



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.:** 012/054  
**For Agenda Of:** January 11, 2022  
**Placement:** Set Hearing (1/11/2022)  
Departmental  
(2/01/2022)  
**Estimated Time:** 90 Minutes on  
February 1, 2022  
  
**Continued Item:**  
**If Yes, date from:**  
**Vote Required:** Majority

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**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

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**County Counsel Concurrence**

As to form: Yes

Other Concurrence: CEO, General Services, Community  
Services Department

As to form: Yes

**Auditor-Controller Concurrence**

As to form: N/A

**Recommended Actions:**

That the Board of Supervisors:

On January 11, 2022, set a hearing for February 1, 2022 on the Departmental Agenda.

On February 1, 2022, the Board of Supervisors can take the following actions:

- a) Receive status report on negotiations for a Community Workforce Agreement (CWA) on public projects;
- b) Direct staff to pursue Option 1, continue negotiating with Tri-County Building and Construction Trades (TCBT), and return with documents for approval to utilize a CWA; or,
- c) Direct staff to pursue other options (Table 3), continue negotiating with TCBT, and return with documents for approval to utilize a CWA; or,
- d) Provide other direction as appropriate; and,

- e) 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:**

On August 17, 2021 your Board provided conceptual direction to staff on negotiations for a CWA on public projects, including to pursue utilizing the CWA the City of Santa Barbara recently negotiated with TCBT as the County’s base agreement and negotiate certain terms within that document as follows:

*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.*

At that time, the Board rejected three other options presented: (1) utilize the CWA as negotiated by the City of Santa Barbara with TCBT; (2) utilize the County’s 2014 conceptually approved Project Stabilization Agreement (PSA); and (3) negotiate an entirely new CWA with TCBT. No direction was provided on threshold amounts or exemptions. Your Board also directed staff to proceed with the necessary coordination and negotiation, and to return to your Board for further direction as necessary during negotiations.

During negotiations, Staff and TCBT were able to address several of the areas presented to your Board on August 17, 2021 as needing further discussion to create a balanced CWA. Of the original eight areas, the majority have been resolved through negotiations. However, in a few areas, the group was unable to come to an agreement. Staff’s primary goal has been to ensure maximum potential bidders for public projects while honoring the benefits of CWAs for the community and the County. Currently, there is concern over a few key issues as proposed by TCBT and accepted by the City of Santa Barbara that could likely reduce the number of bidders and local participation on future public contracts. It is reported that over 80% of the local contractors within the tri-counties area are non-union contractors, therefore reducing their participation could reduce the number of local bidders on future County projects. This lack of competition could leave the County vulnerable to reduced bid competition and higher construction costs unless mitigated.

**Possible Options for the Board’s Consideration Today:**

To break through this impasse and develop an agreement, staff proposes the following CWA options with components intended to mitigate possible reductions in competition and local hire but still provide the public benefits that CWAs offer. The Board could also direct staff to pursue other options. Since there are several combinations of the CWA’s components, staff has developed a few possible options, which are described in greater detail starting on page 7 of this report:

- Option 1 (Staff Recommended): Utilize your negotiation teams’ recommended CWA, with agreement point modifications and exclusions described in this report, for future County projects over \$10 million and including rebid provisions; or

- Option 2: Pursue a CWA that includes agreement points to date in Table 1, and in areas where no agreement has yet been reached, as noted in Table 2, use the TCBT/City of Santa Barbara agreement. If this is selected, staff would recommend changing the threshold to \$20 million (from \$5 million) and including rebid provisions; or
- Option 3: Utilize a tiered bid approach to utilize multiple CWAs (Options 1 and 2) on future projects; or
- Option 4: Validation of the CWA. Utilize the City of Santa Barbara’s CWA (Option 2), dual bid a project over \$5 million, before adopting a Board policy on threshold for use of the CWA, and report back to the Board the bid results and comments from the public and CWA policy recommendations; or
- Other Options: Utilize other components discussed in this report to augment or change the options above or create new options at the Board’s pleasure, including but not limited to:
  - A. Rebidding with or without a CWA.
  - B. Piloting the CWA.
  - C. Initially bidding projects with and without a CWA.

**Background:**

**CWA Agreement Points:**

County staff have been negotiating since the August Board item with TCBT concerning your Board’s desire to develop a Countywide CWA for future public construction projects. To date, your staff’s focus has been how the County can maximize the number of potential bidders on all future public construction projects with a Countywide CWA requirement. Staff has also been contacted by local non-union contractors who shared their thoughts on the City of Santa Barbara’s approved CWA and whether or not they would be inclined to bid their projects in the future with such an agreement.

