



**County of Ventura
Public Works Agency
MEMORANDUM**

DATE: January 20, 2012

TO: Michael Powers, CEO

FROM: Jeff Pratt, Agency Director *[Signature]*

**SUBJECT: REPORT BACK REGARDING THE USE OF LOCAL LABOR ON THE
VCMC HOSPITAL REPLACEMENT WING PROJECT**

Background:

On August 2, 2011 the Board directed staff to report back on the options available for maximizing local labor on the VCMC Replacement Hospital Wing project. Your Board also asked for a cost/benefit analysis of any option presented.

This memo explains the research conducted and options explored. To the extent possible costs are discussed in the summary. Discussion on benefits occurs throughout this document.

Research Process:

County Counsel Research and Opinion

County Counsel has concluded that the County cannot directly require the contractor selected for the project to hire County residents or subcontractors to work on the project. To do this would essentially violate State public contracting requirements for general law counties which require that the award of contract go to the low bidder.

As to alternatives, County Counsel identified two options that might indirectly increase the use of local employees or subcontractors: (1) a requirement that all contractors sign a project stabilization agreement (sometimes called a project labor agreement), and (2) a requirement that the prime contractor engage in an outreach program designed to widely publicize the availability of subcontracts.

Meetings with Subject Matter Experts

The majority of the research conducted involved meetings and conference calls with the subject matter experts identified below. Additional research was done through internet searches and the review of reports and other documents provided by the subject matter experts. Following is a brief review of the meetings held. A detailed discussion of each of the options explored is provided in this letter.

Design-Build Contractors

Staff met with the design-build teams (Clark Construction, Hensel-Phelps Construction, and McCarthy Construction) on 8/3/2011 in order to learn what they have done in the

past to promote local hiring and what results they have achieved. Each of the teams presented recruitment actions that they have taken on previous projects and the results achieved. Each team explained planned recruitment activities for the hospital project. They stated that using local labor was essential to keeping labor costs down and being competitive. Subsequent meetings and phone calls were held to further discuss local hire. All of the teams were confident that they would achieve at least 50% local labor on the project.

Tri-County Building Trades (TCBT)

The TCBT represents 18 crafts in Ventura, Santa Barbara and San Luis Obispo counties. Staff met with TCBT on 8/9/11 to discuss ways to foster local hiring on the project. Numerous meetings and conference calls were held on forming a Memorandum of Understanding (MOU) that met the desires of TCBT, maximized local labor on the project, and maintained a competitive proposal environment. As discussed later in this letter, TCBT eventually rejected the idea of an MOU and suggested in its place a Project Labor Agreement (PLA). TCBT provided electronic copies of numerous documents supporting the use of Project Labor Agreements for review. TCBT strongly encouraged the use of a PLA as a means of increasing local labor on the project. TCBT also argued that a PLA would reduce project costs.

The Tri-County Office of The Associated General Contractors of America (AGC)

The AGC provides education, training, advocacy, and resources to its contractor and subcontractor members. At the request of AGC, staff met on 8/10/11 to discuss local labor requirements and Project Labor Agreements. The AGC does not oppose PLAs but does oppose what they call Government Mandated Labor Agreements (GMLA) - PLAs that are negotiated by the owner and organized labor without representation by the contractors who eventually have to agree to the terms of the GMLA. AGC thought that a PLA would lock out a significant number of contractors.

Ventura County Contractors Association (VCCA)

The VCCA is a non-profit membership association of general contractors, subcontractors, building material suppliers and many other leading construction industry businesses in Ventura County. Staff contacted the VCCA by phone to discuss local hire and PLAs. The VCCA is strongly opposed to PLAs stating that 85% of sub-contractors in Ventura County are non-union and would not sign a PLA. Contractors that do not sign a PLA could be prohibited from working on a project with a PLA. The reasons given by the VCCA for not signing a PLA are the hiring restrictions and union payments that are required as part of a PLA. VCCA also thought that a PLA would lock out a significant number of contractors.

Southwest Regional Council of Carpenters (SRCC)

The SRCC represents carpenters in Ventura, Santa Barbara and San Luis Obispo counties. Staff met with the SRCC on 12/5/11 at the request of the SRCC. The SRCC normally will not sign a PLA that includes the TCBT because of differences in resolving craft jurisdictional disputes. The SRCC did not strongly support or oppose a PLA. They felt that the use of local labor would be high on the project regardless of whether or not

a PLA was used. They did state that if a PLA with TCBT were used that they would want to negotiate their own PLA for the project.

Option Development

Based on staff’s research, six options were formulated and explored. The options are divided into three main categories: 1) requirements that can be added to the Request for Proposal and Contract, 2) memorandum of understanding with the unions, and 3) Project Labor Agreements. The six options falling into the three categories are summarized in the table below. The following sections provide a detailed discussion on each of the six options.

