



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** David Sykes

**SUBJECT:** CWA/PLA TASK FORCE REPORT

**DATE:** October 12, 2017

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## SUPPLEMENTAL

### REASON FOR SUPPLEMENTAL

To provide a revised CWA/PLA Ad Hoc Committee Deliberations Matrix (Matrix) dated September 22, 2017. The revised Matrix edits CWA/PLA Ad Hoc Committee member Mark Reynosa's comments on "Minimum \$ Threshold for Projects Subject to CWA."

DAVID SYKES  
Assistant City Manager

Attachment: CWA/PLA Ad Hoc Committee Deliberations Matrix

For questions, please contact David Sykes, Assistant City Manager at (408) 535-8185.

## CWA/PLA Ad Hoc Committee Deliberations

 = Divergent Positions on the Issue

Issue for Consideration	Josué Garcia	Mark Reynosa	Staff Input
Single Project PLA	No	No	-
Wrap Around Multi Project PLA (CWA)	Yes	Yes	-
Types of Projects Subject to CWA	City-funded public works construction contracts	City-funded CIP public works construction contracts	Does not include federally-funded CIP public works construction contracts, City-funded affordable housing loan agreements or private construction projects
Minimum \$ Threshold for Projects Subject to CWA	<p>\$2 million &amp; above to align with Santa Clara County &amp; VTA</p> <ul style="list-style-type: none"> <li>Purpose of PLA/CWA is to put people to work. The lower the threshold the more people we can put to work. Out of 396 projects awarded in the last 5 years, 72 projects were above \$2 million, but only 18 projects were above \$6 million – an average of 3.6 projects per year. If we cover only 3 or 4 projects each year, the opportunities for disadvantaged workers will be very limited.</li> <li>Alignment with County &amp; VTA is important for regional consistency and, more so, in creating a regional workforce pipeline.</li> <li>\$2 million is double the usual threshold. Among cities in our region with wraparound PLAs, all of them have a threshold of \$1 million or below.</li> </ul>	<p>\$10 million &amp; above</p> <ul style="list-style-type: none"> <li>Higher threshold projects avert loopholes &amp; the City's monitoring resources and increases City's financial resources to directly fund and provide to local targeted vocational training programs for all industries.</li> <li>Increases competition and competitive bidding on higher threshold projects as well as increases small &amp; targeted local business opportunities on below threshold projects.</li> <li>Diversification of craft &amp; local targeted workforce opportunities (multiple trades) on higher threshold projects where below threshold projects would have limited, if any targeted hire opportunities.</li> </ul>	<ul style="list-style-type: none"> <li>Prefer higher \$ threshold to better align with nature &amp; type of projects [multiple-trade &amp; vertical building projects]</li> <li>May also allow greater small &amp; local business participation for projects below threshold</li> </ul>
Duration of CWA	5 years with roll over option & annual reporting requirement	5 years with annual reporting requirement & metrics/goals	-

Issue for Consideration	Josué García	Mark Reynosa	Staff Input
Local Hire Requirement	No	No	Defer issue to separate policy work subsequent to completion of Labor Market Study
Good Faith Tiered <sup>a</sup> Targeted Hire Program for Apprentices from Underrepresented Groups <sup>b</sup>	Yes	Yes	Similar to County PLA & VTA CWA Policy
Goal % for Above Consideration	25%	25%	Similar to County PLA & VTA CWA Policy
Possible Exemptions/Exceptions to CWA	<p>Opposed to built-in exemptions that would eliminate projects from even being considered for a PLA unless it is an emergency project or a specialty sole-source contract.</p> <ul style="list-style-type: none"> <li>▪ OK with a built-in exemption for emergency work (i.e., emergency projects where there is not enough time to go to Council)</li> <li>▪ Oppose a blanket exemption based on number of bidders. The number of bidders is driven by the market, the type of project, and City specifications. UC Berkeley statistical analysis shows PLAs do not reduce the number of bidders.</li> <li>▪ OK with exemption for specialty contracts that are documented to be sole source (i.e., there is only one qualified company that performs that type of work and there are not qualified workers in the area to do the work.) Construction trucking that is covered by a prevailing wage determination should <u>not</u> be exempt.</li> </ul>	<p>Yes, including off-ramps for the number of bidders, City's proprietary interests and not in best interest of City.</p> <ul style="list-style-type: none"> <li>▪ Clear exemptions avert loopholes, non-compliance issues &amp; City's economic resources.</li> <li>▪ Increases City's CIP budget where increased project management, CWA administration costs &amp; any non-compliance exposure, due to CWA challenges, are put into bids.</li> <li>▪ Provides projections for the City &amp; the small &amp; targeted local business community in a cyclical construction industry and protections for unforeseen emergencies (flooding &amp; earthquake reconstruction).</li> </ul>	<p>Seek flexibility should CWA not be in City's best interest. Create exemption process acceptable to stakeholders. Examples could include: bid variances; lack of bidders; emergencies; specialty contractor; trucking</p>

