February 5, 2013

Dan Richard, Chairman
California High Speed Rail Authority
770 L Street, Suite 800
Sacramento, CA 95814

Re: Community Benefits Agreement

Dear Chairman Richard:

I wish to respond to the many inaccuracies in the letter that you received on January 23, 2013, from the Associated Builders and Contractors of California ("ABC") about the Community Benefits Agreement that is included as Addendum 8 of the Authority’s Request for Proposals.

As you know, the Community Benefits Agreement ("CBA") will provide a necessary framework for the many years of close cooperation between and among the Authority, design-build teams, contractors and subcontractors, and multiple labor organizations that will be essential to successful performance of the project work. Such a framework will enable contractors and subcontractors to perform the project work with a highly-skilled and streamlined workforce, while at the same time meeting the Authority’s goals for employing local and disadvantaged workers and the Authority’s goals for awarding contracts to small business enterprises.

Before turning to the many errors in the ABC letter, it bears emphasis that ABC is a far-right-wing political advocacy organization with a national agenda of attacking labor unions, not a true representative of the California construction industry. ABC’s members in California include only about three-tenths of one percent of the State’s licensed contractors. ABC’s letter professes an interest in apprenticeship training, but in California about 95 percent of the construction apprentices in state-approved programs are indentured in apprenticeship programs jointly sponsored by labor unions and signatory contractors. The National Labor College recently analyzed ABC’s operations and concluded that ABC is “an astro-turf political organization with a well-funded PR and lobbying machine, and a slight capacity for workforce development.” A copy of the 2012 National Labor College report is enclosed for your information.

With this background in mind, I would like to respond specifically to the many inaccuracies in ABC’s letter.
1. As the Authority knows, the ABC letter is wrong in claiming that the Community Benefits Agreement would exclude workers who are not union members from performing project work. The CBA does exactly the opposite; it forbids discrimination based on union membership. Section 5.1 provides that “the C/S/Es and Unions agree not to engage in any form of discrimination on the ground of . . . membership in a labor organization in hiring and dispatching workers for the project” and Section 6.2 provides that “[n]o employee covered by this Agreement shall be required to join any Union as a condition of being employed, or remaining employed, for the completion of the Project work.”

2. As the Authority also knows, the ABC letter is wrong in claiming that the CBA excludes contractors not otherwise signatory to labor agreements from performing project work. Again, the CBA explicitly provides exactly the opposite of what ABC claims. Section 3.2 provides that “the C/S/E will not be obligated to sign any local, area, or national collective bargaining agreement as a condition of performing work within the scope of this Agreement” and Section 13.4 provides that “[c]ontractors shall have the absolute right to award contracts or subcontracts for Project Work to any qualified contractor notwithstanding the existence of non-existence of any agreements between such contractor and any Union.”

3. The ABC letter also gets matters backwards in claiming that the Community Benefits Agreement will make it more difficult to achieve the Authority’s goal of providing job opportunities for Nationally Targeted Workers. Rather, the CBA is essential to the achievement of that goal.

All five design-build teams bidding for the initial phase of project work are signatory to pre-existing labor agreements. Many of the other contractors performing project work also will be signatory to pre-existing labor agreements. The CBA supersedes the normal hiring hall provisions of those pre-existing labor agreements by requiring that qualified National Targeted Workers be given first preference for dispatch. Section 7.5.1 provides that “the Unions and the Contractors/Employers agree that so long as they possess the requisite skills and qualifications National Targeted Workers shall be first referred for Project work, including journeypersons and apprentices,” and Section 7.10 provides that “[w]hen National Targeted Workers are requested by a C/S/E, the Unions will refer such workers regardless of their place in the Union hiring halls’ list and normal referral procedures.”

The Los Angeles Unified School District (“LAUSD”) has used a Project Stabilization Agreement with similar hiring preferences to achieve great success with its “We Build” local hire program. That Project Stabilization Agreement covers about $28 billion in bond-funded construction and renovation. The hard data shows that an average of about 38 percent of the hours worked has been performed by tradespersons who reside within the jurisdiction of the LAUSD and about 67 percent of all yearly hours worked have been performed by residents of
the County of Los Angeles. The utilization of local labor put billions of dollars back into the local communities. Data concerning the success of this local hire program is enclosed with this letter.

The ABC letter criticizes the provisions of the Community Benefits Agreement that provide for local union hiring halls to serve as the primary referral source for workers. But experience with other major construction programs, including the LAUSD’s program, shows that the use of the local hiring halls to dispatch workers is the only reliable method of ensuring that local workers benefit from the jobs created. Absent such a requirement, some contractors would bring in entire crews of out-of-state workers.