As discussed previously, there are certain agreement points that tend to become the main points of negotiation with regard to CWAs. As reported on August 17, 2021, staff concentrated on the following agreement points from the City of Santa Barbara’s approved CWA for discussions to date with TCBT:

**Table 1**

<b><i>CWA Points</i></b>	<b><i>Agreement Points (modified City CWA)</i></b>
1. Core workforce *	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

2. Exemption from the CWA requirements for offsite commercial fabrication/batching facilities*	Exempt
3. Exemption from the CWA for all Professional Services	Construction Inspection & Materials Testing consultants are considered a covered craft under the CWA if included in the construction contract
4. Exclusive use of apprentices from a locally approved apprenticeship program*	Exclusive use of union apprenticeship programs
5. Union dues for non-union contractors*	No union dues for non-union contractors' employees
6. Union benefits for non-union contractors	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
7. Master Labor Agreements (MLA's)	Exclude
8. Local participation*	Encourage local contractors and suppliers to participate with a goal of at least 50% of all labor hours from local area residents

\* Areas of Agreement

Through our informal discussions to date, staff has agreed with five of the eight agreement points TCBT successfully negotiated within the City of Santa Barbara’s approved CWA. They are asterisked above and listed below for reference:

- 1. Core Workforce
- 2. Exemption from the CWA requirements for offsite fabrication/batching facilities
- 4. Union dues for non-union contractors
- 5. Exclusive use of apprentices from a locally approved apprenticeship program
- 8. Local participation

Given input from local contractors, staff believes it is likely that these agreement points would not have an impact on whether a local non-union contractor will bid a future County project or not if it required a CWA.

**CWA Areas of Concern (where agreement not yet reached):**

The remaining points (non-asterisked above) are areas staff believes may cause our local non-union contracting community to refrain from bidding with regards to future County projects that required a CWA. The non-asterisked agreement points above are listed below for reference:

- 3. Exemption from the CWA for all Professional Services
- 6. Union benefits for non-union contractors
- 7. Master Labor Agreements

Staff has recommended to TCBT the following modifications to these agreement points from the City’s CWA to maximize the number of bidders on future County projects that may require a CWA:

**Table 2**

<b><i>CWA Points without concurrence</i></b>	<b><i>County Staff Proposed Agreement Points (modified City CWA) – Option 1</i></b>	<b><i>TCBT Response/ City CWA</i></b>
3. Exemption from the PSA for Professional Services+	Construction Inspection & Materials Testing consultants are considered a covered craft under the CWA if included in the construction contract; otherwise, it is the County’s responsibility to avoid conflict of interest by the contractor	Construction Inspection & Materials Testing consultants are considered a covered craft under the CWA
6. Union benefits for non-union contractors+	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	Non-union contractors pay into union benefit plans
7. Master Labor Agreements (MLA's)+	Exclude	Include
Emergency Contracting	Include as a listed exemption to ensure that services are immediately available from any and all contractors	No exemption
Threshold	\$10 million	\$5 million

## + Staff Modifications

TCBT does not agree to staff's proposed agreement point modifications. TCBT has stated that negotiations with the City took 2.5 years to complete and the County is benefiting from the concessions they made to get to that agreement. However, several points that were tentatively agreed to in the 2014 County PLA differ from the City CWA. That is the reason why staff is before you today requesting further direction.

Below is additional information for your Board's consideration on these three agreement points:

### #3. Exemption from the PSA for all Professional Services:

- Quality Assurance/Quality Control (QAQC) is the owner's responsibility in the construction industry.
- Insures that the prime contractor and their sub-contractors build projects in accordance with the approved plans and specifications.
- To avoid potential conflicts of interest staff recommends to continue either employing local consultants to perform QAQC professional services when required on County projects or County staff who are excluded from a CWA.  
In cases where Construction Inspection and Materials Testing are included in the construction contract, they will be included as a covered craft in the CWA.

