



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

The Inspector General

Office of Inspector General
Washington, D.C. 20590

May 15, 2012

The Honorable Frank R. Wolf
United States House of Representatives
Washington, DC 20515

The Honorable Tom Latham
United States House of Representatives
Washington, DC 20515

Dear Representatives Wolf and Latham:

Thank you for your letter of March 7, 2011, requesting that the U.S. Department of Transportation (DOT) Office of Inspector General (OIG) review the management and governance of the Metropolitan Washington Airports Authority (MWAA). MWAA, which employs approximately 1,400 staff and is currently governed by a 13-member Board of Directors,¹ is a public body with broad management authority over two major federally owned airports in the Washington, DC, metropolitan region: Washington Dulles International Airport and Ronald Reagan Washington National Airport. MWAA operates these airports, their access highways, and other related facilities under the terms of a lease agreement with DOT authorized by the Metropolitan Washington Airports Act of 1986² and an interstate compact between the Commonwealth of Virginia and the District of Columbia. MWAA is also responsible for designing, constructing, and partially financing the Dulles Corridor Metrorail Project—a two-phased, multibillion-dollar effort aimed at connecting Northern Virginia regions and providing easier access to Dulles International Airport. Consequently, MWAA's decisions can have great influence over the Washington, DC, area and its residents.

¹ Board members are appointed either by the President of the United States (three appointees), the Governors of Virginia (five appointees) and Maryland (two appointees), or the Mayor of Washington, DC (three appointees). They serve 6-year terms without compensation and establish MWAA policy.

² P.L. 99-591 (1986).

In your request, you stressed that the accountability and transparency of MWAA's Board of Directors are important to ensure the success of the Dulles Corridor Metrorail Project, currently MWAA's highest profile undertaking. In further communications with us, you expressed concerns regarding multiple allegations of mismanagement and misconduct on the part of MWAA. Although our audit,³ which we initiated in June 2011, and investigations into these allegations are ongoing, we are issuing this interim letter on our observations to date, as we have identified areas of concern regarding accountability in MWAA's activities. This letter focuses on MWAA's policies and processes for Board travel, ethics, and transparency, as well as MWAA's policies and processes for awarding contracts.⁴

Separately, you also requested that we review Phase 2 of the Dulles Corridor Metrorail Project. In this request, you expressed concerns about project oversight and the reasonableness of assumptions regarding Dulles Toll Road revenues, the major funding source for this phase. We initiated this review on March 15, 2012,⁵ and we are providing preliminary details in this letter regarding whether MWAA's project plans rely on reasonable assumptions for toll road revenues.

SUMMARY OF OBSERVATIONS

Although the airports and projects it operates are federally owned or financed, MWAA is independent of the Federal Government and not subject to Federal laws that govern ethics, transparency, access to information, procurement, and other areas. As such, MWAA's governance depends on the strength of its internal codes, policies, and processes, and its adherence to them. However, our work to date indicates that MWAA's accountability to Congress, stakeholders, and the public—as well as its compliance with the Act—has been limited by weaknesses in its internal policies and oversight of these policies. In particular, MWAA's policies and procedures related to financial disclosures, travel, and transparency are insufficient to ensure fiduciary and ethical responsibility in the Board's expenses and activities. MWAA's contracting policies and practices are similarly insufficient to ensure compliance with the Act's provisions and its internal procurement procedures, resulting in contracts that are not subject to full and open competition and may not represent best value.

MWAA's policies and practices are generally less rigorous than corresponding State and Federal rules. Notably, MWAA's government-appointed Board members are not bound to the same State ethics and financial disclosure laws as the elected officials who appointed them. This puts MWAA and its Board of Directors in a unique position compared to other major transportation authorities that are State entities—and subject to

³ OIG Audit Announcement No. 11A3013A000, "Audit Initiated of the Metropolitan Washington Airports Authority," June 21, 2011. OIG announcement letters and reports are available on our Web site at <http://www.oig.dot.gov/>.

⁴ For a description of our scope and methodology, please see the enclosed Exhibit.

⁵ OIG Audit Announcement No. 12M3001M00, "Audit Initiated of Phase 2 of the Dulles Corridor Metrorail Project," March 15, 2012.

State ethics, transparency, and procurement laws—or Federal entities subject to corresponding Federal laws. Moreover, the policies lack procedural safeguards for ensuring they are followed. There are limited avenues for judicial review, and few other mechanisms (such as penalties for non-compliance) for addressing concerns regarding MWAA’s ethics, transparency, contracting, and other practices.⁶ In contrast, similar entities, such as the Board of Directors of the Dallas-Fort Worth International Airport, must follow Texas State law and guidelines related to ethics, transparency, and procurement, and willful failure to comply can be punishable by imprisonment and fines.

Our ongoing review has revealed a culture that is largely unaccustomed to external audits and inquiries by the accountability community. While MWAA has freely cooperated in most areas of our review, Board and staff in some areas were reluctant to provide access to key documents and grant us private interviews with Board members. MWAA’s reluctance to providing us full transparency may be attributable to the fact that it has experienced few independent audits since its creation 25 years ago.⁷ However, increased public and governmental scrutiny is likely for MWAA as it continues its progress on the Dulles Corridor Metrorail Project and other high-profile endeavors. This will necessitate a greater commitment to ensuring transparency to its stakeholders and the public to promote and sustain confidence in the integrity of its actions and decisions.