Issue for Consideration	Josué Garcia	Mark Reynosa	Staff Input
CWA Exemption for Small Businesses with Subcontract Value of ≤\$250K	<p data-bbox="684 142 1014 204">Yes, but only for targeted hire requirement</p> <ul data-bbox="659 240 1039 1032" style="list-style-type: none"> <li data-bbox="659 240 1039 461">▪ Targeted hiring of a new entry-level worker may be difficult for small businesses who have only a few employees. The other PLA requirements do not have any relationship to business size.</li> <li data-bbox="659 461 1039 558">▪ On other PLAs, small contractors continue to bid projects.</li> <li data-bbox="659 558 1039 1032">▪ Creating loopholes in PLAs will not help small businesses win bids; the PLA comes into effect only after they bid and win the project. Instead, the City can create incentives and supports for small and disadvantaged businesses, such as a bid preference and technical assistance with bonding, insurance, paperwork, etc. VTA has an effective model with a goal of 17% of contracts going to MBE/diverse businesses.</li> </ul>	<p data-bbox="1236 142 1283 168">Yes</p> <ul data-bbox="1066 204 1453 526" style="list-style-type: none"> <li data-bbox="1066 204 1325 230">▪ Levels competition.</li> <li data-bbox="1066 230 1453 363">▪ Provides more opportunity and less CWA administration and project management costs for small businesses.</li> <li data-bbox="1066 363 1419 526">▪ Increases City's resources to develop, fund and maintain educational and mentoring programs for local &amp; small targeted businesses.</li> </ul>	<p data-bbox="1497 142 1927 233">May run counter to encouraging small &amp; disadvantaged contractors from bidding on City projects</p>

Issue for Consideration	Josué García	Mark Reynosa	Staff Input
Contractors' Core Workforce <sup>d</sup> Requirements	<p>Yes, using the local union hall increases the % of local workers and helps to ensure compliance with worker protection laws.</p> <ul style="list-style-type: none"> <li>Small (and large) non-union contractors have the ability to hire from the local union hall. There is no restriction or limitation on non-union contractors working under the PLA.</li> <li>Hiring from the local union hall provides an added layer of worker protections and increases the employment opportunities for local workers.</li> <li>OK with including the process as an item to be negotiated in the PLA, with the goal of ensuring the local hiring hall process is straightforward, easy for contractor to understand and does not add administrative burdens.</li> </ul>	<p>Yes, Collective Bargaining Agreement (CBA) may dictate who can work on a CWA project. CBAs already contain local union hall obligations.</p> <ul style="list-style-type: none"> <li>Increases opportunity for local targeted workers to stay employed with a single contractor and to not be removed from project by local union hiring hall rules.</li> <li>Provides the opportunity for targeted workers who travel from outside areas to not be removed from project by local union hiring hall rules.</li> <li>Increases safety on projects by lowering worker turnover by the limitations within local union hiring hall rules.</li> </ul>	<ul style="list-style-type: none"> <li>Requirements limiting a contractor's ability to use their own workforce seem inefficient and unnecessarily limit business operations</li> <li>May run counter to encouraging small &amp; disadvantaged contractors from bidding on City projects</li> </ul>
CWA Imposition of Liquidated Damages for Work Stoppages	Yes, to be negotiated	Yes, \$25k per day (similar to VTA)	\$ amount to be determined during negotiation of CWA [CWA liquidated damages range from \$10k to \$25k per day]

<sup>a</sup> **Tiered** – Tier One includes Santa Clara County and Tier Two includes the Counties of Alameda, Contra Costa, Santa Cruz, San Benito, San Mateo and San Francisco

<sup>b</sup> **Underrepresented Groups** – Current or past County client (County Social Services, Re-entry and/or Foster Care Program), veterans of US military service, homeless, unemployed or low-income individuals, at-risk youth, or survivor of human trafficking.

<sup>c</sup> **Apprentices Goal** – The California Labor Code requires all public works contracts valued at \$30,000 or more carry an obligation to hire apprentices. This duty applies to all contractors and subcontractors on a project even if their part of the project is less than \$30,000. The apprentice ratio is generally 16.7%. The Good Faith Tiered Targeted Hire Program for Apprentices Goal of 25% is a subset of the Labor Code requirement; i.e., Of the 16.7% required apprentice hours, 25% of those hours are to be apprentices from underrepresented groups.

<sup>d</sup> **Core Workforce** – A contractor's own employees must meet "core employee" requirements. The requirements may vary but the concept is that a contractor, under a CWA, is only allowed to use a limited percentage of their own workforce and must pull the rest from the union hall.