#6. Union benefits for non-union contractors: Staff recommends utilizing the same language conceptually approved by the Board and TCBT, with the exception of one of their affiliates, from the 2014 PSA (benefit language summarized in table directly above this section). Local non-union contractors have reported that requiring union pension and health benefits are significant challenges to a local non-union contractor's individual employee as well as the contractor as described below:

#### a) Health Benefits:

- Non-union contractors typically have health plans in which they pay, at a minimum, the Department of Industrial Relations (DIR) prevailing wage subscribed portion.
- Employee eligibility for new health plan coverage requires them to work for the equivalent of a month's worth of hours in many cases.
- Creates a health care coverage lapse for individual local non-union employees.
- Non-union contractors will either have to pay to keep their employees covered or allow them to have lapses in health insurance coverage.
- Potential for loss of local non-union employee's family doctor as well as coverage on medications.

#### b) Pension Benefits:

- Most local non-union contractors in our community report they have a state and federally approved pension plan and the money is invested at the employee's direction with the assistance of a certified plan administrator.
- All pension plans require some vesting period, typically 5 years, before a member can become eligible to collect a retirement. The County has not had a project that has lasted five years (with exception of Northern Branch Jail) to allow a local non-union contractor's employee to vest within a union pension plan.

- Nationwide studies have reported that construction industry pension plans are underfunded and the underfunding will grow.
- Local non-union contractors are concerned that they will be responsible for a portion of the underfunded pension plan balance if they sign on to a CWA.

**#7. Master Labor Agreements (MLA):** Staff recommends excluding the majority of the sections within the various MLA's as we did in the 2014 conceptually approved CWA. Concerns are listed below for your Board's consideration:

- The County is not a party to the agreements and they may change and we would not be included within the process of their amendment.
- The County's CWA, if approved, could be a multi-year document. There will likely be multiple MLAs that expire during the CWA and the County would be incorporating unknown requirements.
- Each union affiliate has their own MLA. It is burdensome for non-union contractors, who employ multiple trades, to review and comply with all the varying MLA provisions as well as any amendments that occur.
- Some MLA terms are not enforceable or allowable for the County. For example, when a review of the MLAs was conducted in 2014 there were provisions requiring the hiring of persons of a certain age.

Inclusion of each MLA will be very limited and primarily to address each union's trust funds and grievance procedures for jurisdictional disputes as was done in the 2014 conceptually approved PSA.

***Other Issues:***

**Emergency Contracting:** Staff has reviewed the exclusions contained within the City of Santa Barbara's approved CWA and are satisfied with the list contained in the agreement. Staff are proposing to add Emergency Contracts as an exclusion. As your Board knows, the County of Santa Barbara is prone to all types of emergencies. When emergencies hit and our infrastructure is impacted we must respond in a timely fashion to protect the health and safety of the public and to ensure that any and all outside funding is not lost to help us rebuild. Numerous times over the last few decades we have negotiated emergency contracts with contractors the evening prior to the work commencing the next morning. It is not timely nor practical to include CWA provisions within such contracts.

**Threshold:** If your Board chooses option 1, staff's recommendation (discussed below), a threshold over \$10 million is recommended. Projects of this size can be complex, involve multiple trades, and last several months to years. As discussed below, at times we do see interest in this bid range from contractors outside of the tri-County area. This option will insure that our local contractors continue to bid these projects as they have in the past and if an outside contractor bids they utilize local labor. Staff reviewed the County's Capital Improvement Program (CIP) and found that there are twenty CWA eligible projects estimated at over \$10 million and total over \$554 million over the next five years for which a CWA could potentially be utilized. The list of County CIPs is shown in Attachment A.

***Possible Options for the Board's Consideration Today:***

While there could be a multitude of variations, staff has developed a few options for your Board's consideration today. However, your Board may seek different options or a combination of components:

