RJI Construction Industry Partnership Public Policy Committee
DRAFT Recommendations to the RJI for Preferences to Promote Local Hiring and Local Economic Development Benefits from Construction in Fresno, Madera, Tulare, and Kings Counties
January 31, 2005

Purpose

After considerable study and deliberation with participants representing the diversity of the regional construction industry, local government, and community interests, we strongly believe formal local hiring preference policies implemented through new laws, procedures, incentives, and enforcement mechanisms adopted by administrative and contracting jurisdictions are required in order to:

1. Substantially reduce the structural and crisis level unemployment experienced for decades by local residents in our four-county region, which includes Fresno, Madera, Tulare and Kings Counties;
2. Measurably increase the demand for local skilled labor and, in response, the supply of local skills training opportunities at a scale now only available to Northern and Southern California residents who predominate employment on many major local construction projects;
3. Establish reasonable local requirements and the supportive institutional systems necessary to reduce our unemployment levels and increase our pool of local skilled labor, without unduly hampering business and development activities or unreasonably restricting appropriate and healthy competition;
4. Retain within the four-county region the economic stimulus inherent in increased payrolls accruing to local resident workers, and the use of local services and materials supplied by local businesses to the construction industry; and
5. Significantly increase the community investment required to develop and sustain a skilled local workforce and high local employment rates by all who contract and subcontract for public and publicly subsidized construction work within the region.

Definition of “Local”

Preference in hiring should be given to local residents and local business enterprises employing a majority of local residents, who for a period of the preceding twelve months reside or have established principal offices in Fresno, Madera, Tulare, or Kings Counties.

Definition of “Covered Construction”

All local public development and commercial development constructed in Fresno, Madera, Tulare, and Kings Counties, made possible through public assistance or public subsidies of various kinds, should be subject to local hiring preferences.
Definition of “Thresholds” for Covered Construction Subject to Local Hiring Preference

The threshold value of a public contract or total construction contract award, including all subcontract components, subject to local hiring preference should be a minimum of $500,000.

Primary Policy Recommendations to Promote Local Hiring and Local Economic Development Benefits

1. Incentivize or otherwise require that 50% or more hours worked are performed by local residents, and that 50% or more of new hires are local residents, on all covered construction projects.

2. Incentivize or otherwise require that a minimum of one (1) in five (5) hours worked on all covered construction projects must be performed by apprentices.

3. Incentivize or otherwise require on all covered construction that all contractors and subcontractors be enrolled and participate in apprenticeship programs that are approved by the Division of Apprenticeship Standards of the State of California Department of Industrial Relations to train apprentices in Fresno, Madera, Tulare, and Kings Counties. (See Note 1. below for grace period and milestones suggested for non-compliant entities to meet this policy standard.)

4. Incentivize or otherwise require the use in covered construction projects of services and products supplied by local business enterprises employing a majority of local residents and having a principal office in Fresno, Madera, Tulare, or Kings Counties

Recommendations Regarding Enforcement and Institutional Infrastructure Development to Support Primary Policy Recommendations

Recommendations on institutional infrastructure, procedures, incentives, and enforcement mechanisms necessary to support policies and laws adopted by administrative and contracting jurisdictions will be made once primary policy recommendations have been endorsed by the RJI.

Note 1: In order for a contractor or subcontractor to qualify for bid submission on projects under this policy they must make a diligent effort to establish skilled craft training for local residents within Fresno, Madera, Tulare and Kings Counties.
Evidence of such an effort is as follows:

1) Must be approved to train in the applicable apprenticeable craft by a State of California approved apprenticeship program that is approved to train in the geographic area of the project; or

2) Must be approved to train in the applicable apprenticeable craft by a State of California approved apprenticeship program that is approved to train outside the geographic area of the project, if said apprenticeship program has filed an application with the State (or has submitted a letter of intent as discussed below) amending the approved area of training to include the area in which the project is being constructed; or

3) Must be approved to train by a State of California approved apprenticeship program who is not approved to train in the applicable apprenticeable craft, but is in the process of seeking approval to train in the appropriate apprenticeable craft and within the geographic area of the project being constructed; or

4) Must be in the process of seeking approval from the State to train in the applicable apprenticeable craft and/or geographic area of the project, or in the process of establishing a relationship, and ultimately approval to train, with an organization or entity who is in the process of seeking approval from the State to train in the applicable apprenticeable craft and in the geographic area of the project.

