



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: David Sykes

SUBJECT: CWA/PLA TASK FORCE REPORT

DATE: October 12, 2017

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 style="text-align: center;">\$2 million & above to align with Santa Clara County & VTA</p> <ul style="list-style-type: none"> ▪ 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. ▪ Alignment with County & VTA is important for regional consistency and, more so, in creating a regional workforce pipeline. ▪ \$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. | <p style="text-align: center;">\$10 million & above</p> <ul style="list-style-type: none"> ▪ Higher threshold projects avert loopholes & 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. ▪ Increases competition and competitive bidding on higher threshold projects as well as increases small & targeted local business opportunities on below threshold projects. ▪ Diversification of craft & local targeted workforce opportunities (multiple trades) on higher threshold projects where below threshold projects would have limited, if any targeted hire opportunities. | <ul style="list-style-type: none"> ▪ Prefer higher \$ threshold to better align with nature & type of projects [multiple-trade & vertical building projects] ▪ May also allow greater small & local business participation for projects below threshold |
| Duration of CWA | 5 years with roll over option & annual reporting requirement | 5 years with annual reporting requirement & metrics/goals | - |

| Issue for Consideration | Josué Garcia | 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 ^a Targeted Hire Program for Apprentices from Underrepresented Groups ^b | 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 data-bbox="663 344 1041 498">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 data-bbox="663 537 1041 1365" style="list-style-type: none"> <li data-bbox="663 537 1041 691">▪ OK with a built-in exemption for emergency work (i.e., emergency projects where there is not enough time to go to Council) <li data-bbox="663 698 1041 979">▪ 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 data-bbox="663 985 1041 1365">▪ 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. | <p data-bbox="1068 344 1446 464">Yes, including off-ramps for the number of bidders, City's proprietary interests and not in best interest of City.</p> <ul data-bbox="1068 503 1446 1076" style="list-style-type: none"> <li data-bbox="1068 503 1446 623">▪ Clear exemptions avert loopholes, non-compliance issues & City's economic resources. <li data-bbox="1068 630 1446 846">▪ Increases City's CIP budget where increased project management, CWA administration costs & any non-compliance exposure, due to CWA challenges, are put into bids. <li data-bbox="1068 852 1446 1076">▪ Provides projections for the City & the small & targeted local business community in a cyclical construction industry and protections for unforeseen emergencies (flooding & earthquake reconstruction). | <p data-bbox="1488 344 1950 529">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 García | Mark Reynosa | Staff Input |
|---|---|--|---|
| <p>CWA Exemption for Small Businesses with Subcontract Value of ≤\$250K</p> | <p>Yes, but only for targeted hire requirement</p> <ul style="list-style-type: none"> ▪ 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. ▪ On other PLAs, small contractors continue to bid projects. ▪ 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. | <p>Yes</p> <ul style="list-style-type: none"> ▪ Levels competition. ▪ Provides more opportunity and less CWA administration and project management costs for small businesses. ▪ Increases City's resources to develop, fund and maintain educational and mentoring programs for local & small targeted businesses. | <p>May run counter to encouraging small & disadvantaged contractors from bidding on City projects</p> |

| Issue for Consideration | Josué García | Mark Reynosa | Staff Input |
|---|---|--|--|
| Contractors' Core Workforce ^d 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"> ▪ 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. ▪ Hiring from the local union hall provides an added layer of worker protections and increases the employment opportunities for local workers. ▪ 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. | <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"> ▪ 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. ▪ Provides the opportunity for targeted workers who travel from outside areas to not be removed from project by local union hiring hall rules. ▪ Increases safety on projects by lowering worker turnover by the limitations within local union hiring hall rules. | <ul style="list-style-type: none"> ▪ Requirements limiting a contractor's ability to use their own workforce seem inefficient and unnecessarily limit business operations ▪ May run counter to encouraging small & disadvantaged contractors from bidding on City projects |
| 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] |

^a **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

^b **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.

^c **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.

^d **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.