



Warning signs unheeded in "smart highway" deal

By *BILL BURKE*, The Virginian-Pilot
© October 21, 2002

The state in 1999 awarded a \$58.9 million contract to create Virginia's most ambitious "smart highway" system despite widespread warnings about the competence and financial condition of the company it hired.

Today the project is mired in controversy. Federal and state investigators are looking into possible wrongdoing, federal funding has been suspended, and the job is about two years behind schedule.

In the weeks before the contract was awarded, questions about the job performance and financial stability of Able Telcom Holding Corp. and one of its business units were chronicled in numerous newspaper articles, posted on the Internet and circulated widely in financial circles.

In New Jersey, the governor and a state legislator had asked for probes into an Able Telcom company's handling of a \$488 million highway project to install an E-ZPass electronic toll-collection system. The massive project, one of the largest of its kind, was so fraught with technical problems and work delays that the Able Telcom company doing the work had been ordered to pay a \$25,000-per-day fine.

Also, there were questions about Able Telcom's solvency. The company reportedly was strapped for cash. Shareholders had filed a series of lawsuits, claiming that they had been misled. Several key officers had resigned, as had Able Telcom's auditor, concerned about the company's lack of control over its finances.

And less than a month before the Virginia contract was awarded, a Wall Street investor who closely monitored Able Telcom had cautioned Virginia highway officials in an Internet posting about Able Telcom and its business units, citing problems of financing and job performance.

Despite the warning signs, on Feb. 18, 1999, a company operated by Able Telcom, Florida-based Transportation Safety Contractors Inc., received a \$58.9 million contract to saturate Hampton Roads' interstates with information-sharing TV cameras, electronic message signs and fiber-optic cable.

Several members of the state board that awarded the contract said recently that staff members with the Virginia Department of Transportation, whom they relied on to advise them on contract matters, did not alert them to the problems with Able Telcom before they voted.

The members of the Commonwealth Transportation Board said if they had been aware of those troubles, they probably would have deferred the vote and may not have hired the Able Telcom contractor at all.

New Jersey Assemblyman John S. Wisniewski asked for a legislative probe into the troubled New Jersey project two weeks before the Virginia contract was awarded. He said recently that if VDOT officials had asked his advice about doing business with an Able Telcom company at the time, "I would have said, 'You have to be very careful, there's a host of problems with this company.'"

And if VDOT was aware of Able Telcom's background and awarded the contract anyway, "that would be reckless," Wisniewski said.

The New Jersey E-ZPass system still is not fully operational and has lost hundreds of millions of dollars. And the Virginia project is plagued by some of the same issues that have arisen in New Jersey, including work delays, questions about the competence of the firm hired to do the work and allegations of wrongdoing.

Able Telcom is defunct. Its former business unit doing the work in Hampton Roads, Transportation Safety Contractors, is now owned by Viasys Corp. of Lakeland, Fla., whose president, Lance McNeill, brought in a new management team late last year. McNeill said his company has requested that its contract be extended and promised that new deadlines will be met. VDOT is now considering granting a 635-day extension.

“Great strides are being made to improve the situation,” McNeill said earlier this month from his Florida office.

Corporate shell

In March 1998, a consortium of highway authorities in New Jersey, New York and Delaware hired MFS Network Technologies of Omaha, Neb., to construct the nation's most expensive electronic toll-collection system.

Superlatives were the order of the day. Then-Gov. Christine Todd Whitman gushed that the E-ZPass project was “the largest, most innovative transportation procurement in the world.”

The contract called for the company to install more than 400 miles of fiber-optic cable, closed-circuit TV cameras to gather vehicle information for automated toll collection, a center to process violations and a customer-service center.

The E-Zpass program is used widely throughout the urban Northeast. Drivers affix a device the size of a cigarette pack to their windshields and are billed automatically after they drive through camera-equipped toll plazas.

MFS was owned at the time by WorldCom Inc., the now scandal-ridden and bankrupt communications behemoth. In July 1998, WorldCom sold MFS to Able Telcom, whose fortunes soared with that single transaction. The Florida holding company had reported \$20 million in revenues in 1993. Five years later, Able Telcom was the corporate overseer on a job that was to pay nearly half a billion dollars.