The process and timeline for seeking approval to train in the applicable apprenticeable craft and/or the geographic area of the project is as follows:

1) The interested party must submit a letter of intent to the awarding body/agency stating their intent to proceed under one of the qualifying conditions as listed above and identifying said condition.

2) Within 60 days of submitting the letter of intent, the interested party must submit evidence of having filed with the State the application for approval of Apprenticeship Standard (approval to train) for the applicable apprenticeable craft and/or in the geographic area of the project.

3) Upon submitting evidence of having filed the application with the State to the awarding body/agency, application status updates shall be requested from the State by the interested party on a biannual basis. The State's written reply must be forwarded to the awarding body/agency within 15 days of receipt as evidence of continued progression in the approval process.
February 9, 2005

Ashley Swearengin
Chief Operating Officer
Fresno Area Regional Jobs Initiative
Office of Community and Economic Development
California State University, Fresno
2743 East Shaw Avenue, Suite 107
Fresno, CA 93710

Dear Ms. Swearengin:

Associated Builders and Contractors opposes the proposed Local Hiring Policy apprenticeship recommendations from the Fresno Area Regional Jobs Initiative (RJI) Construction Industry Partnership (CIP) Public Policy Committee.

These proposed recommendations would not be controversial if the State of California used reasonable criteria when considering the approval of new or expanded apprenticeship programs and approved new or expanded programs quickly and without bias. Unfortunately, construction unions manipulate the state’s approval process for new and expanded programs to prevent choice and competition in apprenticeship training from Merit Shop associations.

Unions have a vested interest in mandating contractor agreements with apprenticeship programs, because unions monopolize state-approved apprenticeship programs for many trades. In Fresno County, unions control apprenticeship programs for all trades except the five trades for which Associated Builders and Contractors has state-approved programs: electrical, carpentry, painting, plumbing, and laborer. There is ZERO chance at this time that additional Merit Shop apprenticeship programs will be approved to train in Fresno County.

It should be no surprise that a union-dominated policy committee would recommend that contractors be required to sign apprenticeship agreements. This requirement would force the Fresno area construction industry to become largely unionized, because unions will not permit contractors to have an apprenticeship agreement without requiring them to sign a collective bargaining agreement.

California’s History of Preventing Competition and Choice in Apprenticeship

Associated Builders and Contractors was able to start operating state-approved apprenticeship programs in several trades in some areas of California in the mid-1990s after many years and
hundreds of thousands of dollars in litigation. Opposing competition and choice in training, unions fought ABC every step of the way.

Starting when Gov. Gray Davis took office in January 1999, the California Division of Apprenticeship Standards and the California Apprenticeship Council began using technical objections to revoke approval granted during the Wilson Administration for Merit Shop programs to expand into new geographic areas. Merit Shop apprenticeship programs sponsored by employer organizations such as the Western Electrical Contractors Association, the Independent Roofing Contractors of California, and the Air Conditioning Trades Association were confined to smaller territories, leaving many apprentices enrolled in these programs in the lurch. Then, when these victimized apprentices dropped out of their program, union lawyers declared the programs were failures and should be shut down because of their drop-out rates!

Currently the Office of Apprenticeship Training, Employer and Labor Services (OATELS) of the U.S. Department of Labor is proceeding to take away the authority of the State of California to regulate apprenticeship on federal projects because of the state's history of discrimination against Merit Shop programs. California Labor Code Section 3075(b) requires a "need" for a new program (the notorious "needs test") before a proposed program can be approved. The unions never see a need for a new program to compete against one of their existing programs, and the needs test thus serves to eliminate apprenticeship opportunities for current and prospective apprentices by restricting approval of new or expanded programs. For more information on this proceeding, see http://www.oalj.dol.gov/public/mtrad/2002cep00001/2002cep00001_092.pdf

The California Apprenticeship Council also implemented a regulation in 2002 that requires workers enrolled in apprenticeship programs to receive a percentage of state-mandated prevailing wages even when working on private projects. In many parts of California, and in particular in the Central Valley, state prevailing wages far exceed actual market wages for the area, thus putting contractors at a competitive disadvantage when using apprentices on private construction and ironically discouraging training through apprenticeship programs.