Finally, based on our preliminary review, MWAA’s assumptions for Dulles Toll Road revenue appear reasonable.

BOARD POLICIES AND LACK OF TRANSPARENCY LIMIT MWAA’S ACCOUNTABILITY

MWAA’s policies and processes for ethical conduct and travel expenses do not ensure accountability for the activities of its Board of Directors. Gaps in transparency have further undermined MWAA’s accountability by obscuring key information from the public. As a result, it is more difficult for the public to determine whether Board decisions are reasonable, appropriate, and ethically sound.

Policies Are Not Sufficient To Promote Ethical Conduct or Prevent Potential Conflicts of Interest

Although MWAA is not subject to Federal or State ethics guidelines and laws, MWAA has a Code of Ethical Responsibilities aimed toward ensuring the integrity of decisions made by its Board of Directors.⁸ This includes obtaining financial disclosure information

⁶ Another consequence is that there is less protection for employees who report fraud, waste, and abuse or who are asked to cooperate with investigations. Employees of most Federal entities are protected by Section 7c of the Inspector General Act, which prohibits reprisals for making complaints or disclosing information to an Inspector General. Most States have similar provisions for State employees. See, e.g., Virginia Code Ann. § 2.2-3009 et seq; MD Code, State Personnel and Pensions, § 5-305.

⁷ The Government Accountability Office (GAO) has reviewed some aspects of MWAA’s contracting procedures, most recently in 2002, but has not conducted an audit of MWAA’s overall management policies and processes as we do in our current work.

⁸ The Airports Act requires MWAA to establish this Code, but does not provide detailed requirements regarding its contents.

from Board members to help prevent Board decisions from being compromised by conflicts of interest. However, several weaknesses in MWAA's policies and processes limit their effectiveness in preventing violations of its codes as well as the appearance of ethical issues or conflicts of interest:

- **Oversight and training**—MWAA does not provide the support and oversight needed to ensure Board members understand the importance of and comply with its ethical standards. While Board members are ultimately responsible for identifying and disclosing any potential conflicts of interest, they may not fully understand their responsibilities, increasing the risk of conflicts of interest. For example, MWAA's policy states that Board members may not participate in any Board decision or Authority action when a conflict or the appearance of one arises. Yet, one Board member's recommendation led MWAA to initiate a \$100,000 contract with a law firm despite the fact that an immediate family member worked for the firm. While this family relationship had been previously disclosed, the Board member did not refrain from participating in matters related to the firm when the issue arose (per MWAA policy), and MWAA awarded the contract to the recommended firm. At a minimum, this created the appearance of a conflict of interest that may have been avoided had the Board member exercised better judgment and fully followed MWAA's ethical procedures.

Additional support and training are key to improving Board compliance with its ethical standards and preventing future conflicts. Currently, the Board Secretary and his staff are responsible for reviewing and compiling Board financial disclosure forms and consulting with Board members as needed. However, he does not document his review, regularly follow up with Board members regarding potential conflicts of interest, or document when ethics advice has been provided—practices recommended by the U.S. Office of Government Ethics. MWAA also does not provide ethics training to Board members or to those responsible for creating, updating, and reviewing financial disclosure forms, including the Board Secretary. Periodic ethics training can educate individuals regarding the requirements and standards to which they are held, and set a tone regarding the importance of ethical conduct in all official acts. While MWAA is not legally required to provide ethics training,⁹ such training is widely considered to be a critical component of any ethics program.

- **Financial disclosure**—MWAA's financial disclosure process is insufficient for identifying and evaluating potential conflicts of interest. Because many Board members are established businessmen and professionals and active members of their communities, they may have many financial interests or relationships with multiple organizations that could represent potential conflicts of interest. Yet, MWAA's financial disclosure form only requires Board members to list the employers of their immediate family members, and to disclose their financial interests in entities that are

⁹ For example, the U.S. Office of Government Ethics recommends regular ethics training programs.

either currently involved with or seeking a contract with the Authority. MWAA provides Board members with a list of these entities, and Board members are required to report any interests they may have with the listed entities. As a result, MWAA's process does not enable the identification of potential conflicts of interest, such as a Board member's interest in a firm that has not worked with MWAA previously but may do so in the future.

In contrast, Federal employees who are subject to disclosure requirements reveal all financial interests and other affiliations, with some exceptions,¹⁰ as well as liabilities, gifts, arrangements and agreements for employment, outside positions, and travel reimbursements. Federal employees are also required to disclose all stock holdings above a low threshold. Federal ethics officials use the information employees disclose to identify potential conflicts and to advise the employee regarding the possibility of future conflicts, steps to take if there is a conflict, and how to appropriately recuse oneself or otherwise resolve the conflict of interest. MWAA's financial disclosure system precludes such proactive steps.