<i>Option</i>	<i>Category</i>	<i>Description</i>
1	Contract Requirements	Goals and Targets
2		Recruiting Requirements
3	MOU	Memorandum of Understanding with TCBT
4	Project Labor Agreements	Exclusionary PLA with TCBT and SRCC
5		Exclusionary PLA with the Five Basic Trades
6		Inclusionary (aka “Open”) PLA with TCBT and SRCC

Contract Requirements

Option 1 - Goals and Targets

This option would require the design-build teams to meet specific local hiring goals/targets as specified in the Request for Proposal (RFP) which would then become part of the design-build contract. County Counsel has advised that the County, as a General Law county, cannot directly require the contractor selected for the project to hire County residents or subcontractors to work on the project. The County cannot legally use goals or targets for hiring local works as either a basis of selection or as a performance requirement on the project.

Members of your Board may be aware of other public jurisdictions that have included local hiring goals or targets in their contracting. This practice is legal for charter counties and cities and many special districts. It is not legal for General Law counties like Ventura County.

Option 2 - Recruiting Activities

County Counsel has advised staff that the County can require certain recruiting activities designed to promote local hiring. Those activities cannot be restricted to County residents. For example, the contractors can be required to hold job fairs within the County to attract local workers but attendance at the job fair cannot be restricted to County residents.

The design-build teams have stated that they normally engage in recruitment activities on all large projects. The teams stated that they use local labor as much as possible because it reduces costs and makes them more competitive. The contractors stated that they have experienced 50%-80% local labor on previous projects and expected to have the same result on this project. One team is working on a project in Los Angeles with a 30% local hire goal on which they have achieved 72% local hire. Listed below are some of the recruitment activities that could be required in the RFP/contract. This list is based on input from the design-build teams and includes activities they have previously engaged in or are planning to use on this project:

1. Prior to commencing work, require the contractor shall submit a plan that contains the manpower plan and schedule for the hiring of qualified workers.
2. Advertise valid existing and projected position vacancies through the local media, such as a community television network, local newspapers of general circulation, or trade papers or minority focus newspapers.
3. Place a valid job order for existing and projected position vacancies with the local office of the California Employment Development Department and other specified hiring centers, for no less than ten (10) consecutive calendar days.
4. Advertise existing and projected position vacancies, job informational meetings, job application workshops, job application centers and job interviews by posting notices which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process, in conspicuous local authorized public places, including but not limited to city halls, schools, post offices, and libraries.
5. Conduct job informational meetings to inform the community of employment opportunities and provide assist in applying and interviewing for jobs in the construction industry. These meetings will be held at locations within Ventura County and approved by County staff and may be hosted by multiple contractors.
6. Provide ongoing assistance to all applicants in completing job application forms.
7. Establish a job application center located in Ventura County, where job applications may be obtained, delivered to and collected.
8. Conduct job interviews at locations within Ventura County.
9. Provide monthly reports on the use of Ventura County residents on the project to include but not limited to:
 - a. The total estimated number of construction hours that will be expended to complete the project;
 - b. The number of California Craft Project hours completed to date - i.e. certified payroll wages;
 - c. Total number of all workers, local and non-local (apprentices, journeymen, foremen, and superintendents), hours worked, and wages earned on the project per worker classification.

Memorandum of Understanding with the Labor Unions

Option 3 - Memorandum of Understanding (MOU) with the Tri-County Building Trades

Staff attempted to negotiate an MOU with TCBT that would meet the desires of TCBT, maximize local hiring, and maintain a competitive proposal environment. Following a series of meetings the areas of main concern for TCBT were reduced to three: 1) prequalification of contractors, 2) contractor compliance with state labor code requirements, and 3) the use of qualified apprentices from state certified programs on the project.

Contractor Prequalification

Staff provided TCBT a copy of the prequalification questionnaire - posted on the project web site and completed by each of the design-build teams – for TCBT’s review and comment. A similar questionnaire was used for all major sub-contractors. The questionnaires covered a variety of topics such as financial stability, past performance, labor compliance, and safety. The TCBT reviewed the questionnaire and had no objections or recommendations.

Labor Compliance

Staff informed TCBT that, because the design-build delivery method was being used on the project, the California Public Contract Code required the use of a State certified Labor Compliance Program (LCP). The LCP will monitor the contractor and all sub-contractors for compliance with the Labor Code including the payment of prevailing wages and the use of qualified apprentices. Staff is in the process of developing the LCP and will provide TCBT with a draft of the program manual for review and comment when it is completed. TCBT stated that they were pleased to see that there would be an LCP on the project and wanted to review and comment on the draft program before it was adopted.