Union lawyers are now blocking another attempt by the Western Electrical Contractors Association (WECA) to expand its territory beyond Sacramento County and the ten counties adjacent to Sacramento County. Among the union arguments is the claim that WECA does not have trainers on staff for the new territory. Apparently organizations proposing new or expanded programs have to bring trainers onto their payroll while waiting for the day when the unions will let them start bringing apprentices into the program. WECA is now suing the California Apprenticeship Council in its quest to win state approval for its expansion.

ABC's Reaction to the Local Hiring Policy Apprenticeship Recommendations

Obviously union officials who dominate the Fresno Regional Jobs Initiative (RJI) Construction Industry Partnership (CIP) Public Policy Committee are fully aware of how the State of California approves apprenticeship programs and the slim likelihood that a competing Merit Shop program would ever be approved. Sitting in the Plumbers union hall on February 15, the committee will approve this apprenticeship proposal and forward it to the Regional Jobs Initiative board of directors. ABC will fight the proposal there. If it passes, we will fight the
proposal at local governments. If it passes there, we will sue the local governments. In the meantime, ABC plans to inform local news media about the anti-competitive, union-controlled political agenda of the Construction Industry Cluster of the Fresno Area Regional Job Initiative.

**ABC's Alternative Recommendations to the Proposed Local Hiring Policy**

- Lobby Governor Schwarzenegger to appoint individuals who support competition and choice in apprenticeship training programs to the California Apprenticeship Council and to positions in the Division of Apprenticeship Standards.
- Create incentives for contractors to use voluntary community hiring halls.
- Create incentives for contractors to achieve voluntary goals for local hiring.
- Lobby state legislators to change the state’s method of calculating prevailing wages from a modal rate to a more accurate weighted average.
- Ask the Division of Labor Statistics and Research to conduct a local wage survey that allows the Central Valley to have prevailing wage rates for all trades that reflect actual local market wages, instead of Bay Area wages as found in union collective bargaining agreements. This will prevent Bay Area union workers from traveling to the Central Valley and taking away job opportunities from local workers.
- Discourage or prohibit union Project Labor Agreements, such as the PLAs used on the Community Health Systems Downtown Campus in Fresno and the Kings River Conservation District Peaking Plant, which encourage out-of-area union workers to flood the local construction job market.
- Lobby state legislators to repeal Senate Bill 975, which in 2001 redefined a public works project to include any private project that gets any sort of assistance from a government entity, thus expanding prevailing wage requirements to numerous private commercial and industrial construction projects.
- Commit to lower taxes and less regulation on the state and local level.

Associated Builders and Contractors considers the Fresno Area Regional Jobs Initiative (RJI) Construction Industry Partnership (CIP) Public Policy Committee to be about bigger government, more regulations on small and medium-sized businesses, and more union coercion of businesses and workers. If the committee truly wants to encourage economic growth and quality job creation in the Central Valley, it should instead advocate for less intrusive government, less regulation on small and medium-sized businesses, and more freedom from union coercion.

Sincerely,

Kevin C. Dayton
Vice President of Government Affairs
Regional Job Initiative Looks to Government Regulations and Unions to Create Local Jobs

Small and medium-sized businesses in Fresno have cause to be wary when local labor union leaders team up with the city’s business establishment to advance an economic development plan. While local business owners are working long hours growing their companies and actually creating jobs in the context of the free market, local labor and corporate leaders are in committee meetings generating their own ideas to create jobs through more government regulations and increased unionization of businesses.

The Fresno Branch Office of Associated Builders and Contractors (ABC), a predominately non-union construction trade association of commercial, industrial, and public works contractors, decided to participate in the Construction Industry Partnership of the Fresno Area Regional Jobs Initiative (RJI) on behalf of our Fresno area contractors. ABC saw potential in the RJI to tackle the problem of the skilled labor shortage for construction trades in Fresno.

Soon the focus began to change. We were uneasy when a “Public Policy Committee” was created, because we believe that economic growth and job creation is most likely to occur not through new government “policies,” but through an environment of lower taxes and limited regulation.