- **Differences between Board and employee policies**—MWAA's ethics policies do not emphasize ethical responsibilities and business integrity at MWAA's uppermost level. While both Board members and MWAA staff are required to disclose "direct" and "indirect" financial interests in entities that do business with MWAA and to recuse themselves from participating on behalf of MWAA in transactions with those entities, MWAA's policies for its Board are less rigorous than for employees. Under MWAA's employee policy, staff must disclose any businesses from which they receive \$2,500 in annual income in any form. They must also disclose any personal debt of at least \$200 from persons who do business or seek to do business with MWAA. In contrast, the Board policy sets the disclosure threshold for Board members at \$5,000¹¹ and does not require members to disclose any personal debt. Moreover, the employee ethics policy explicitly includes all forms of income, including spousal income, when determining whether there is a conflict of interest. In contrast, the Board policy is not clear on whether there would be a conflict of interest with respect to all sources of income or only stock dividends or other unearned income.¹² Furthermore, the ethics code for employees contains a nepotism provision,¹³ but the code for Board members does not. We have identified concerns related to nepotism at MWAA; our work is ongoing in this area. While the reasons for many of these differences in policies are unclear, they

¹⁰ Exceptions include those interests that fall within well defined categories that have been found unlikely to create a conflict of interest (for example, ownership of a diversified mutual fund).

¹¹ Both policies include entities where the value of the employee's or Board member's holding exceeds \$50,000 or 3 percent of the entities' equity.

¹² Under the Board ethics policy, a "direct financial interest" is defined as an "enterprise that *yields* \$5,000 or more in annual income to the Director or the Director's Immediate Family" (emphasis added). The use of the term "yields" makes it unclear whether the Board policy applies to all income or only to stock dividends and other forms of unearned income (as opposed to income in any form).

¹³ Under this provision, MWAA employees may not appoint, employ, promote, or advance within the Authority one of his or her relatives. They also may not exert control over employment status or business affairs of a relative working in the Authority.

could create the impression that the Board holds itself to lower standards than MWAA employees.

- **Recusal practices**—MWAA’s ethics policies are vague regarding when and how Board members should recuse themselves when a conflict of interest arises. MWAA’s policy states that Board members may not participate in any respect related to an entity they have an interest in that is currently or seeking to do business with MWAA. However, the policy does not clarify how Board members should recuse themselves in these situations, raising concerns about the policy’s effectiveness. For example, one Board member left the meeting room for discussions related to a proposal for which he had disclosed a potential conflict. However, another Board member who recused himself in the same meeting remained in the room. While the Board member refrained from participating in the related discussion or voting on the matter, he had been instrumental in drafting the materials that were up for vote, and had a clear interest in the outcome of the vote because of his relationship with organizations that would potentially benefit from the proposal passing. These differing practices raise questions regarding how recusals should be conducted to most effectively prevent undue influence.

MWAA’s Policies and Oversight Do Not Ensure That Board Travel Expenses Are Reasonable

Because MWAA is not subject to Federal or State guidance regarding travel expenditures, MWAA’s travel policies are key for ensuring fiduciary responsibility in Board expenses. MWAA has travel policies in place for its Board that approve travel and expenses for attending meetings, business events such as conferences, and inaugural flights at the two airports.¹⁴ However, MWAA’s policies lack clarity and oversight in key areas, which creates the risk of Board travel expenditures that could be perceived as excessive by stakeholders and the public.

First, MWAA’s policy does not provide suggested limits or thresholds for business-related Board travel expenses, including expenses for food and beverages and flights. Without such limits, Board members can incur travel expenses that may appear excessive. For example, one Board member was reimbursed \$238 for two bottles of wine purchased during a meal—an allowable expense under MWAA’s Board policy.¹⁵ Another voucher we reviewed contained meal expenses for some Board members and their guests during a trip to Hawaii for a conference. The cost for three dinners totaled approximately \$4,800.¹⁶ We observed similar questionable expenses related to air travel.

¹⁴ Inaugural flights, a common business expense among airports, are a celebratory round trip flight between Reagan National or Dulles International Airports and another airport, customarily offered by an air carrier on the first day of service to a new destination, or soon thereafter.

¹⁵ In contrast, regular MWAA employees are explicitly prohibited from being reimbursed for alcohol.

¹⁶ The first meal was for three Board members and four of their guests at a total of \$1011.53. The second meal was for four Board members and nine of their guests at a total of \$1935.11. The third meal was for five Board members and seven of their guests at a total of \$1855.39.

For example, one Board member was regularly reimbursed for airline tickets purchased less than a week before Board meetings, which are scheduled for the same day each month. The cost of these 1-hour round-trip flights ranged from \$761 to \$1,125. Another Board member purchased an international air ticket to a conference in Prague only 10 days prior to the trip at a cost of nearly \$9,200. Typically, tickets purchased in advance of travel—such as for recurring meetings and aviation conferences—may be obtained at lower rates. While MWAA’s travel policy states that Directors should make every effort to secure the most cost effective means of travel, there are no specific guidelines to limit travel costs for these types of trips.

MWAA’s policies and processes regarding business-, coach-, and first-class travel are similarly vague. The policy states that Board members may travel coach or business class, and encourages but does not require Board members to purchase coach class tickets for “short flights,” which are not defined. MWAA’s policy also allows Board members to purchase first-class tickets with the special authorization of the Board Chair and Executive Committee. However, MWAA lacks an established process for obtaining this authorization or for denying reimbursement for first-class tickets that have not been authorized. In the sample of 44 travel vouchers we reviewed (totaling \$131,122),¹⁷ 6 travelers (14 percent) had been reimbursed for first-class tickets, including a first-class flight from Washington, DC, to Hawaii to Florida totaling nearly \$4,800. However, none of these vouchers had documentation to show that the tickets had been authorized per MWAA’s policy. According to an MWAA official we interviewed, first class flights are at the discretion of the traveler and do not need to be pre-approved—raising questions about how strictly MWAA follows its own policies in this matter.

