



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Barry Ng

SUBJECT: CWA/PLA TASK FORCE REPORT

DATE: October 19, 2017

Approved

Date

10/20/17

SUPPLEMENTAL

REASON FOR SUPPLEMENTAL

To provide additional information for consideration on various aspects of CWAs/PLAs.

Additional Information

City History

- In 2002, the City implemented PLAs on two projects – the Airport Master Plan and New Civic Center.
- In 2011, the Convention Center expansion project used a PLA, but it was not initiated by the City. The prime contractor, Hunt, entered directly into a PLA with Santa Clara & San Benito Building and Construction Trades Council.
- All three PLA projects were in excess of \$100 million, involved multiple trades and were vertical (building) projects.
- The City has generally not experienced labor-related issues on its public works projects.

Applicability to City-Wide Capital Improvement Program (CIP) Public Works Construction Projects

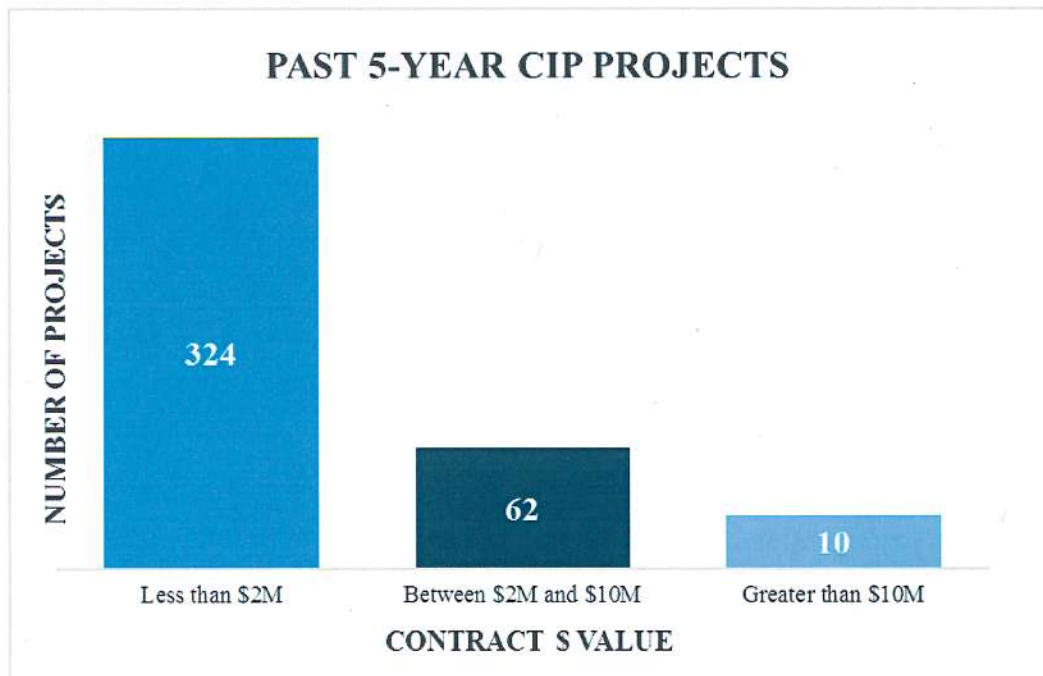
- Per the CWA/PLA Task Force, the CWA would **only** apply to City-wide CIP public works construction projects which fall under the following general programs:

- | | |
|----------------------------------|---|
| ✓ Airport | ✓ Storm Sewer System |
| ✓ Communications | ✓ Traffic (Includes Pavement & Transportation Infrastructure) |
| ✓ Library Municipal Improvements | ✓ Water Pollution Control |
| ✓ Parking | ✓ Water Utility |
| ✓ Parks & Community Facilities | |
| ✓ Public Safety | |
| ✓ Sanitary Sewer System | |
| ✓ Service Yards | |

- Per the CWA/PLA Task Force, the CWA would **not** apply to:
 - Federally-funded CIP public works construction contracts;
 - City-funded affordable housing loan agreement projects; or
 - Private construction projects.
- The San José-Santa Clara Regional Wastewater Facility (RWF) is a regional wastewater treatment facility serving eight South Bay cities and four special districts. The RWF is jointly owned by the cities of San José and Santa Clara and is administered and operated by the City's Environmental Services Department. Each contributing agency is responsible for its allocated share of RWF costs, as well as the operation and maintenance. Implementation of a CWA/PLA would require further coordination with the contributing agencies.