We became even more concerned when union officials began dominating the Public Policy Committee and the committee began meeting at union halls. These union leaders engage in economic harassment campaigns against our member companies, often using the government as their agent. Their ultimate goal is to force every contractor in town to sign a collective bargaining agreement or a government-mandated Project Labor Agreement (PLA) with the unions, so that all employer benefit payments go into union trust funds, all workers are dispatched to contractors through the unions, and all workers pay union dues and fees.

Now ABC is fighting a union-backed proposal before the RJI Construction Public Policy Committee that would require all contractors on public works projects and major commercial and industrial redevelopment projects to sign an agreement to train their workers through a formal state-approved apprenticeship program. Apprenticeship programs provide quality training—in fact, ABC operates state-approved apprenticeship programs for five trades. The problem is that apprenticeship programs are also highly politicized.
Unions monopolize the state-approved apprenticeship programs for most construction trades in the Fresno area. They also control the State of California’s process for approving new apprenticeship programs. Any non-union contractor or contractor association that wants to start an apprenticeship program needs to spend many years and hundreds of thousands of dollars in litigation to fight the union campaign to prevent competition and choice in training.

If a non-union contractor wants to train workers through a state-approved apprenticeship program, it must ask the available local program for a training agreement. Union programs are happy to oblige—as long as the contractor becomes unionized.

There’s a $55 million wastewater treatment plant upgrade in the works for the City of Fresno. Numerous listed prospective contractors and suppliers are from out of town, and many of them are union. Yet the Fresno Area Regional Jobs Initiative is more interested in recommending policies that would change the basic business operations of, for example, small local family-owned masonry and paving contractors.

It’s small and medium-sized businesses that are today’s engines of economic growth and job creation, not government, big corporations, or labor unions. If the Fresno Area Regional Jobs Initiative wants to bring 30,000 new jobs to Fresno, it should advocate for less intrusive government, less regulation on small and medium-sized businesses, and more freedom from union coercion.
March 4, 2005

Ashley Swearengen
Chief Operating Officer
Fresno Area Regional Jobs Initiative
Office of Community and Economic Development
California State University, Fresno
2743 East Shaw Avenue, Suite 107
Fresno, CA 93710

Dear Ms. Swearengen:

This is a follow-up to the February 15 meeting of the Fresno Area Regional Jobs Initiative (RJI) Construction Industry Partnership (CIP) Public Policy Committee regarding the proposed apprenticeship requirement recommendation.

The Golden Gate Chapter of Associated Builders and Contractors proposes five amendments to the proposed apprenticeship requirement recommendation. In addition, we have suggested two alternative proposals that would support the goals to create more job opportunities for local residents and supply a higher skill level of workers to local contractors.

**Needed Amendments to Original Proposed Apprenticeship Requirement**

Contrary to the claims of some Public Policy Committee members, state policies and practices regarding the approval of new and expanded state-approved apprenticeship programs are highly relevant to the proposed apprenticeship requirement for local governments. California Labor Code Sections 3070-3098 govern the approval and operation of apprenticeship programs on public works projects in the Fresno area and in all other regions of California.

In February, leaders of the Fresno Area Regional Jobs Initiative traveled to Sacramento to testify at a state legislative hearing about improving the business climate in California. They recognized that economic growth and job creation in the Fresno area are closely intertwined with state laws and regulations. The Public Policy Committee needs to recognize this reality and include these amendments to the proposed apprenticeship policy for local governments:
1. The RJI and Local governments should lobby Governor Schwarzenegger to appoint members of the California Apprenticeship Council who support greater choice and competition among state-approved apprenticeship programs. The terms of seven CAC members appointed by Governor Gray Davis expired on January 15, but there have not been new appointments. The terms of seven more CAC members appointed by Governor Gray Davis expire on January 15, 2007.

2. The RJI and local governments should lobby the state legislature and Governor Gray Davis to repeal California Labor Code Section 3074(b), which establishes a “needs test” for the approval or expansion of new apprenticeship programs. This language was inserted into the California Labor Code through Assembly Bill 921, sponsored by the State Building and Construction Trades Council and signed into law by Governor Gray Davis in 1999. This portion of the Labor Code is the primary basis for the U.S. Department of Labor’s decision to derecognize California’s authority to regulate apprenticeship on federal construction projects.

