



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: CEO/Public Works
Department No.: 012
For Agenda Of: August 17, 2021
Placement: Departmental
Estimated Time: 1 hour
Continued Item:
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department: Mona Miyasato, County Executive Officer, (805)568-3400
Director(s)
Contact Info: Scott D. McGolpin, P.E., Public Works Director, (805)568-3010
SUBJECT: Development of Countywide Community Workforce Agreement Ordinance and Project Template

County Counsel Concurrence

As to form: Yes

Other Concurrence: CEO

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

That the Board of Supervisors:

- a) Provide conceptual direction to staff on negotiations for a Community Workforce Agreement (CWA) on public projects, including to pursue one of the following options:
 - 1) Utilize the CWA the City of Santa Barbara recently negotiated with Tri-County Building and Construction Trades Council (TCBT); or
 - 2) Utilize the CWA the City of Santa Barbara recently negotiated with TCBT as the County's base agreement and negotiate certain terms within that document; or
 - 3) Utilize your Board's 2014 conceptually approved Project Stabilization Agreement (PSA) as the County's CWA; or
 - 4) Negotiate an entirely new CWA with TCBT; or
 - 5) Provide other direction as appropriate.
- b) Direct staff to proceed with the necessary coordination and negotiation, and to return to your Board for further direction as necessary during negotiations, and following negotiations, with a recommended ordinance and findings to approve use of a CWA; and

- c) Find that the proposed activities do not constitute a “Project” within the meaning of the California Environmental Quality Act, pursuant to 14 CCR 15378 (b)(5)(Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment), therefore no environmental document is required.

Summary Text:

In April, 2019 your Board directed staff to draft an ordinance governing the use of CWA on public projects. In addition, direction was given to the General Services and Public Works Departments to negotiate a template of terms to be used in the framework of future project-specific CWA with the TCBT. The Board at that time did not express any preferences for specific terms of the CWA.

Since that time, leadership changes at TCBT, other high priority and time sensitive County projects and initiatives, and the COVID-19 pandemic have slowed movement on negotiating an agreement. Staff had also been monitoring the City of Santa Barbara’s progress in creating and negotiating a CWA with TCBT in hopes of mirroring aspects of its agreement that would work for the County.

CWAs are a type of contract used in the construction industry to set the terms and conditions of employment on large projects of long duration and design complexity. CWAs allow for the expeditious resolution of disputes that can arise in the course of the project, helping to ensure that the project is delivered on time and that safety and quality standards are maintained. CWAs may include provisions that seek to improve conditions on the worksite and provide benefits to the community by including jobs and training opportunities for disadvantaged workers.

As discussed in 2014, when the Board first considered a CWA (also known as a Project Labor Agreement or Project Stabilization Agreement) there were supporters and critics of the use of these agreements. Critics argue that CWAs place non-union contractors at a disadvantage in bidding on projects and raise overall project costs. For example when non-union contractors are required to pay union benefits/dues under the terms of a CWA, but the contract length will not allow for the vesting of this investment, it may raise costs. The County of Santa Barbara has never constructed a project with a CWA and therefore has no direct experience as to whether a CWA will either increase or decrease the cost of construction, nor whether it will attract or detract local labor.

Language in CWAs can be written to advance important policy goals of your Board, such as improving training, recruiting members of disadvantaged communities into high-paying jobs in construction in the future, increase local hiring, and insuring that small businesses have an opportunity to participate.

Often CWAs, particularly those on large projects, contain health and safety provisions, including those that dictate overall safety practices, create safety committees, mandate safety training and safety meetings, and address such matters as illicit drug screening. While non-union contractors are the most vocal CWA opponents, CWAs accommodate non-union firms by prohibiting discrimination in bidding based on union status and allowing non-union firms to bring core workers with them to projects. CWAs also require that all contactors working on a project adhere to a collective bargaining agreement; and non-union contractors must operate under these negotiated rules.

Pursuant to Public Contract Code section 2500, *et seq.* and *Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 374-376, the County must include certain terms in a CWA and must find that use of a CWA on a project is in furtherance of a legitimate government interest and is necessary to avoid labor strife.