MWAA Recently Enhanced Its Board’s Transparency, but Visibility Into Key Board Activities Remains Limited

When we began our review, we identified several areas where MWAA had opportunities to enhance the transparency of its Board’s decisions, activities, and processes. Transparency is a key element to ensuring accountability for the Board’s actions. It is also crucial for keeping the public, Congress, and other interested parties informed of major decisions that impact the Washington, DC, metropolitan region and its residents.

Largely as a result of our discussions with MWAA, the Board of Directors revised its bylaws in February 2012 to enhance the transparency and accessibility of its activities and processes. In particular, MWAA now posts online meeting announcements, agendas, meeting minutes, and other key information—such as its bylaws, code of ethics, and rosters of committee members—so that the public can more easily learn when a key meeting will occur, what topics will be discussed, and what major decisions were reached. MWAA began implementing these new practices in March 2012.

¹⁷ We reviewed a statistical sample of 44 out of 144 travel vouchers filed from January 2010 through March 2011.

While MWAA's revised bylaws represent important progress, some gaps in transparency remain. For example, unlike other boards, MWAA has not posted formal meeting minutes for Board committee meetings as it does for its general Board meetings. While each committee Chair provides a summary of the activities that took place during the last committee meeting, the summaries do not all include key elements such as who was in attendance, a detailed account of the discussions, the results of a vote to move an action to the full Board (i.e., number of yeas or nays), or whether there were any abstentions or recusals. Typically, there are at least three committee meetings a month and one general Board meeting. Because issues are discussed and debated in more detail in committee meetings than in general Board meetings, these minutes could provide greater transparency for the public regarding the rationale behind some of MWAA's decisions.

Moreover, there remains a risk that public visibility into MWAA business could be impeded through an inappropriate use of closed sessions. Like other public entities, MWAA's Board holds a portion of its discussions behind closed doors in executive session to allow for confidential discussion of matters such as personnel changes or ongoing litigation. While we acknowledge that closed sessions are a necessary part of the Board's governance in order to protect sensitive information, these sessions should not obscure information and processes of which the public should have knowledge. For example, MWAA's recent revisions to its bylaws were discussed in a closed executive session—even though the revisions included enhancements to transparency.

Furthermore, MWAA's Board is subject to less stringent procedures for ensuring that executive sessions are used properly, when compared to boards that are subject to State transparency laws. MWAA's bylaws specify the topics that are permitted to be discussed in executive sessions, and the Board chairman announces the reasons justifying an executive session during Board meetings when applicable. In contrast, the Board of Directors of Dallas Fort-Worth International Airport must follow a Texas law requiring that certified agendas or recordings of closed sessions be kept for 2 years. Similarly, Virginia State law requires that boards take a public vote certifying that all matters discussed were appropriate for a closed session. In addition, both Texas and Virginia allow members of the public to initiate actions to enforce these provisions, and the State laws hold Directors personally liable for non-compliance through imprisonment or fines.¹⁸ MWAA's Board is not required to face any of these actions or penalties regarding the content of its closed sessions. As a result of these potential gaps in transparency and limitations for addressing them, MWAA's stakeholders and the public may be less inclined to maintain full confidence that the Board of Directors has remained accountable for all its activities and decisions.

¹⁸ For example, a willful violation of the Texas open meetings law is a misdemeanor punishable by up to 6 months in prison and a fine of up to \$500. Under Virginia law, a willful violation of the open meetings law is a \$500 to \$2,000 civil penalty for a first offense and \$2,000 to \$5,000 for a second and any subsequent offense.

Finally, MWAA's Board holds its audit committee meetings exclusively in closed executive sessions. This lack of transparency is especially significant considering the nature of the committee, which discusses issues related to policy and oversight. In contrast, similar airport and transportation governance boards¹⁹ hold at least a portion of their audit committee meetings in open session. This allows the boards to inform airlines, airport users, and other interested parties of their internal audit findings and recommendations and assure interested parties and the public that they are accountable for their findings. MWAA has an opportunity to enhance its transparency by allowing audit results to be presented in open session.

MWAA'S CONTRACTING POLICIES AND PROCEDURES ARE INSUFFICIENT TO ENSURE COMPLIANCE WITH THE AIRPORTS ACT

The Airports Act and the lease agreement between DOT and MWAA require the Authority to award contracts over \$200,000 competitively to the maximum extent possible. However, MWAA awarded only about one-third of its contracts with full and open competition during the period of our review.²⁰ In addition, MWAA has not complied with requirements to request Board approval for certain types of contract awards. MWAA's lack of compliance with contract award requirements may be due to weaknesses in MWAA's contracting policies and procedures.

MWAA Did Not Maximize Competition or Always Request Board Approval When Required

While the Airports Act and MWAA's lease agreement require that all contracts over \$200,000 be awarded with full and open competition to the maximum extent possible, the Act also permits the Board to grant exceptions to this requirement. MWAA's Board of Directors has used its exception authority to authorize categorical exceptions to full and open competition for items such as legal services, urgent need, or financial services.²¹ MWAA awarded almost two-thirds (64 percent) of its 190 contracts that exceeded \$200,000 with less than full and open competition during the period of our review.²² Of these, 117 contracts were awarded using categorical exceptions, which amounted to more than \$220 million. Sole source or limited competition contracts over \$200,000 that do not fall under one of MWAA's categorical exceptions require Board approval. During the period of our review, MWAA awarded five sole source contracts that were over

¹⁹ For example, as part of our review, we visited the Port Authority of New York and New Jersey and Dallas-Fort Worth International Airport to gain an understanding of their Boards' functions and activities, with a focus on accountability and transparency practices. We chose these entities based on their many similarities to MWAA, such as size and makeup of board.

