



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Councilmembers Johnny Khamis

SUBJECT: PRIVATE DEVELOPMENT
WORKFORCE STANDARDS/
COMMUNITY WORKFORCE
AGREEMENTS ON PUBLIC
PROJECTS

DATE: March 29, 2018

Approved by:

Date:

3/29/18

RECOMMENDATIONS

Approve Mayor Liccardo's memo dated March 16, 2018 and his supplemental memo dated March 21, 2018 with the following modifications:

- 1.) Clarify, for the City Council, whether or not the Capital Bond Measure – item (2) from the Mayor's memo dated March 16, 2018 - will be funded through a new tax. If a new tax is required in association with the bond, require that the proposed bond measure list specific, prioritized projects and require that bond proceeds are spent exclusively on those specific projects, in order of priority, to ensure the top projects are completed first and funds are not redirected to other projects.
- 2.) Eliminate item (3) Best-Value Contracting from the Mayor's memo dated March 16, 2018 that would seek to modify the "lowest responsible bidder" in the City Charter and, instead, direct the appropriate City Staff to develop appropriate criteria for the Council to consider in defining "responsible bidder" in a way that would exclude those bidders who have a documented history of poor project performance and work quality.
- 3.) Add the following criteria to item (6) Community Workforce Agreements (CWA) in the Mayor's memo dated March 16, 2018, while maintaining the Mayor's request to lower the CWA threshold from the previous compromise level of \$6 million to the \$3 million level:
 - a. Allow the first ten (10) workers employed by non-signatory Contractor/Employer to come from its own, core workforce, prior to the imposition of any requirement to hiring workers from a union hall.

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- i. To minimize risk of malfeasance, staff may consider measures to ensure accurate designation of "core" employees, such as by requiring non-signatory subcontractors to identify their core workforce at the time of bidding.
 - ii. "Core" employees of non-signatory employers shall not be required to pay union dues and fees.
 - b. Permit signatory and non-signatory Contractors/Employers to select and directly hire all supervisors above general foreman.
 - c. A non-signatory Contractor/Employer shall compensate any workers for benefits in excess of the basic hourly wage in accordance with the applicable prevailing wage determination established by the Department of Industrial Relations pursuant to California Labor Code and the City's Prevailing Wage Policy. Contractor/Employer shall either:
 - i. Directly compensate the worker, or
 - ii. Contribute to Contractor/Employer's sponsored benefit plans on behalf of the worker, or
 - iii. Contribute to the Union's established employee benefit plan on behalf of the worker.
 - d. Any subcontract of \$250,000 or less in value is to be exempted from the mandates of a CWA.
 - e. Allow all State or Federal approved apprenticeship programs to participate in all CWA-covered projects.
- 4.) Modify the wording of Exhibit A, paragraph A, so that it reads as follows (enhancements in red/underlined, deletions in red/strikethrough):

A. Workforce standards (including prevailing wage, apprentice ratios, local and targeted hire, and monitoring and compliance provisions, all described in Paragraph D., below) shall only be mandated upon private development where there is a public subsidy for that project. Such standards shall not be mandated upon private development where there is no public subsidy or where there is an applicable exclusion pursuant to Paragraph C, below. Public works shall not constitute a "private development" subject to these standards.
- 5.) Modify portions of, and add to, Exhibit A, paragraph C, as follows:
 - (3) Fee or tax reductions or waivers resulting from changes to State or Federal regulations related to CEQA or the Mitigation Fee Act, e.g., modifications to City Policy 5-3 Level of Service Policy resulting from SB743
 - (4) Fee or tax reductions or waivers applied uniformly across an entire category of projects, wherein "category" is limited to five general designations: "residential," "office," "retail," "research & development," and "industrial."

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(5) Fee or tax reductions or waivers applied uniformly across an entire specified subcategory of project, where Council makes findings of fact that (a) prevailing law, such as the Quimby Act or Prop. 26, requires such reductions or waivers; or (b) financing or construction of that subcategory of development is "infeasible" without a fee or tax reduction or waiver, and reducing or waiving said fees is in the public interest.

(6) The sale or lease of publicly-owned land at fair market value.