Background:

Pilot Project Stabilization Project for AB 900 Phase II Project

In 2014, the Santa Barbara County Board of Supervisors directed the General Services Department to negotiate a Pilot PSA for the construction of the Northern Branch Jail AB 900 Phase II Project. (For unrelated reasons, the AB900 project later was defunded and never implemented). After over 10 weeks of negotiation, staff returned to the Board in the fall of that year with the proposed conceptual PSA (Attachment A) which was the outcome of that negotiation, which failed to receive 100% approval from TCBT trades and affiliates.

For that negotiation, the Board provided direction to staff to negotiate with TCBT and various stakeholders within certain parameters to establish the PSA (today a PSA is known as a CWA). The County's goal at the time was to negotiate a balanced PSA that would maximize the potential number of bidders and local participation on the Northern Branch Jail AB 900 Phase II Project. This goal was intended to maximize competition and in turn provide a bid in the range of the Engineer's Estimate (and budget) to construct this project.

Negotiations at that time centered around seven main points as there were many issues related to these points. Both negotiating parties at the time were able to reach agreement on these points and they are listed below:

- Core workforce - defined as employees on a contractor's payroll who have been employed 60 of the last 100 working days – negotiated that non-union contractors may directly employ up to a maximum of six (6) employees of its regular work force. Then 100% union referrals for remainder of employees.
- Exemption from the PSA requirements for offsite fabrication/batching facilities – negotiated an exemption.
- Exemption from the PSA for all Professional Services – negotiated an exemption.
- Exclusive use of apprentices from a locally approved apprenticeship program – negotiated the exclusive use of union apprenticeship programs.
- Union dues for non-union contractors – negotiated no union dues for non-union contractors, however, a “window” fee would be collected by the union.
- Union benefits for non-union contractors – negotiated three options; 1) union contractors would continue paying union benefits, 2) non-union contractors with equivalent benefit plans would continue to pay into their plans, and 3) non-union contractors without benefit plans would pay equivalent benefits into a trust for their employee.
- Local participation – established goal of 45% local participation rate.

TCBT were able to get all but one affiliate to approve the Board's conceptually approved PSA at the end of these negotiations in 2014.

Balancing Concerns

A question is whether a CWA would reduce competition in bidding. It is ultimately not possible to know with certainty the impact of a CWA on bid prices, which are impacted by other situational and market factors. This is noted because the potential impact of reduced competition is a significant cost concern in construction. According to the Current Construction Costs 2021 Annual Edition prepared for the construction industry by Saylor Publications Inc. (now Sierra West), states that project bid amounts increase as the number of bidders decrease:

<u># of Bids</u>	<u>Bid Deviation from Engineer's Estimate</u>
1 bid	+38%
2-3 bids	+16%
4-5 bids	0%
6-7 bids	-5%
8+ bids	-10%

As an example, this factor alone could represent a 21% increase in bid pricing as the number of bidders decreases from seven to three. In 2014, your County negotiating team worked with stakeholders to obtain input on key items contained within a PSA that would maximize the number of bidding contractors for the project. The stakeholders who participated were members of the following professional associations: Tri-Counties District of The Associated General Contractors (AGC); Santa Maria Valley Contractors Association (SMVCA); and the Santa Barbara Contractors Association (SBCA). Discussion of using a similar stakeholder process is described later in this Board letter.

Whatever the terms ultimately negotiated, staff recommends creating a countywide ordinance governing when to use a CWA for public projects and negotiating a template of terms for a future project-specific CWA that will save staff time and resources. Additionally, a broad template will provide continuity across County projects over a specific threshold and will save money in staff time by not requiring separate negotiations for individual projects.