²⁰ We reviewed contracts awarded between January 2009 and June 2011.

²¹ The six categorical exceptions established in section 1.2 of MWAA's Contracting Manual include (1) limited competition for urgent needs; legal, financial, audit, or legislative representation professional services; and local business set asides; (2) airport security controlled distribution RFP; (3) utility supplies and services; (4) Government purchasing agreements; (5) airline tenant procured projects; and (6) proprietary equipment and software. Use of these exceptions requires no further Board approval.

²² We reviewed contracts awarded between January 2009 and June 2011.

\$200,000, but did not fall under any of MWAA's categorical exceptions.²³ These contract awards, which amount to \$6 million, did not have Board approval.

We also found that MWAA did not obtain required Board approval for high-value contracts as required by its Contracting Manual.²⁴ Specifically, 4 of the 13 awards (31 percent)²⁵ valued over \$3 million in our statistical sample did not receive Board approval.²⁶ The Government Accountability Office (GAO) similarly reported in 2002 that MWAA did not always seek Board approval for sole source awards exceeding \$200,000 or for awards exceeding \$3 million.²⁷

Ultimately, MWAA's contracting practices risk compromising the intent of the Airports Act to obtain the best value for its contracts and to provide an opportunity to all contractors that may wish to compete for MWAA's business. These practices also keep the Board from being fully informed of critical business decisions that can impact the Authority.

MWAA's Contracting Policies and Procedures Do Not Reflect Effective Contract Management

MWAA's Contracting Manual, which it developed in 2003 and updated in 2008, sets forth the contracting policies and procedures that the Authority uses to acquire goods and services. However, MWAA's contract award practices do not always comply with its policies and procedures. For example, MWAA's Contracting Manual states that categorical exceptions comprise only a small portion of MWAA's contracts and their dollar value.²⁸ Yet, MWAA's use of categorical exceptions has amounted to 40 percent of the value of the Authority's \$589 million in contract awards during the period of our review.

In addition, MWAA's use of categorical exceptions may be inappropriate in some cases. For example, MWAA's Board of Directors used limited competition to award over \$1 million in contracts for an organizational study to assess MWAA's governance, management functions, and interorganizational challenges. The Board claimed "urgent need"—a categorical exception to full and open competition—because delays in the study would result in "serious detrimental consequences." For example, the Board stated that, if the study is delayed, important events such as the operation of the Dulles Toll

²³ According to MWAA's Contracting Manual sections 2.10 and 1.2, contract awards using less than full and open competition require a justification to explain use of either (1) sole source awards or (2) categorical exceptions. During the period of our review, MWAA's staff actually prepared justifications for seven sole source awards. However, we reviewed only five of these seven as sole source awards because the justifications for two cited specific categorical exceptions.

²⁴ MWAA's Contract Manual section 1.2 requires Board approval for contract awards exceeding \$3 million. The exception is competitively awarded construction contracts, which do not require Board approval.

²⁵ These four contracts are valued at \$16 million at contract award and a total potential value of \$59 million if MWAA exercises the option years.

²⁶ These 13 contracts, which were valued at nearly \$189 million at contract award and could be as much as \$277 million if option years are exercised, represent the high-valued contracts in our statistical sample of 32 contracts.

²⁷ GAO report, GAO-02-36, "Metropolitan Washington Airports Authority: Contracting Practices Do Not Always Comply With Airport Lease Requirements," March 1, 2002.

²⁸ Section 1.2. in MWAA's second edition Contracting Manual, issued in 2008. The Manual does not quantify "small portion."

Road and the construction of the Dulles Corridor Metrorail Project “would take place without an efficient and accountable organization in place.” However, despite the stated urgency of these contracts, the organizational study has still not been finalized—a delay of more than 12 months from its scheduled due date.

Some requirements are simply overlooked because it is unclear who is responsible for ensuring compliance. MWAA’s Contracting Manual states that the contracting officer should ensure Board approval prior to contract awards over \$3 million and sole source contract awards over \$200,000.²⁹ However, MWAA’s contracting officers told us that they did not seek Board approval for contract awards because this responsibility lies with the office requesting the contract. MWAA’s procurement manager stated that the responsibility for securing Board approval belongs to the office requesting the contract, but according to MWAA’s Contracting Manual the contracting officer is responsible for ensuring this approval is obtained prior to award. However, the role of the office requesting the contract is not mentioned in MWAA’s Contracting Manual. In 2002, GAO similarly reported that MWAA had overlooked requirements to secure required Board approval for some awards.³⁰ Our findings indicate that MWAA has still not fully addressed the concerns identified by GAO over 10 years ago.

Another weakness in MWAA’s contracting policies is that MWAA does not require public notification of its intent to award sole source contracts. In contrast, Federal procurement regulations generally require contracting officers to notify the public when they decide to award sole source contracts.³¹ MWAA’s practice of awarding sole source contracts without notifying the public limits competition because it does not allow other contractors a fair opportunity to offer the supply or service at a potentially lower cost.

