



December 10, 2019

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Ms. Juliana Barnes
Project Manager
Office of Program Delivery (RPD-15)
Federal Railroad Administration
801 I Street, Ste. 466
Sacramento, CA 95814

Dear Ms. Barnes:

I am in receipt of your December 9, 2019, letter on behalf of the Federal Railroad Administration (FRA) disapproving the release of this Authority's Request for Proposal (RFP) to execute a track and systems contract. This disapproval, however, is based on misunderstandings and your Agency's own inaction, which does not provide a good faith basis for interfering with the Authority's efforts to meet the timelines in our federal grant agreements.

As you can imagine, your letter was received with surprise and disappointment in its timing and substance, both of which demonstrate a continued disengagement on this project that appears intended to frustrate the Authority's undaunted commitment to meet its obligations under our federal funding agreements.

First, the timing of your letter appears intended to disrupt our Board's necessary action to progress on a contract to install track atop the civil works now under construction in California's Central Valley. As you know, or should know, the installation of track on the 119-mile segment is a deliverable under our federal funding agreements with your Agency, and pursuant to those agreements must be completed by December 31, 2022. We did not have the luxury of inaction on this issue.

Had the FRA intended to provide constructive input on our pending RFP, the Agency should have taken up our invitation to engage months ago. The Authority has made numerous attempts to communicate with the FRA leading up to the expected board action on the track and systems contract:

- On May 9th the Authority sent a copy of the Track and Systems Request for Proposal Industry Draft to the FRA.
- On June 3rd the Authority sent a copy of the Draft Track and Systems Request for Qualifications for review to the FRA.
- On October 11th the Authority sent a draft Track and Systems Request for Proposal to the FRA.

Not until December 9th at 4:00 p.m. did we receive any substantive comment on the above items. This letter arrived less than 24 hours before our expected board action which has been publicly discussed for months, and publicly noticed as an action item on November 27th, 2019. Unfortunately, the timing of your letter is the latest example of the FRA's evolving position from one of cooperation and partnership to disengagement that appears calculated to impede the project's progress.

The substance of your letter is also disappointing. Your letter states that the Authority should not move forward on the track and systems RFP because the FRA has not yet approved the First Construction Segment Contingency Plan. We submitted the contingency plan required under the funding agreements in 2016 and again in 2019, but the FRA has not acted on the most recent plan or responded at all.

Moreover, the contingency plan referenced in the FRA letter is a plan that contemplates use of grant reserve funds for rail service investments if we do not pursue electrified high-speed rail. The current direction of the project is to construct a fully **electrified** high-speed rail line in the Central Valley. While the RFP will allow the Authority to meet the minimal operating requirements of the First Construction Segment in the Central Valley, a series of prior Authority Board actions and policy recommendations stretching back three years have clearly set forth the Authority's intent to construct a fully **electrified** high-speed rail line in the Central Valley and nothing in the RFP is inconsistent with that intent:

- In October 2016, the Authority submitted to the FRA its "First Construction Package Utilization Plan and Concept of Operations" document that adopted an alternative for early operations that "would provide an electrified service that utilizes the high-speed rail system/tracks and rolling stock." (page 4);
- In December 2016, the Board approved the Central Valley Funding Plan that includes all project elements for electrified high-speed rail in the 119-mile Central Valley Segment. The plan states the Central Valley Segment "will serve as the foundational backbone for the statewide high-speed rail system and serve as the

test track that will be necessary before service can begin on the Silicon Valley to Central Valley Line” and therefore this segment will be “a fully electrified high-speed rail segment suitable and ready for high-speed train operations...;”

- In May 2018, the Board adopted the 2018 Business Plan that stated the Authority’s intent to add Central Valley track and systems to prepare the Central Valley Segment for early interim use by an operator and for testing of electrified high-speed trains (page 18, 2018 Business Plan);
- The May 2019 Project Update Report made a policy recommendation to pursue a Merced – Fresno – Bakersfield interim operating segment to provide electrified high-speed rail service (page 62, 2019 Project Update Report);
- In May 2019, the Board accepted an updated Program Baseline budget that included costs for electrified track and systems work;
- In July 2019, the Board voted to advance the Request for Qualifications for the electrified track and systems RFP;
- In September 2019, the Authority submitted the ARRA Grant-required Financial Plan to the FRA, stating a clear intent to electrify service in the Central Valley (pages 54-57).

The FRA has these listed materials and has not questioned or disputed them.

Furthermore, your letter incorrectly suggests that the Authority failed to submit the Central Valley Project Funding Plan (CVPFP) for review. The Authority submitted the above referenced FCS financial plan to the FRA on September 30th, 2019, which is over two months ago. The CVPFP clearly detailed the Authority’s estimated budget and secured funding. There has been no FRA response to date. The Board has approved funding for the Central Valley Segment and all other FRA grant deliverables at \$15.6 billion. As has been described publicly to the Board, the public and the Legislature, this funding level is set pursuant to a 70-percent probability to complete all the FRA grant requirements pursuant to a Monte Carlo risk analysis.

Your letter also states that it is “premature” for the Authority to move forward on this track and systems contract. Simply put, we cannot afford the inaction you propose unless the FRA is willing to extend the current timeline for completion of the work under the funding agreements. Additional contracts are necessary for the work to progress efficiently and for the Authority to meet the completion dates in the agreements. We must install track pursuant to those agreements and this RFP enables

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us to do so under the timelines in our funding agreements. Of course, the Authority has not been shy about disclosing challenges we've had with prior civil infrastructure design-build contracts – which were awarded with the full concurrence of the FRA. We have publicly discussed lessons learned from prior contracts, and we are applying those lessons to this and future contracts.

Finally, many of the technical concerns raised in your December 9 letter appear to be based on outdated drafts of the RFP. Several of the FRA's expressed concerns have been addressed in updated RFP documents. In addition, a short meeting or call with the FRA can resolve further concerns if there is a desire and willingness to mutually resolve any misunderstanding. For example, the Authority agrees with the FRA regarding the applicability of the "Buy America" provision of Federal law. In fact, the RFP expressly requires all bidders to comply with that provision.

This Authority is committed to meeting our obligations to deliver project elements pursuant to our federal funding agreements. We remain committed to deliver the nation's first truly electrified high-speed rail service, and we believe that executing a track and systems contract now is a necessary prerequisite toward meeting those objectives.

As always, I look forward to constructive engagement with the FRA, and I invite you to engage with me and my team to clear up any misunderstandings about the need, timing or substance of the pending RFP. I am available at your request.

Respectfully,



Brian P. Kelly
Chief Executive Officer

cc: Elaine Chao, Secretary, United States Department of Transportation
Ron Batory, Administrator, Federal Railroad Administration
The Honorable Nancy Pelosi, Speaker, United States House of Representatives
The Honorable Dianne Feinstein, Senator, United States Senate