Apprentices

Staff informed TCBT that the LCP mentioned above will check for the use of apprentices in accordance with Labor Code. TCBT stated that they had doubts that apprentices from non-union apprenticeship programs would be local residents since there are no state approved non-union programs in the tri-county area. Staff contacted the design-build teams. The teams stated that they would be using local apprentices even though they would be from state approved programs not in Ventura County.

Results

After numerous meetings and staff’s responses to TCBT’s concerns, TCBT stated that they would not sign an MOU and were instead interested in a Project Labor Agreement for the project. Much of the discussion centered on TCBT’s concern that a non-union electrical contractor could possibly be on the team that is awarded the project. This is due to the fact that the prequalified electrical subcontractor for McCarthy Construction (one of the prequalified design-build general contractors) is non-union.

Project Labor Agreements

Purpose/Description

A Project Labor Agreement (PLA) is a project-specific, collectively-bargained labor agreement including provisions on wages, benefits, hours of work and other terms and conditions of employment. The PLA replaces or augments the "Master Agreements" that each of the individual crafts or trades, e.g. electricians, have. They also contain no lock-out and no strike provisions. Typically PLA's are negotiated pre-bid or pre-proposal. This insures that anyone bidding or proposing on the project is fully informed as to the terms and conditions within the PLA. To the owner the PLA has the advantage of "harmonizing" the various craft master agreements (e.g. working hours) and minimizing the risk of strikes or other work disruptions. To labor the PLA often guarantees work.

A factor that makes it difficult to determine whether or not a PLA will increase local labor on a project is that each of the crafts covered by the PLA will follow the worker assignment rules for their particular craft. Different crafts use different assignment rules. Each of the crafts associated with TCBT pull workers from a Ventura, Santa Barbara and San Luis Obispo counties.

For example, the International Brotherhood of Electrical Workers (IBEW) assigns workers in priority order from four different lists which they refer to as Books. Book 1 is all workers that meet the following requirements:

1. Four or more years experience in the electrical field;
2. Pass the IBEW journeymen wireman exam or been certified as a Journeyman Wireman by an IBEW joint apprenticeship training committee;
3. Were employed at least one in the last four years in the union hall's jurisdictional area.

If no workers are available from Book 1, then workers are assigned from Book 2 which is all workers nationally with the same qualifying experience as Book 1. Book 3 is all workers with 4,000 hours of qualifying experience or who have completed a state certified apprenticeship program. Book 4 is all other workers. Each craft determines its assignment rules.

TCBT stated that under a PLA non-union workers would be placed in Books 1-4 depending on their residence and proof of qualifying experience. TCBT argued that local hiring is enhanced because workers assigned off of Book 1 will likely be from Ventura County. For other TCBT crafts the local jurisdiction is the tri-county area - Ventura, Santa Barbara and San Luis Obispo counties.

TCBT argued that the assignment rules could be adjusted under a PLA so that priority assignment (Book 1) for all crafts could be made based on ZIP codes located in Ventura County. This is not an acceptable proposal as it violates State law per County Counsel opinion.

PLA Discussion Methodology

Once the idea of an MOU was dismissed by TCBT, staff met to discuss the potential contents of a PLA with TCBT. At the table during the meetings and discussions were representatives of all three prequalified Design/Build (D/B) teams, two representatives of TCBT, and county staff. Representatives of the Association of General Contractors were consulted as needed over the course of the discussions.

Before the meetings began, the D/B teams were independently asked to provide all of the deal points that they felt should be included in any contemplated PLA. Staff compiled the three lists into 31 separate deal points. The talks with TCBT et al worked from the deal point list. 26 of the deal points were discussed and conceptual consensus was achieved by all parties. A significant concession made by TCBT (one of the 26 consensus points) was that, should a D/B team be able to demonstrate to the satisfaction of TCBT that the D/B's benefits package was equivalent to or better than the benefits packages paid by the unions, the D/B's would not be required to pay into the union benefits programs – which would mean a significant PLA savings for the D/B's.

The five deal points upon which consensus could not be reached are as follows:

1. Exemption from the PLA for those trades or subcontractors that had already prequalified through the project's established process. TCBT insisted that all trades and subcontractors be signatory to the PLA.
2. The number of core work staff - County counsel has indicated that there can be no restrictions on contractor core staffing. TCBT believes otherwise.
3. Exemption from the PLA requirements of all offsite fabrication facilities not used exclusively for the project. In accordance with industry best practices, a large part of the project will be prefabricated offsite. TCBT had major concerns and wanted detail that could not yet be provided before committing to a course of action.
4. Exemption from the PLA of all project inspection, survey, and testing activities performed by the selected D/B teams. TCBT indicated that some of the inspection, survey, and/or testing firms are union shops.
5. Exclusive use of apprentices from a locally approved apprenticeship program. The D/B teams wanted the flexibility to use apprentices from any State approved apprenticeship program. TCBT trusted only the State approved local apprenticeship program.