4. The ABC letter is also wrong in claiming that the Community Benefits Agreement will deter small business participation. To the contrary, by allowing subcontracts to be awarded without regard to union status and providing all contractors with a ready source for skilled journeypersons and apprentices, the CBA serves as the basis for a successful small business outreach program. The LAUSD was able to use its Project Stabilization Agreement in conjunction with a Small Business Boot Camp to achieve huge successes in this area. From fiscal year 2003 to fiscal year 2010, $3.7 billion (47%) of the total contracts awarded by LAUSD for work covered by the Project Stabilization Agreement were awarded to Small Business Enterprises. The latest figures for the LAUSD’s program show that the total awards to Small Businesses Enterprises now exceed $4.3 billion (48%). The relevant data is enclosed with this letter.

5. The ABC letter also asserts without any basis whatsoever that the Community Benefits Agreement will increase project costs. As you know, the project work already is covered by California’s Prevailing Wage Law, so variations in wage-and-benefit expenses are not going to be the driver of project costs. The CBA provides the framework for performing the project work with the most streamlined and efficient workforce and without any delays due to labor disputes, which could significantly raise project costs on a project of this magnitude.

To that end, the CBA provides in Section 13.2 that “[t]here shall be no restrictions on the efficient use of manpower other than as may be required by safety regulations” and that “C/S/Es may utilize the most efficient methods or techniques of construction, tools or other labor-saving devices to accomplish the work.” The CBA also contains procedures for settling all grievances and jurisdictional disputes through arbitration, and provides in Section 4.1 that “there shall be no strikes, work stoppages, slowdowns or other disruptive activity for any reason” by a union “and there shall be no lockout by the Contractor.” Section 4.6 allows for immediate, expedited arbitration and huge fines if this provision is violated.

The ABC letter suggests that project costs will increase because contractors will refuse to bid for project work. But that certainly is not the experience under any
of the other project labor agreements covering major construction programs in California. More than one-third of the repeat contractors under the LAUSD’s Project Stabilization Agreement have been non-union contractors. The San Diego Unified School District uses a project labor agreement for all its Proposition S projects, and the Los Angeles Community College District uses a project labor agreement for its Proposition A, AA and Measure E facilities. The San Francisco Public Utilities Commission is using a project labor agreement for its Hetch Hetchy Water System Improvement Program projects. These awarding bodies have not experienced or projected any shortage of bidders.

6. The ABC letter is also wrong to criticize the requirement in the Community Benefits Agreement that contractors request apprentices from the local joint labor-management apprenticeship programs. These joint programs are presently training 95 percent of the more than 50,000 apprentices who are indentured in construction apprenticeship programs approved by California’s Division of Apprenticeship Standards. Because these programs are jointly sponsored by labor and management, they are designed to protect the welfare of the apprentices and to enable the apprentices to graduate from the programs and pursue long-term careers as journey-level workers.

By contrast, apprenticeship programs set up without any labor participation have never trained more than a tiny percentage of workers in California and they too often have served as vehicles for exploiting the apprentices. For example, I am enclosing a letter from ABC’s Golden Gate Chapter that admits that the ABC chapter’s Construction Craft Laborer apprenticeship program, in the entire time between the program’s approval in 1995 and a state audit of the program conducted in 2007 had a graduation rate of 0%.

7. Finally, the ABC letter is simply unfair in criticizing the Authority for agreeing to pay $2,000 per month -- a tiny sum in the context of the billions of dollars of project work -- to the Center for Military Recruitment, Assessment and Veterans Employment, a 501(c)(3) charitable tax-exempt organization that operates the “Helmets to Hardhats” program. Since 2007, the program, in partnership with the Building Trades, has verified the placement of 5,887 veterans into construction jobs, including more than 200 “Wounded Warriors” reporting at least 30 percent disability. The Authority’s Targeted Hiring Policy seeks to provide employment to military veterans, and the Helmets to Hardhats program serves as a national resource center for veterans seeking employment in the construction industry. Nothing in the Community Benefits Agreement precludes outreach to other organizations that refer military veterans for employment.

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Apart from the many inaccuracies in the ABC letter, the letter simply recycles ABC’s typical attacks on labor organizations, asking the Authority to sacrifice sound construction management practices to pursue ABC’s ideological agenda.
ABC repeatedly claims that “83% of California workers” are not in unions, but the relevant workforce here consists of skilled construction workers. As stated above, 95 percent of the apprentices in state-approved construction apprenticeship programs are in joint labor-management programs, and that figure has held steady for many years. All five of the pre-qualified design-build teams have union contracts. Every recent major infrastructure project in California has been performed largely or entirely with union labor. The success of the Authority’s mission necessarily depends on many years of continuing cooperation among multiple contractors and subcontractors and multiple labor organizations on multiple project sites. The Community Benefits Agreement provides the framework for that success.

As the President of the State Building and Construction Trades Council of California, a federation of 22 local building trades councils, 13 district labor councils, and 134 local unions that represent more than 350,000 construction workers in California, I look forward to working with the Authority and its staff to build a historic infrastructure project that will make Californians proud.

Sincerely,

Robbie Hunter
President

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opeiu#29/afl-cio

Encls.