- 6.) Modify Exhibit A, item D. Workforce Standards, Section 3 Apprenticeships – Good Faith Effort for 1:5 Apprentice Ratio, paragraph (a), as follows:
 - a. Apprentices can come from any state or nationally approved, certified program, whether joint labor-management or unilateral
- 7.) Modify Exhibit A, item D. Workforce Standards, Section 4 Targeted Hiring of Disadvantaged Workers – Good Faith Effort to Hire Disadvantaged Workers for 25% of Apprentice Hours as follows:

Private projects receiving a subsidy shall undertake a good faith effort to hire targeted workers from disadvantaged populations as entry-level apprentices, under similar Targeted Hiring procedures as included in the VTA and Santa Clara County CWA policies or through a National Center for Construction Education & Research (NCCER) certified pre-apprenticeship program.
- 8.) Have the City Manager provide an Information Memo to the City Council within 30 days that provides the Council with an updated, dollar-weighted ranking of anticipated projects that will be affected by this new policy.
- 9.) Require the City Auditor, once these new standards have been in effect for a period of two years, to return to City Council with an evaluation of the effects on bidding and contracting on affected projects, providing a comparison with comparable current projects as the base case from which to compare outcomes, with a focus on cost impacts, responsiveness of vendors to bids, outcomes for apprenticeship participants, effect on local workforce hiring, and other criteria as the auditor may find appropriate.
- 10.) Within 180 days after the City Auditor delivers the evaluation of this program, the program shall sunset unless the City Council takes an affirmative vote to continue the program.

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DISCUSSION

On October 24th, the City Council approved a compromise Community Workforce Agreement (CWA)/Project Labor Agreement (PLA) framework submitted by the CWA/PLA Task Force Committee Recommendations that would have imposed new mandates on City projects over \$6 million requiring employers to hire through the union hall, hire locally, and ensure apprenticeship programs would be part of City projects. The union leaders who requested these policies then rejected the new policies because they did not feel they were sufficiently favorable.

It's been less than six months since the City Council acted on the policies demanded by union leaders, and we are once again being asked to find a solution to a problem that doesn't exist. Mayor Liccardo, in an effort to prevent a union-backed initiative that would raise costs and debilitate private and public projects throughout the City, entered into negotiations to find further compromise to the compromise we already approved.

As the Mayor pointed out in his memo from October 23, 2017 (page 2): "Ample studies demonstrate that PLAs add to the cost of construction projects, and the research provided suggests a margin on the order of approximately 15% higher costs. Beyond our obligation to diligently steward our taxpayers' money, we must also consider whether we our residents must tolerate getting 15% fewer road miles of repaving, seeing 15% fewer parks rehabilitated with capital dollars, or paying 15% more in sewer fees to rebuild our 60-year-old plant. We must ask these questions against a backdrop of a citywide need of more than \$1 billion for capital replacement and repair."

On March 16th, Mayor Liccardo submitted a memo to Council outlining the details of a compromise with labor unions to implement CWA/PLA policies on City-subsidized private developments, put a \$300 million taxpayer-funded bond before the voters, change the City's longstanding "**lowest responsible bidder**" criteria for public projects, and impose CWAs on City-funded capital contracts over \$3 million (\$3 million less than the previously-approved \$6 million compromise).

It is essential that with any compromise we protect the principles of fair and open competition and protect the interests of the residents and taxpayers in San José. This is why we want to ensure that any projects funded by any voter-approved, taxpayer-funded bond issue are completed, as promised. Too often in the past voters have been enticed to vote for bond measures through promises of new facilities in their districts – such as a new fire station in District 6 – only to be disappointed when the promised station isn't delivered. We want to ensure the projects are specific and prioritized so that the voters get what they're paying for.

We also want to ensure that the City's residents get the best value for the dollar on City projects and that bidding remains a competitive, transparent process. Since at least 1882,

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the City has had language in the City Charter requiring the City get **the lowest-cost responsible bidder** to undertake projects. The suggested change to “best value bidder” might as well be call the “best friend bidder” because it could open the door to favoritism and cronyism. We recommend that no change be made to the Charter and that, instead, the City work within the definition of “responsible” to ensure that bidders that don’t perform are not included as finalists, even if they are the lowest cost. Lowest Responsible Bidder Our constituents comparison shop for big-ticket purchases, and we must continue to comparison shop, as well.

We have recommended necessary clarifications to ensure that both union and non-union contractors can continue to compete on an even playing field while these new requirements are imposed, such as:

1. More clearly defining what constitutes a Public Subsidy and making other technical changes to the language to ensure that it is clear to all parties what is and is not included.
2. Ensuring that non-union employers can compete fairly while maintaining control over their core workforce and over the projects on which they are successful bidders.
3. Preventing the double-payment of employee benefits.
4. Ensuring that both union and non-union apprenticeships are included in what are defined as qualified apprenticeship programs.

The cost of living in San José is high enough. If we are going to move ahead with new requirements on public and private projects, we need to ensure that they have the least impact possible on costs within San José. The modifications that we have proposed with keep the playing field level between bidders, will prevent small & minority-owned contractors from being disproportionately excluded from the bidding process, and will ensure that City residents continue to get the best value for their dollar.