification and development of each conceptual financial proposal. The evaluation spanned several months and culminated with IRP consensus that private financing potential for each garage was indeed achievable.

On April 3, 2013 the Board of Supervisors accepted the proposals submitted by Comstock Partners, TC606 LLC and WestDulles Properties to finance, design, and construct the Loudoun County Parking Facilities under the County's Solicitation for Proposals and the Public-Private Transportation Act (PPTA) of 1995 for further analysis. Comstock Partners proposed to conduct these activities for all three parking facilities. TC606 LLC proposed for the Route 606 parking

facility. WestDulles Properties proposed for the Route 606 parking facility. A Public Hearing was held on May 8, 2013, consistent with the requirements of the PPTA process.

Following the Board's direction, the IRP interviewed each of the developer teams. Each developer team was asked to respond to questions regarding their specific proposal. Questions focused on further clarification of the conceptual financial plan, determining if the financial plan was dependent upon revenue generated from development of additional transit station area property, and ascertaining if each developer could structure a financing arrangement solely linked to parking garage revenue.

To summarize, both Comstock and TC606, LLC were willing to enter into a contract with Loudoun County that would limit their station area development to solely financing, designing, constructing, operating, and maintaining the garage facility according to the specification identified in the Phase 2 Preliminary Engineering. Both developers also indicated that they had the financial capacity to secure financing and both preferred the use of Private Activity Bonds. In addition, Comstock and TC606, LLC agreed to provide Loudoun County annually with a percentage of their parking revenue.

WestDulles Properties, while eager to finance and develop the garage at the Route 606 station, stated verbally and in writing that they would finance the garage by establishing a Community Development Authority (CDA). Loudoun County indicated in the RFP and during the pre-bid meeting that garage financing using a CDA was not a desirable financing instrument for this public-private venture. WestDulles Properties representatives were apprised in writing and during the interview with the IRP of the lack of interest in a CDA financing. However, they continued to center their financing plan on using the CDA approach. CDAs (and other tax districts) were generally not desired in light of the previous establishment of the Rail Tax Districts upon the same properties. In their final written response to their interview questions sent to the IRP, WestDulles Properties continued to promote the CDA approach as their preferred method of financing construction of the garage. WestDulles Properties did, however, indicate that they were willing to pursue other methods of financing acceptable to Loudoun County but would require substantial 606 station area development rights from Loudoun County (and, by consequence, MWAA). The 606 station area and surrounding property along the Dulles Greenway is owned by the US Government. MWAA has obtained federal permission to convey to Loudoun County the land footprint for the garage, Kiss and Ride, and bus boarding areas only. County staff has been advised by MWAA that it has no imminent or long-range plans to develop the property in the vicinity of the 606 station area and garage.

After a review of all three proposals and subsequent meetings with each proposer to discuss their submission in further detail, the County's IRP recommended moving forward to the Detailed Proposal Phase with two firms: Comstock Partners and TC606, LLC. Subsequent to the July 3, 2013 business meeting staff evaluated the implications of moving forward with a broader solicitation effort based upon Board direction, and determined that an entirely new solicitation package would be easier to administer given the time constraints leading up to a final decision on the matter. Therefore, staff is recommending that the Board reject the three proposals received to date and issue a new solicitation as described in further detail below.

ISSUES:

The strength and viability of the three proposals varied significantly. The Comstock and TC606, LLC proposals both showed a viable development and conceptual financing plan that does not rely upon County financing or County bond capacity, nor the creation of an additional tax district as would be required in a CDA. Both Comstock and TC606, LLC proposals described that private financing can be raised for the project following the commissioning of an investment grade parking demand study, and that no public financing would be necessary. Comstock Partners proposed to build all of the garages as a single concession, while TC606, LLC is only interested (as of the conceptual proposal) in the Route 606 site.

As stated above, the WestDulles Properties proposal sought to finance the 606 garage with a private CDA, which would be reliant upon adjacent commercial development of WestDulles Properties property to be viable. This is counter to the SCP key assumptions.

Of note, the Comstock Partners proposal was contingent upon the negotiation of an agreement to develop 1.1 million square feet of development at the Route 772 South 'Transit Parcel' which is to be proffered to the County.