3. Organizations and contractors that operate state-approved apprenticeship programs in the four-county area of concern to the RJI shall commit to not challenging the approval or expansion of new state-approved apprenticeship programs into the four-county territory based on the “needs test.” In addition, these organizations and contractors shall ensure that their state and national affiliates will not challenge these programs based on the needs test. Associated Builders and Contractors already makes such a commitment through this letter, and please notice that we are not challenging the legitimate application of the competing Western Electrical Contractors Association (WECA) to expand into the territory.

4. Most of the contractors that will be caught in the apprenticeship recommendation for local governments with a project cost threshold level of $50,000 will be small local businesses with just a few employees. Not only are these businesses the engine of economic growth and job creation, these are the businesses that are least able to withstand costly new government mandates such as engaging in the process to seek state approval for a new apprenticeship program. Therefore, the project cost threshold for this policy should be raised to at least $5 million.

5. In order to provide adequate background information to local governments that will be considering the recommendation, the recommendation should include copies of the agreements, subscription agreements, collective bargaining agreements, or any other terms and conditions that a contractor must abide by in order to use apprentices from programs approved to train in the four-county area.
An Alternative Recommendation #1:
Required Employment of Participants in Neutral Pre-Apprenticeship Programs

A better alternative to the controversial and politically-charged proposed apprenticeship policy would be a recommendation that local governments require a certain percentage of apprentices to come from a neutral pre-apprenticeship training program. For example, Fresno County requires 60 percent of apprenticeship hours as determined by California Labor Code Section 1777.5 on the Juvenile Justice Campus Project to be performed by residents of Fresno County who are also registered participants in the Youth Pre-Apprenticeship Training Program sponsored by the Fresno County Workforce Investment Board.

A similar program is also in effect for school construction at the Kings Canyon Unified School District. The school district requires 60% of apprenticeship hours to be performed by graduates of the Orange Cove Pre-Apprentice Training Program. Unfortunately, this program is apparently not neutral in terms of labor affiliation. Contractors have to contact the Carpenters Union to obtain apprentices from this program, and contractors seeking apprentices for other trades besides carpentry are referred to other unions.

In both of these requirements, the unions managed to insert language requiring eligible apprenticeship programs to have five years of graduates, thus eliminating newly-approved non-union apprenticeship programs from consideration. ABC would be opposed to language that excludes newly-approved state-approved programs.

ABC believes that the requirement on the Fresno Juvenile Justice Campus Project to use 60% of apprentices from the Youth Pre-Apprenticeship Training Program sponsored by the Fresno County Workforce Investment Board would be a good policy model for a recommendation from the Public Policy Committee. Larger contractors with many workers on a job site are better able to absorb the special challenges of training workers from a third-party program, so a threshold of $20 million would be an appropriate project cost under which this policy could be adopted. The recommended policy should not contain graduation requirements that exclude new apprenticeship programs.

An Alternative Recommendation #2:
Local Governments Should Use Smaller Bid Packages on $50 Million+ Projects

Attached are the prospective bidder lists in recent Daily Pacific Builders for six Fresno Area public works projects and a bid result for a $26,350,000 school construction job. These lists include school construction projects worth $12.5 million, $15.2 million, and
$11.5 million. There are two smaller transportation construction projects worth $500,000 and $1.5 million, and a small restroom remodeling job.

There is no evidence in these lists supporting the claim that the proposed apprenticeship requirement is needed because out-of-town contractors are coming into the area to work on public works projects. Almost all prospective bidders listed are local businesses in the Fresno area. There are a few prospective bidders from Bakersfield (who would probably argue about the definition of “local”), a union cement company from Rancho Cordova appears as a prospective bidder on two projects, and a company based in San Diego appears on one project.

Instead, out-of-town contractors seem to be more common on large projects such as the $55 million City of Fresno wastewater treatment plant upgrade and the Fresno County Juvenile Hall general contracts. I am quite surprised that the Public Policy Committee has not addressed the issue of local governments needing to break down large projects into smaller bid packages. This would be an excellent way to encourage more local residents to make a living or learn skills in a construction trade through local contractors without imposing an additional regulatory burden on businesses.

The ABC Golden Gate Chapter is confident that these suggestions will lead to a policy recommendation from the Fresno Area Regional Jobs Initiative (RJI) Construction Industry Partnership (CIP) Public Policy Committee that creates local jobs and expands training opportunities for local workers.

Sincerely,

Kevin C. Dayton
Vice President of Government Affairs

attachments