CIP Project Thresholds

- For City CIP public works construction projects in excess of \$10 million, certain requirements generally apply per existing City policies/codes: (1) pre-qualification of contractors; (2) implementation of a construction impact mitigation plan; and (3) formal partnering to resolve contract disputes.
- Over past five years, City has awarded approximately 396 construction contracts.
- These construction projects are significantly varied in nature as they span the City CIP from pavement maintenance to sewers to parks to buildings.



- Of these 396 construction contracts, 16 included funds that prohibited the use of PLAs/CWAs (federal government may prohibit PLAs/CWAs on federally-funded projects). Federally-funded projects include:
 - ✓ US Department of Transportation/Federal Aviation Administration/Airport Improvement Program (US DOT/FAA/AIP); and
 - ✓ US Department of Transportation/Federal Highway Administration (US DOT/FHWA).

Past 5-Year Federally Funded Projects

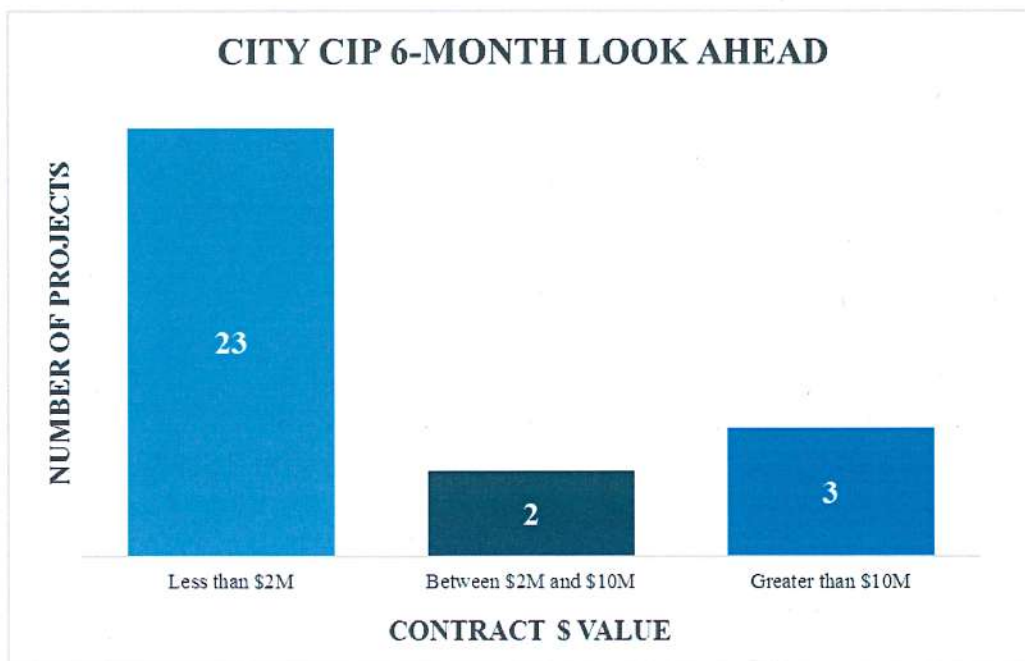
Contract \$ Value	Number of Projects
>\$10 million	2
Between \$2 million & \$10 million	8
< \$2 million	6

- In the past five (5) years, there were two (2) major pavement maintenance projects (Relinquishment and OBAG Resurfacing) that were packaged for efficiency purposes.
- Over the next two (2) years, Department of Transportation staff expect to advertise approximately 15 paving/resurfacing projects. It is anticipated that three (3) of these projects will include US DOT/FHWA funds (1 > \$10 million; and 14 Between \$2 million & \$10 million).