But the transition was not an easy one. Several top MFS officers resigned shortly after the deal was struck, and the business press took note.

On July 22, 1998, a columnist for TheStreet.com, an online business journal, described Able Telcom's “revolving door” of key officers and auditors and remarked on the company's habit of tardiness in filing quarterly statements with the Securities and Exchange Commission.

An Oct. 6, 1998, article in the Miami Daily Business Review offered a litany of Able's problems, including a spate of lawsuits by shareholders who claimed that Able had withheld important information about the MFS deal; the September resignation of Able's auditor, who said the company needed tighter controls over its finances; and persistent reports that the company would be forced to file for bankruptcy protection.

The article also noted that Able's “traffic light division,” Transportation Safety Contractors Inc., had reported a \$1.7 million drop in revenue and losses of \$2.95 million in fiscal year 1996.

That was the company Virginia would hire four months later to install almost \$60 million worth of smart-highway improvements along Hampton Roads' interstates.

Fair warning

Two weeks before the Virginia contract was awarded, Manuel Asensio, a Wall Street investor who monitored Able Telcom, cautioned Virginia highway officials about doing business with the company. On Feb. 4, 1999, he posted a notice on the Internet advising that VDOT's “inquiries should require disclosures concerning Able's debt defaults and its failure to perform under other transportation contracts, which may lead to its disqualification” for the contract.

Newspapers in the Northeast, including The New York Times, were on the story. They reported the delays and fines and Whitman's January 1999 request that the state attorney general's office conduct a legal review of the project.

But those warnings apparently were not heeded by VDOT.

“The most rudimentary due diligence should have determined that the state of Virginia should not have contracted with this company,” Asensio said recently from New York. “If they had just read the press clippings, they would not have entered into the contract.”

Asensio is widely known on Wall Street as a “short seller,” an investor who makes money as the result of a company's financial distress. Thus Asensio stood to profit from Able Telcom's problems, which he is quick to acknowledge.

But his concerns were echoed by New Jersey Assemblyman Wisniewski, who is now chairman of New Jersey's Assembly Transportation Committee. Wisniewski, who was a member of that committee when the E-Zpass contract was awarded, said he would have told VDOT in 1999: “You're dealing with an entity that does not have the institutional experience or personnel on staff to carry out the contract.”

The day VDOT awarded the contract to Transportation Safety, its sister business unit, MFS, was still being assessed a \$25,000 daily fine by the New Jersey Turnpike Authority.

Board was in the dark

C. Frank Gee, VDOT's chief of operations, was among the agency staff members who took part in a review of the five firms that bid for the smart-highway contract. Gee, who was state construction engineer at the time, said VDOT awarded the contract to Transportation Safety because it was the lowest “responsive, responsible” bidder on the project.

Gee said he did not recall any “red flags” concerning Transportation Safety during the review.

David W. Nester, VDOT's acting state construction engineer, said the agency was bound by law to award the contract to Transportation Safety, which had been prequalified to bid on the project and demonstrated that it could obtain a performance bond for the job. The contract could have been legally denied the low bidder only if that bidder had been debarred by another agency or had been convicted of or admitted to wrongdoing, Nester said.

But a former member of the Commonwealth Transportation Board said the panel had considerable latitude in awarding contracts and did not always follow staff recommendations. The panel has the final say on state highway contracts.

“There should be room for human judgment” in the contract-award process, said H. Carter Myers III of Culpeper.

Myers is one of several board members who said the 17-member panel should have been told of the troubles with Able Telcom before the contract was awarded.

If VDOT staff had informed the board of those problems, “I can assure you it would have been deferred and fully disclosed before any action was taken,” said Myers, who left the board in May.

“The board absolutely, unequivocally should have been told” of the problems, said former board member Benjamin R. Humphreys Jr., who represented the Fredericksburg District when the contract was approved. “If a vendor is having problems in another area, we need to know that.”

If VDOT staffers had alerted the board to the problems, “a lot of questions would have been asked and it would not have been approved,” said ex-member Olivia Welsh of Staunton. “The worst thing you can do is not let the board know what's going on,” she said.