Because the parties could not achieve consensus, the talks on PLA's were suspended pending a report back to the board.

The discussion below describes three major categories of PLA's which could contain some or all of the 31 deal points discussed.

The Three Major Types of PLAs

Exclusionary

The literature and PLA language on exclusionary PLA's reviewed included the following provisions:

- Uniform wages
- Uniform work rules and conditions
- Procedures for settling disputes
- No-strikes and no-lockouts
- Rules on the assignment of workers to include all workers being hired through the local union hall
- Rules on the number of their own core workers a contractor may use on the project. All other workers must be hired through the local union hall. This type of PLA typically allows 3-5 core workers.
- Payment of union dues by all workers and payments into the union benefits and pension programs by all contractors

These PLA's are referred to as exclusionary because, although non-union contractors are not actually excluded from working on projects with a PLA, they have the effect of excluding non-union contractors who choose not to operate under the requirements of the PLA.

The provision pertaining to core workers could not be accommodated within a General Law County PLA.

Five Basic Crafts

This type of PLA is an exclusionary PLA but only applies to the following five basic crafts:

- Carpenters
- Iron Workers
- Cement Masons
- Laborers
- Operating Engineers

Inclusionary

An inclusionary PLA is the same as an exclusionary PLA except for the following:

- Non-union workers are not required to be hired through a union hall.
- Non-union contractors are not limited in the use of their own employees and are not required to use the union hall for new employees.
- Non-union workers are not required to pay dues.

- Non-union contractors are not required to pay into the union welfare and pension programs.
- Contractors are not required to use union only apprentices and may use apprentices from any state approved apprenticeship programs.

Option 4 - Exclusionary Project Labor Agreement with the Tri-County Building Trades and Carpenters

In attempting to identify the major negotiating issues for a PLA, the TCBT and design-build teams were not able to reach agreement on the assignment of workers for the project. The TCBT preferred not to exclude prequalified non-union electrical contractors from the PLA. In addition, TCBT insisted that, for those non-union contractors signing a PLA, a limit be placed on the number of core staff permitted to be used on the job. County Counsel has said that this requirement would contradict State law.

TCBT insists that any PLA for the project be exclusionary to the extent that it includes all of the trades that they represent which are (in shorthand):

1. Boilermakers
2. Cement Masons
3. Elevator Constructors
4. Floorlayers
5. Glaziers
6. Electrical Workers
7. Iron Workers
8. Laborers
9. Operating Engineers
10. Painters
11. Roofers
12. Sheet Metal Workers
13. Teamsters
14. Tile, Marble, and Terrazzo
15. Sprinklerfitters
16. Plumbers/Pipefitters
17. Heat and Frost Insulators
18. Bricklayers

Option 5 - Exclusionary Project Labor Agreement with the Five Basic Crafts

This option is similar to Option 4 except that the PLA would be negotiated with the following five basic crafts:

- Carpenters
- Iron Workers
- Cement Masons

- Laborers
- Operating Engineers

This option was proposed by both AGC and McCarthy Construction as a possible solution since the five basic crafts will constitute most of the labor on the project and the list does not include electricians. Staff contacted the TCBT to propose this option. TCBT stated that they would not support any PLA that did not include all of the 18 crafts that they represent.

Option 6 - Inclusionary (aka "open") Project Labor Agreement with Tri-County Building Trades and Carpenters

An open PLA was used in the construction of the \$1B Denver International Airport (DIA). Apparently there was something in it for all as both union and non-union agencies signed. A version of the DIA agreement specific to the hospital replacement wing was started but not completed as TCBT was not receptive. This option was not explored in further detail because, in discussions with TCBT, they made it clear that they would not sign any PLA that did not include the electrical craft.

Summary

This item is presented for discussion and to obtain further direction. From the preceding discussion, it is clear that there is not an option available that will guarantee the maximization of local labor on the project. The design-build teams assert that maximizing local labor on the project makes absolute economic sense and is necessary in order to submit a competitive proposal. TCBT argues that only by pulling labor from a local union hall will maximum local labor be achieved. AGC and VCCA assert that most of their Ventura County members are non-union and would not be able/willing to participate in a project with a PLA.

Our discussions with the various stakeholders indicate that options 1 - 3, discussed above, will not add costs to the project.

Whether or not options 4 – 6 will add cost is a more difficult question. Studies reviewed are varied on whether or not a PLA will add costs to a given project. Studies reviewed indicated an added cost ranging from 0 - 15%.

All three of the prequalified design-build teams and both estimators used during the development of the project program have told staff that a PLA will increase costs anywhere from 3 - 5%.

Staff's observations are that using local labor makes clear economic sense, especially given the projected length (5 years) of this project. It is not clear whether a PLA will increase the amount of local labor.