Finally, MWAA permits delegations of contracting authority that allow personnel outside of MWAA’s Procurement and Contracts Office to enter into agreements with contractors, which can lead to ineffective procurement practices.³² For example, our analysis to date shows that MWAA allowed work to begin prior to official contract award dates on 190 out of the 709 contracts awarded during the period of our review.³³ To illustrate, despite only having delegated authority to award contracts up to \$50,000, an MWAA senior official awarded a \$100,000 sole source contract to a law firm under a categorical exception for urgent need. The senior official also requested that the contractor proceed with the work before MWAA’s Procurement and Contracts Manager gave his required approval for the award. As the timeline below illustrates, the Procurement and Contracts

²⁹ MWAA’s Contract Manual, section 2.4.9.

³⁰ GAO report, GAO-02-36, “Metropolitan Washington Airports Authority: Contracting Practices Do Not Always Comply with Airport Lease Requirements,” March 1, 2002.

³¹ FAR 5.207.

³² MWAA’s Contracting Manual, sections 1.2.1 and 2.4.9, require that, prior to contract award, (1) the manager of procurements and contracts department approve justifications for contracts awarded with limited competition, and (2) the contracting officer complete the “award” portion of the Solicitation, Offer, and Award form.

³³ MWAA directive GC-002 delegates contracting authority from the President and CEO to the (1) Vice President and General Counsel, (2) Vice President and Airports Managers, (3) Concession and Property Development Manager, and (4) Procurement Manager.

Manager was unaware of the contract award until we inquired, and the contract was not signed until 3 weeks after the work was completed.

Timeline for Noncompetitive Contract Awarded by MWAA Senior Official

Date of Action	Action Taken
November 18, 2011	MWAA's Board requests a legal opinion on an Airports Act amendment that increased the number of Board members. An MWAA senior official asks a contractor to begin work on the opinion.
November 29, 2011	Contractor submits the completed legal opinion to MWAA before the noncompetitive contract is documented and officially signed.
December 8, 2011	OIG requests a copy of the contract from MWAA's Procurement and Contracts Office. The Office indicates that it has never heard of the firm.
December 9, 2011	The MWAA senior official who authorized the contractor to begin work signs and dates contract documents, including a justification for an "urgent need" categorical exception to full and open competition.
December 12, 2011	MWAA's Procurement and Contracts Manager approves the justification for awarding the contract without competition as an "urgent need" categorical exception.
December 21, 2011	MWAA's contracting officer signs the noncompetitive contract.

Source: OIG analysis

MWAA's process of delegating contracting authority to staff that are not contracting professionals increases the risk that MWAA may award contracts that do not meet its Contracting Manual requirements and that MWAA may award sole source contracts when it could have used a broader form of competition. Also, requesting contractors to begin work prior to documenting the legal arrangement—including requirements, price, and other terms—significantly increases MWAA's contract cost and performance risks.

ASSUMPTIONS USED IN MWAA'S ESTIMATION OF TOLL ROAD REVENUES APPEAR REASONABLE

Our preliminary assessment of Dulles Toll Road revenue estimates suggests that the assumptions MWAA used to arrive at the estimates are generally reasonable. MWAA plans to finance almost two-thirds of Phase 2 of the Dulles Corridor Metrorail Project with revenue from the toll road, which it operates following a 2008 transfer agreement from the Virginia State DOT. Because MWAA's Phase 2 funding depends heavily on the revenue the toll road can produce and sustain, sound revenue forecasts are critical to the success of MWAA's funding plans. Our review focused on the inputs and assumptions used in forecasting toll receipts in a March 2012 report commissioned by MWAA.³⁴

³⁴ CDM Smith (under contract to MWAA), "The Comprehensive Traffic and Revenue Study 2012 Update Working Draft," March 2012.

MWAA's population and employment forecasts and gasoline price assumptions appear reasonable. While MWAA's method for estimating values of time (VOT) does not follow typical practice, the resulting assumptions appear reasonable. We also identified factors that help explain an increase between two Dulles Toll Road studies in the toll projected to maximize revenue.

Population and Employment Forecasts and Fuel Price Projections Match Those Produced by Reputable Sources

Based on our preliminary review, the assumptions MWAA made in forecasting population and employment and in projecting fuel costs appear reasonable. Population and employment forecasts help estimate the number of travelers who will use the toll road, and higher population and employment forecasts support higher toll revenue projections. MWAA's baseline population and employment inputs match those reported in the most recent U.S. Census. In addition, MWAA appears to have applied a relatively conservative growth rate to this baseline to forecast future population and employment. Specifically, the growth rates applied to the baselines do not differ substantially from those published by the Metropolitan Washington Council of Governments (MWCOG). Previous MWCOG estimates of population and employment growth rates for counties along the Dulles Toll Road have proven to be conservative, and the MWCOG growth rates used in the analysis are lower for Dulles Toll Road counties than those produced by other sources.³⁵