“You're talking about taxpayers' dollars, and I had a short fuse when it came to taxpayers' dollars,” Welsh added.

“I'm certain the board would not have approved such a contract if we had known of any problems,” said former board member Ulysses X. White of Manassas. He and other former board members said they could not recall details of the contract, one of scores they acted on every year.

The vote to approve the pact apparently was unanimous; the vast majority of contract approvals are. VDOT records do not indicate that there were any dissenting votes. Board members could not recall how they voted, but several said they probably would have remembered if they had cast a “no” vote.

Among the VDOT officials who signed off on the contract were David R. Gehr, state transportation commissioner at the time, and James G. Browder, the agency's chief engineer, who was Gee's boss. As commissioner, Gehr was a nonvoting member of the transportation board.

Gehr and Browder both have since left VDOT and now hold executive positions with companies that act as consultants on highway projects.

Gehr was fired by then-Gov. Jim Gilmore in August 1999 in the midst of a controversy involving allegations of environmental violations on state highway projects.

Gehr is now a vice president and smart-highway specialist with Parsons Brinckerhoff, an engineering consulting firm that was paid about \$15 million to monitor the New Jersey E-ZPass project. A report issued in July by a New Jersey legislative committee concluded that Parsons Brinckerhoff "was negligent" in its oversight role on that project.

Efforts to reach Gehr at his office in Herndon and Browder at his Richmond office were unsuccessful. Neither returned phone calls.

Cleaning up the mess

Today, transportation leaders in New Jersey and Virginia are left to deal with Able Telcom's troubled legacy.

New Jersey's E-ZPass project has become the largest highway boondoggle in the Garden State's history. It was supposed to generate a \$34 million profit, but instead, as of July of this year, had produced \$469 million in deficits. The state has been forced to raise fees for E-ZPass users and eliminate discounts for toll-road users to make up for the losses.

A July report by the state's transportation department described it as a "debacle."

"The system has become the pariah of the electronic toll collection community," the report noted.

A separate legislative study concluded that there were "improprieties, wrongdoing or misfeasance in every stage of this project."

The New Jersey Turnpike Authority last month loaned the E-ZPass system \$30 million to improve customer service, repair lanes and update the data-processing system.

With MFS long off the job, New Jersey has hired another company to fix the problems.

Transportation Safety, the company doing the Hampton Roads work, was acquired by Viasys Corp. in July 2001. Viasys' McNeill said Transportation Safety is in "better financial shape" now than when it was owned by Able Telcom.

He said his company has made major personnel changes in the past 10 months, "putting the right technical people and management people in place."

McNeill said a major factor in the project's delays has been getting VDOT to approve unforeseen changes in structures that support the large overhead electronic message signs.

Transportation Safety is under contract to build the third and final phase of the smart-highway system, construction of which began in 1993. The firm only last week began installing the 170 closed-circuit cameras and has not installed any of the 93 electronic message signs the VDOT contract calls for. When the system is complete, Internet-savvy motorists will have access to 288 cameras showing interstate traffic conditions. Only 61 are operating today.

Meanwhile, the Federal Highway Administration has suspended payments on the federally funded project until VDOT completes an internal review of apparent problems outlined by the highway agency. Among problems that have come to light are charges that false statements were made, money was misspent, and conflicts of interest existed between Transportation Safety and a consultant hired by VDOT to monitor the quality of the work on job.

A spokeswoman for the New York-based consultant, DMJM+Harris, said earlier this month that the company "is looking into" issues raised in a Sept. 20 story in The Virginian-Pilot.

Also, the FBI and the U.S. Department of Transportation are conducting an investigation into allegations of wrongdoings on the project. No charges have been brought.

Stephany D. Hanshaw, manager of the smart-traffic system's operations center, questioned the competency of Transportation Safety's contracting team. He said the contractor's performance has improved in recent months, but he noted that his office has had concerns about the company's "ability to do the work." He cited questions about the firm's "personnel, knowledge, skills and abilities."

Reach Bill Burke at 446-2589 or at bburke@pilotonline.com