City of Santa Barbara Process

Recently, the City of Santa Barbara went through a similar negotiations process with TCBT. City staff worked with consultants to develop a CWA (Attachment B) that is consistent with other CWAs and with the City of Santa Barbara's objectives. City staff have negotiated terms of the CWA with the TCBT and have reached agreement on terms. City staff approached their Council earlier this year seeking direction on the remaining outstanding terms from their negotiations and they are listed below:

- Local Participation – encourages local contractors and suppliers to participate with a goal of at least 50% of all labor hours from local area residents.
- Core Workers – non-union contractors may directly employ up to a maximum of three (3) employees of its regular, local, experienced work force. Then a 1 to 1 ratio is utilized until 9 employees are employed and then 100% union referrals for 10 or more employees.
- Benefit Plans – non-union contractors shall pay contributions to the established union benefit funds in the amounts designated in the appropriate trades Master Labor Agreement.
- Construction Inspection & Materials Testing – the work of these consultants are considered a covered craft under the CWA.

City Council voted to accept TCBT position on these outstanding terms on January, 26, 2021. City staff and TCBT finalized their draft agreement for City Council approval on July 20, 2021.

Decision Points

Today, your Board's negotiating team needs your input as we commence negotiations with TCBT about establishing a CWA for future County projects. Staff believes there are five options for moving forward with an overall CWA in Santa Barbara County and they are:

Option 1: Utilize the CWA the City of Santa Barbara has finalized through negotiation with TCBT. The City's CWA (Attachment B) includes a threshold of \$5 million for when the agreement would apply (City exempted maintenance and repair work from their CWA process). This would be the rapidest route for your Board to achieve a County CWA today as both agencies will be utilizing similar local contractors in the future. It should be note that the City's most recent acceptance of union terms related to the four remaining items listed above may negatively impact the number of bidders they receive on future projects based on 2014 stakeholder input to your negotiating team, or

Option 2: Utilize the CWA the City of Santa Barbara has finalized through negotiation with TCBT as the County's base CWA and negotiate agreement terms within that document to maximize the number of bidders on County projects in the future. These include terms regarding Core workforce, Exemption from the CWA requirements for offsite fabrication/batching facilities, Exemption from CWA requirements for all Professional Services, Union dues for non-union contractors and Union benefits for non-union contractors to name a few. Your Board may also determine a different threshold amount on when the CWA would apply to County projects and which types of construction, if any, would be exempt from the CWA requirements, or

Option 3: Utilize your Board's 2014 conceptually approved PSA as the County's CWA (Attachment A), or

Option 4: Renegotiate an entirely new CWA with TCBT, or

Option 5: Provide other direction as appropriate.

Coordination and Process

In addition to the options above, there are several issues related to coordination and process used if staff is to negotiate a CWA where your Board's direction would be beneficial to the process:

- Stakeholder Process: In the last County effort toward a PSA, staff developed a process involving stakeholders as mentioned above. If the Board directs Options 2 or 4 above – which will involve more discussion and negotiation with TCBT - staff could develop a stakeholder process again to seek input of those affected. If your Board agrees with this approach, staff proposes that we would reach out to the same professional contractor associations utilized as stakeholders in 2014. The AGC has approached the department recently with their desire to participate as a stakeholder in this process. Including stakeholders would take additional time and effort to coordinate.
- Threshold: The City of Santa Barbara is using a \$5 million threshold with various exemptions. Your Board may set a different threshold. Previously, for the 2014 Pilot PSA, no threshold was set as it was designed for a specific project as a pilot to test these agreements in our County. Staff also

believes that this decision can come later with a proposed ordinance for your Board's consideration upon successful negotiations on a CWA with TCBT if we are directed to proceed today.

- Pilot: The City of Santa Barbara negotiated a CWA for all future construction projects over their defined threshold limit. Your Board could do the same or decide to include on a specific future construction project as a pilot.

At the set hearing discussion for this item a number of speakers referenced the current CWA negotiations occurring in Ventura County with TCBT. On September 15, 2020, Ventura County staff presented the advantages and disadvantages of a CWA to their Board of Supervisors. The Ventura County Board directed its staff to provide more information on alternatives including a proposal for an "open" CWA negotiation process; pilot projects; and further data collection to meet their goals.

Attachments:

Attachment A: 2014 County of Santa Barbara, Conceptually Approved Project Stabilization Agreement

Attachment B: City of Santa Barbara, Community Workforce Agreement, July 20, 2021

Authored by:

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