Fuel price projections also factor into forecasts of toll road use, as the number of travelers typically decreases when the costs of driving rise. An underestimation of fuel costs could result in an overestimation of the number of potential toll road travelers. MWAA's contractor assumed that gasoline prices would start at \$3.59 a gallon in 2011 and grow at an assumed inflation rate of 2.5 percent per year. We consider these projections to be reasonable because they are similar to those used in the U.S. Energy Information Administration's (EIA) Early 2012 Annual Energy Outlook reference case. EIA forecasts fuel prices under many different scenarios, and its Annual Energy Outlook reference case is in the center of these—that is, it is not the most conservative or the most radical prediction of fuel cost growth. The EIA reference case presents a “business-as-usual estimate, given known technology, technological, market, and demographic trends.”³⁶

MWAA's Estimates for Travelers' VOT Were Derived Atypically but Appear Reasonable

Overall, the VOT estimates used in MWAA's analysis appear reasonable. However, some aspects of the methods used to develop them may affect their value. Travelers' VOT estimates are one of the most significant components of toll road revenue assumptions. VOT estimates help predict whether increased tolls will translate into

³⁵ For example, both Woods & Poole and the Center for Regional Analysis at George Mason University predict higher growth rates for these counties.

³⁶ EIA, “Annual Energy Outlook 2011,” March 2011.

increased revenue. The higher a traveler's VOT, the more the traveler is willing to pay to save time, and, therefore, the higher the toll the traveler would accept before seeking a more time-consuming alternative route to the toll road. The importance of VOT estimates is supported by sensitivity analyses conducted in a July 2009 Dulles Toll Road study, which determined that a 25 percent decrease in VOT estimates would have caused a 17 percent reduction in that study's annual toll revenue projections.³⁷ Overall, MWAA's VOT estimates are similar to the VOT estimates derived in an earlier Virginia DOT study, which strengthens their credibility.³⁸ However, two factors in MWAA's subcontractor's methodology raise questions about whether the most recent estimates represent a valid confirmation of the earlier study's results.

First, when calculating VOT estimates for the Dulles Toll Road, MWAA's subcontractor included a factor capturing travelers' protest sentiments against tolls and toll increases—a factor not typically considered in VOT estimation. In doing so, the subcontractor effectively reduced the impact of travelers who might be unwilling to pay as much to use the toll road on the estimates of how much travelers would be willing to pay for time savings. This inflated the VOT estimates. According to the subcontractor, this factor was included in part to prevent the VOT estimates from being too low; however, he could not indicate the magnitude of its impact.

Second, MWAA's VOT estimation did not consider travelers' preferences for public transit—a factor typically included in other VOT estimates in the industry. According to MWAA's subcontractor, this factor was excluded due to problems in the estimation process.³⁹ It is unclear what impact excluding this factor has had on MWAA's VOT estimates. However, we remain concerned that the exclusion of this factor may impact MWAA's VOT estimates.

Increase in Revenue-Maximizing Toll Estimates May Be Explained in Part by Two Factors

MWAA's most recent estimate of the Dulles Toll Road's revenue-maximizing toll—or the toll that would generate the greatest total toll receipts—differs significantly from that found in an earlier study. In a 2005 Dulles Toll Road study commissioned by the Virginia State DOT, the revenue-maximizing toll for 2005 was estimated to be about \$2. Yet, in a 2009 study commissioned by MWAA, the same contractor projected that the revenue-maximizing toll would rise to slightly over \$7 for 2010 and \$12 for 2023. MWAA's current 2012 study represents only a partial update of the 2009 study,⁴⁰ and so the findings of the earlier study remain relevant. While some increase in toll prices between

³⁷ Wilbur Smith Associates (under contract to MWAA), "Comprehensive Traffic and Revenue Study Final Report," July 2009. The 2012 study represents an update of this analysis and used the VOTs estimated in 2009.

³⁸ Wilbur Smith Associates (under contract to the Virginia Department of Transportation), "Dulles Toll Road Rate Adjustment Review," February 8, 2005.

³⁹ The subcontractor stated that survey data on travelers' transportation preferences were unable to support the inclusion of a modal constant for transit preference in the VOT estimation process and also produce usable results.

⁴⁰ Most importantly, the 2012 study uses the VOT estimates derived for the 2009 study.

2005 and 2010 was certainly to be expected, the rate of the increase between the two reports is striking.

Based on our preliminary review, this increase can be attributed in part to two factors, both of which relate to increased traffic on non-toll roads. First, the population and employment levels used in MWAA's calculations grew substantially between 2005 and 2010—by 8.6 percent and 15.3 percent respectively—for Fairfax and Loudoun counties combined. For the purposes of modeling toll revenues, this growth is significant because it increases road congestion, which has affected non-tolled roads more heavily.⁴¹ This leads to a greater relative time savings from using the toll road, which supports a higher revenue-maximizing toll.

Second, between the 2005 and 2009 studies, MWCOG revised the travel demand model used in all the Dulles Toll Road traffic and revenue studies. Most notably, the revisions increased the amount of delay associated with congestion on the alternate, non-tolled roads. When used in MWAA's analyses, the revised model served to increase the relative travel time for drivers using alternative roads for all or part of their trip, which increases demand for the toll road and therefore further supports an increased revenue-maximizing toll.

Ultimately, however, estimating potential toll road revenues requires the use of many inputs and assumptions, including those above, and complex models. While the two factors we identified likely contributed significantly to the growth in the estimated revenue-maximizing toll between the two studies, it remains unclear whether they can explain the entire difference.