Updates Subsequent to 7/3/13 Business Meeting

A) Recommendations on New Solicitation

At this time staff is recommending that the three conceptual proposals be rejected and that a new solicitation be issued. With the intent of allowing broader participation by parking garage developers and operators, staff can prepare a solicitation that addresses the complexities associated with site control in the following manner:

- (1) For both the Route 772 South and Route 606 garage facilities, the solicitation will be limited to the 100% Preliminary Engineering location as well as the 100% Preliminary Engineering schematic design. For the Route 772 South garage the solicitation will assume that the site area proffered by Moorefield Station will be conveyed to the County. Similarly for the Route 606 garage facility, the solicitation will assume the site area to be made available to the County by MWAA will be in place for construction of the garage structure.
- (2) For the Route 772 North garage facility, the solicitation will be limited to the 100% Preliminary Engineering schematic design, but will request the proposer to identify the proposed location of the garage and will request the proposer to confirm their ability to control the site. Further, the proposer must demonstrate how they will make the site available for construction in the necessary timeframe.

Staff notes that those entities that previously submitted conceptual proposals could respond to the new solicitation.

B) Parameters to Proposers

Given the Board discussion on specific parameters to be included in a new solicitation, proposers will be asked to address 3 different scenarios as listed below. These scenarios will allow the Board to determine a potential level of participation by the County, based on the specific responses.

- (1) A concession agreement to construct the garage facility on ground encumbered by a lease and controlled by the County, and with the garage anticipated to be a County asset at the end of specific length of time. This option would not include any financial participation by the County.
- (2) An agreement to allow some financial participation for the financing of the Garage in the form of moral obligation of the County, with the facility located on ground encumbered by a lease and controlled by the County.
- (3) An agreement that provides a private entity to operate and maintain a County-built garage facility.

In addition to the above scenarios, direction will be given that proposals should not include CDA financing mechanisms, the assumption of additional development on MWAA-controlled property, or the utilization of any additional development rights on property to be controlled by the County.

C) Timeline Issues – The following is a proposed timeline. Actual time will be effected by number and complexity of proposals received.

1. Issue New Detailed PPTA9/1/13
2. Accept Detailed Proposal Submissions11/1/13
3. Evaluate Detailed Submissions (*)11/1 – 12/31/13
4. Recommendation To Board to Go To
Comprehensive Agreement Negotiations1/7/14
5. Negotiate Comprehensive Agreements.....1/8/14 – 6/30/14
6. Board Approval of Comprehensive Agreements7/16/14

*A Public Hearing will be held during this period.

D) Recommended Board Actions for 7/17/13

Staff recommends that the Board of Supervisors reject the three Conceptual Proposals received to date, and that the Purchasing Agent be directed to prepare a new solicitation for the parking garages to attract broader participation from potential offerers and with more definitive parameters as described above.

E) Control over Parking Rates

Staff notes that the Board has asked about the ability to have control over parking rates at the three garages. As long as the garage is built on property controlled by the County under a ground lease or operating agreement, the County has the option to set terms of an upper limit for parking rates. These issues will be further worked out in Step 5 above – “Negotiate Comprehensive Agreements.”

Should the garages return to be funded by the project and are turned over to WMATA for operation, the rates will be determined by WMATA.

FISCAL IMPACT:

Per the November 15, 2011 MOA, Loudoun County agreed to undertake the effort to select a viable developer to construct and operate the parking facilities, provided there is no financial impact on the County’s financial standing. The County has until July 1, 2014 to determine if the parking facilities should be placed back into the overall project cost of the Dulles Corridor Metrorail Project. Should Loudoun County make that determination, the 4.8% share of costs for the full project would increase by approximately \$8.06 million. A number of items, such as air rights - which has financial value - along with possible concession payments once the parking facilities become operational, have not been determined at this time and are subject to negotiation. Under current discussions with the federal Department of Transportation, the TIFIA loan will be used for financing Loudoun’s share of project construction and not for the parking facilities.

ALTERNATIVES:

1. The Board of Supervisors could accept one, two or all three of the conceptual proposals received to date and move on to the detailed review phase with those submissions. Or,
2. The Board of Supervisors could reject one, two or all three of the conceptual proposals and direct staff to prepare a new solicitation to potentially attract a broader range of proposals within more specific parameters for the locations that are rejected. Or,
3. The Board of Supervisors could reject one, two or all three of the conceptual proposals and request that the garages for the locations rejected revert back to the total Dulles Rail Project Cost.

DRAFT MOTIONS:

1. I move that the Board of Supervisors reject the three conceptual proposals received to date and direct the Purchasing Agent to prepare a new solicitation in accordance with the detailed parameters identified in the July 17, 2013 staff report.

OR

2. I move an alternate motion.