**Table 3**

<b>Options</b>	<b>Components</b>
<b>Option 1</b> County staff recommended agreement	<ul style="list-style-type: none"> <li>• County Staff Modifications</li> <li>• Emergency Contracting exclusion</li> <li>• \$10 million threshold                             <ul style="list-style-type: none"> <li>○ Allow rebidding without CWA</li> </ul> </li> </ul>
<b>Option 2</b> TCBT/City agreement with a few modifications	<ul style="list-style-type: none"> <li>• City of Santa Barbara/TCBT proposal on areas where no agreement reached</li> <li>• Exclusion of MLAs</li> <li>• Emergency Contracting exclusion</li> <li>• \$20 million threshold                             <ul style="list-style-type: none"> <li>○ Allow rebidding without CWA</li> </ul> </li> </ul>
<b>Option 3</b> Both agreements; tiered thresholds	<ul style="list-style-type: none"> <li>• Use City of Santa Barbara/TCBT CWA for projects over \$20 million (Option 2)</li> <li>• Use County Staff modified CWA (Option 1) for projects between \$10 - \$20 million</li> <li>• No CWA for projects less than \$10 million</li> </ul>
<b>Option 4 – Validation Option</b> Validate the City’s version of a CWA with the County’s local contracting community	<ul style="list-style-type: none"> <li>• Use City of Santa Barbara/TCBT CWA for a pilot project over \$5 million (Option 2)</li> <li>• Bid pilot project with and without CWA</li> <li>• Award least expensive bid received</li> </ul>
<b>Other component options</b>	<ul style="list-style-type: none"> <li>• Rebid without CWA if costs come in too high/not enough bidders</li> <li>• Rebid with CWA if costs come in too high/not enough bidders</li> <li>• Pilot CWA</li> <li>• Bid projects with and without CWA</li> </ul>

**Option 1 (Staff Recommendation):** With the above recommended agreement point modifications and additional exclusions described, your Board’s negotiating team believes the County can achieve a potential CWA that would maximize bidder participation from our local contracting community on future contracts and provide the benefits of a CWA.

**Option 2:** Pursue a CWA that includes agreement points to date, and in areas where no agreement has yet been reached, use the TCBT/City of Santa Barbara agreement. If this is selected, staff would recommend setting the threshold at \$20 million (from \$5 million approved by the City) and including rebid provisions. The County enjoys a high level of local participation in bids received for projects less than \$20 million today. The threshold increase is being recommended for this option as projects over \$20 million are complex, involve multiple trades, and typically last several years to construct. In addition, experience tells us that on large County projects, over \$20 million, we do see interest from the contracting community outside of our tri-County area. When this occurs that affects our local labor workforce and perhaps the City’s version of the CWA could ameliorate this concern. The City’s



document has not been tested nor validated through a project bidding process to date. Detailed discussion on this point is included below in the Tiered Bid Amounts section.

**Option 3:** Tiered approach to utilize a CWA on future projects for your Board's consideration moving forward. Through the County's experience, information gathering, and collaborative process during the 2014 negotiation process and discussions with TCBT about the benefits of CWAs for large projects, Staff developed key areas to address to create a balanced CWA, one that maximizes the benefits of CWAs for large complex projects while maintaining the historic competitive bidding environment and use of local contractors and local workforce on County projects.

Since 2014, when a collaboratively negotiated CWA was crafted that TCBT was able to obtain complete support, with the exception of one trade, both TCBT and County staff have worked to refine and tailor the document to create a CWA that maximizes participation and benefits of these agreements for Santa Barbara County's unique construction environment. These include incorporating elements to maximize participation in bidding and a recognition that well over half of projects currently constructed in the County are built by local contractors and local labor. The capacity for most contractors in the County to build projects on their own generally falls below a threshold of approximately \$20 million. Using this as a guide, and working to maximize the benefits to local workers of potential enrollment in union benefits and other programs, which generally occurs in longer duration, on larger projects, the County developed key focus areas in the CWA. These include:

- Setting an appropriate minimum threshold for when to use CWA's for maximum benefit;
- Selecting projects that are appropriate for CWAs to increase their chance of success; and
- Creating a CWA that prioritizes competitive bidding and local workforce.

During negotiations, Staff and TCBT were able to address several of the areas presented to your Board on August 17, 2021 as needing further discussion to create a balanced CWA. Of the original eight areas, the majority have been resolved through negotiations. However, in a few areas, the group was unable to come to an agreement as described above. Staff believes a CWA, based on a tiered bid approach, if neither option 1 nor option 2 are selected, has the best chance of success for our County and for the Union to achieve their goals.

Proposed rebidding provisions would be allowed for all options if bids received come in over the engineer's estimate. This section may also be written to reflect a low number of bids received as well. This may become its own section within the agreement, or could be addressed in the ordinance. Within rebidding, two alternatives exist: rebidding without a CWA or rebidding with a CWA. TCBT's position on rebidding is that all projects should include the CWA but they realize this is at the Board's discretion.

**Tiered Bid Amounts:** On November 22, 2021, your negotiating team broached the subject of utilizing at least two versions of a CWA in Santa Barbara County on future construction contracts with TCBT. Recall that CWA's 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. In everyday terms this means expensive to build, schedules that go on for multiple years and include many different trades.