CONCLUSION

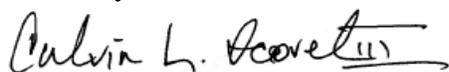
As the primary operator of two major airports and the sponsor of a massive public transportation expansion effort, MWAA is a powerful entity whose decisions greatly impact the Washington, DC, region and its residents. Since its creation, MWAA and its Board of Directors have made many substantial improvements to the region's airports. Yet, the Authority recently found itself the subject of controversy and debate regarding its activities and actions. Our ongoing observations on MWAA's travel, ethics, transparency, and contracting practices underscore the importance of consistent oversight in promoting accountability and public trust. Because MWAA is free from many laws that govern other public airports in the United States, it is especially important that it has strong policies and robust internal controls in place to maintain the high standards of governance expected by the Board's Federal, local, and commercial stakeholders; residents of the region; and the millions of passengers who pass through MWAA's airports each year.

⁴¹ Specifically, the time required to make a trip on the alternative routes grew between the 2005 and 2009 speed and delay studies supporting the respective reports, as did the difference in the time required to make a trip on the Dulles Toll Road versus the alternative roads.

We will continue to monitor MWAA's progress in increasing its accountability and transparency, its policies and processes for complying with the terms of the law and lease between DOT and MWAA, and its procedures for awarding contracts. Our work is ongoing and we plan to report our full audit findings and recommendations for improvement later this year. We will also continue to review MWAA's oversight and revenue assumptions for Phase 2 of the Dulles Corridor Metrorail Project as part of our recently announced audit.

Thank you again for your attention to these important issues. If you have any questions regarding this review, please contact me at (202) 366-1959 or Lou E. Dixon, Principal Assistant Inspector General for Auditing and Evaluation, at (202) 366-1427.

Sincerely,

A handwritten signature in black ink that reads "Calvin L. Scovel III". The signature is written in a cursive style with a horizontal line underlining the name.

Calvin L. Scovel III
Inspector General

Enclosure

cc: Secretary Ray LaHood
Deputy Secretary John Porcari
General Counsel Robert Rivkin
FAA Administrator Michael Huerta
FTA Administrator Peter Rogoff
Chief of Staff Joan DeBoer
MWAA Board of Directors Chairman Michael Curto
MWAA President and CEO John Potter

SCOPE AND METHODOLOGY

We conducted our ongoing audit from June 2011 through May 2012 in accordance with generally accepted Government auditing standards. Based on a request from Representatives Frank R. Wolf and Tom Latham, our objectives for this audit are to determine whether: (1) the policies and processes under which MWAA operates comply with the terms of the law and lease between DOT and MWAA; (2) MWAA's process for awarding contracts is consistent with the Act, as amended; and (3) MWAA's policies and processes are sufficient to ensure accountability and transparency of its Board's activities.

To address our audit objectives, we reviewed the Metropolitan Washington Airports Act of 1986, which created MWAA; the lease of 1987, as amended, between MWAA and the DOT; and the District of Columbia and Commonwealth of Virginia statutes covering MWAA. Pursuant to our review of the DOT-MWAA lease requirements, we reviewed Board bylaws; Board and employee ethics requirements; MWAA's Contracting Manual; and Board travel policies.

We reviewed Board employment and financial interest statements, covering the period from January 2008 through January 2011; a statistical sample of 44 of 144 Board travel vouchers filed from January 2010 through March 2011; all 5 sole-source contracts valued over \$200,000 awarded between January 2009 and June 2011; 32 additional statistically selected contracts out of a universe of 165 contracts awarded between January 2009 and June 2011; and 3 judgmentally selected contracts.¹ We interviewed 12 Board members, the Board Secretary, and the General Counsel to the Board, and attended all monthly Board and committee meetings since September 2011. To obtain comparisons for transparency and accountability, we visited the Port Authority of New York and New Jersey and the Dallas-Fort Worth International Airport, interviewed Board members and staff, and attended Board meetings.

Our ongoing work on toll road revenue assumptions is based on a March 8, 2012, request from Representative Frank R. Wolf. The objective of our ongoing audit work is to assess whether MWAA's Phase 2 project plans rely upon reasonable assumptions of revenue from the Dulles Toll Road. We conducted our work from March 15, 2012, through May 2012.

¹ Our final audit report will include a review of over 100 contracts.

To address our audit objective, we reviewed Dulles Toll Road traffic and revenue studies published in 2005, 2009, and 2012;² and documentation on the different versions of the Metropolitan Washington Council of Governments travel demand model used in those studies. For comparison purposes, we reviewed multiple sources' population and employment forecasts for counties near the Dulles Toll Road, and Energy Information Administration gasoline price forecasts. We also interviewed and requested information from the contractor who produced the Dulles Toll Road traffic and revenue studies, CDM Smith,³ as well as University of Leeds Professor Mark Wardman, the subcontractor responsible for producing the value of time estimates used in the 2009 and 2012 studies.

² Wilbur Smith Associates (under contract to the Virginia Department of Transportation), "Dulles Toll Road Rate Adjustment Review," February 8, 2005; Wilbur Smith Associates (under contract to MWAA), "Comprehensive Traffic and Revenue Study Final Report," July 2009; and CDM Smith (under contract to MWAA), "The Comprehensive Traffic and Revenue Study 2012 Update Working Draft," March, 2012.

³ CDM Smith was created when CDM bought out Wilbur Smith.