FY 2017-2019 Anticipated Paving Projects

Anticipated Contract \$ Value	Anticipated Number of Projects
>\$10 million	1
Between \$2 million & \$10 million	14
< \$2 million	0

- Over the next six (6) months, the City CIP expects to advertise and award approximately 28 construction projects.



Projects between \$2M and \$10M include:

- 1) Rincon & Virginia Avenues Sanitary Sewer Improvement
- 2) Tamien Park Phase II

Projects Greater than \$10M include:

- 1) 4th Street 84-inch Interceptor Phase IV-A
- 2) Advanced Facility Control & Meter Replacement
- 3) Headworks Design-Build

Costs

- During the Task Force meetings, public testimony was received and Task Force members heard anecdotally that PLAs/CWAs increase bids and overall project costs. There are also numerous conflicting studies that address costs. As the City has required a PLA twice, and no comparative analysis is available, there is no City generated data to either support or contradict statements made on the increased costs associated with requiring PLAs/CWAs.
- In the past few years, the construction market has seen significant escalation in labor and material costs, and bids on many project types (particularly large building/facility/equipment projects) have been 10-20% or more over Engineer's Estimates.
- Flexibility should be considered in the delivery of CIP projects that takes into account considerations such as:
 - ✓ extreme bid variances;
 - ✓ lack of bidders;
 - ✓ emergencies;
 - ✓ specialty contractors and trucking;
 - ✓ a project's budget and schedule sensitivities; and
 - ✓ potential conflicts with other City policies such as those designed to support small businesses.

Prevailing Wage

- Public works construction projects including those in San José are governed by State prevailing wage law; i.e., both union and non-union contractors must pay their workers the same basic wages and hire apprentices.
- The City's Office of Equality Assurance (OEA) staff proactively reviews and enforces prevailing wage requirements on all public works construction contracts.
- OEA staff would continue to proactively enforce prevailing wage requirements on projects requiring a PLA or CWA.
- Over the past 16 years, OEA has:
 - ✓ Proactively monitored over 5,000 public works projects totaling in excess of \$2 billion;
 - ✓ Identified 700 wage violations (from both union and non-union contractors);
 - ✓ 4,000+ workers were underpaid;
 - ✓ Recovered in excess of \$3.5 million in back wages to workers; and
 - ✓ Assessed over \$2.2 million in liquidated damages to over 300 contractors.

October 19, 2017

Subject: CWA/PLA Task Force Report

Page 5

- Additional impacts on City staff and resources could be significant, but cannot be determined until specific PLA and/or CWA requirements are established. Further discussion is needed with the City Manager's Office, City Attorney's Office and Public Works regarding any potential additional staffing resources needed to develop, implement and enforce a PLA/CWA program.

Core Workforce/Trust Fund Contributions

- The Task Force received information that stated:
 - ✓ Imposing requirements limiting a contractor's ability to use their own workforce may be inefficient and may unnecessarily limit business operations; and
 - ✓ May run counter to encouraging small and disadvantaged contractors from bidding on City projects.
- A non-union contractor, in order to bid and work on a CWA project, would be required to:
 - ✓ Sign an agreement with the union;
 - ✓ Make contributions into the applicable union trust funds which could result in the potential double payment of fringe benefits (health, pension and vacation) if the non-union contractor already provides fringe benefits to its workers. This occurred during the Airport TAIP project; one non-union subcontractor provided fringe benefits to its workers but under the terms of the PLA was required to also make fringe benefit contributions to the union trust funds); and
 - ✓ Depending on the collective bargaining agreement, may use only union labor from the applicable union hiring hall.
- Workers for a non-union contractor would be required to pay monthly and working dues to the union in order to perform work on the project during the time they are on the job; i.e., essentially granting the workers temporary union membership.
- Workers for a non-union contractor may see a reduction in their take home pay.

/s/

BARRY NG

Director of Public Works

For questions, please contact Nina Grayson, Division Manager/Director of Office of Equality Assurance, at (408) 535-8455.