The above modifications to the City of Santa Barbara's CWA, proposed by your negotiating team (Option 1), are designed to insure that the majority of our County projects, with schedules typically measured in months, do not lose any local bidders with a proposed CWA. It is not practical for a local

non-union contractor's employee to be switching between benefit plans every few months within the same year (described above). However, if that same employee was on a large County project that lasted multiple years – switching benefit plans may make sense and be less inconvenient to the employee and their family. Also, experience tells us that on large County projects, over \$20 million, we do see interest from the contracting community outside of our tri-County area. When this occurs that impacts our local labor workforce.

Staff proposes the following tiered bid range option for your Board's consideration to insure we maximize the number of bidders on future projects and establish bid ranges that maximize local participation:

1. Utilize the City of Santa Barbara's CWA (Option 2) for projects over \$20 million. Staff would only recommend the exclusion of MLA's and the additional exclusion mentioned above for this CWA for projects of this value or more.
2. Utilize the above-recommended CWA (Option 1) from your negotiating team for a bid range of \$10 million to \$20 million. The County enjoys a high level of local participation in these bids today, however, we do see, from time to time, contractors from outside the tri-County bidding this work.
3. All projects below \$10 million would have no CWA requirement. The lion share of contractors who bid this work are from our local contracting community today. No CWA required.

When this proposal was presented to TCBT they dismissed it outright.

***Other Option Components:***

Board members have discussed other options regarding the CWA. These include:

- A. **Rebidding without a CWA or with a CWA.** This would allow rebidding provisions if bids received come in over the engineer's estimate or if only a few bids are received. Within rebidding, two alternatives exist: rebidding without a CWA or rebidding with a CWA.
- B. **Piloting the CWA:** 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 to allow for further data collection and return to the Board with a report on the benefits of utilizing a CWA.
- C. **Initially bidding projects with and without a CWA:** Agencies have discussed this option in the past, most recently the County of Ventura. This may or may not be feasible within the constraints of bid regulations today. Staff would need to perform additional research and report back to your Board if this option was selected.

**Validation Option (Option 4):** On August 17, 2021 Board Members were interested in the CWA recently approved by the City of Santa Barbara without modifications. The City's CWA was only approved a few weeks prior to the August 17<sup>th</sup> Board hearing so their document has not been tested nor validated through a project bidding process to date. Staff believes that agreement should be validated with our local contracting community if there is a desire by your Board to utilize it as the County's CWA in the future. This fact, coupled with the fact that the County of Santa Barbara has not had

experience with a CWA in the past, an additional option for your Board to consider would be to utilize a combination of B and C above. Staff could come back with a proposed pilot project that could be bid with and without a CWA with a draft ordinance for your Board's consideration. Under this validation option, if your Board approves, staff would utilize the City of Santa Barbara's CWA (Option 2) and a project that is \$5 million (mirror the City's threshold) in cost or greater. Staff believes that the primary benefit to this option is it will validate the City's version of a CWA with the County's local contracting community. Also, this option tests if CWAs have an impact on bid participation, costs, and local hire discussed throughout this staff report. By bidding with and without the CWA and piloting on a project we would not lose valuable time through rebidding the work if the CWA is more expensive. If your Board chooses this option, when staff returns with a proposed pilot project, staff would also report on the constraints that must be met within today's bid regulations to insure feasibility.

***Other Information:***

**Expiration Date:** The City of Santa Barbara's approved CWA sets an agreement duration of five years from the date of adoption. Your Board may choose any date you like. Staff recommends mirroring the City of Santa Barbara's expiration date as we have never utilized a CWA in our County. Your Board may also consider requesting that staff provide annual updates on the goals being achieved by the CWA during that timeframe.

**Community Workforce Coordinator:** The administration of the CWA is the responsibility of the County. We envision, at this time, that as a County we will need to add at least one full-time employee (FTE) to administer all the CWA's approved over a proposed five-year timeframe, or whatever expiration is chosen, across multiple departments. The individual hired will need to have a strong background in project management focused in the construction industry. This position would most likely fall into the Leadership Project Classifications.

**Attachments:**

Attachment A: CWA – PROPOSED PROJECTS FROM FY21/22 COUNTY CAPITAL IMPROVEMENT PLAN

Attachment B: August 17, 2021 Development of Countywide Community Workforce Agreement Ordinance and Project Template Staff Report with attachments

**Authored by:**

Scott D. McGolpin, P.E., Public Works Director, 805-568-3010