



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: December 2, 2022
Placement: Departmental
Estimated Time: 60 Minutes
Continued Item:
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors, County of Santa Barbara
Board of Directors, Santa Barbara County Flood Control and Water Conservation
Districts, Santa Barbara County Water Agency, Laguna County Sanitation District,
Santa Barbara County Fire Protection District

FROM: Department: Mona Miyasato, County Executive Officer, (805)568-3400
Director:
Contact Info: Scott D. McGolpin, P.E., Public Works Director, (805)568-3010

SUBJECT: **Development of Countywide Community Workforce Agreement Resolution
and Project Template**

County Counsel Concurrence

As to form: Yes

Other Concurrence: General Services and Community
Services

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

That the Board of Supervisors:

- A. Receive report on the status of negotiations for the development of a Countywide Community Workforce Agreement Resolution and Project Template; and
- B. Approve and authorize the Chair to sign the Countywide Community Workforce Agreement with Tri-Counties Building and Construction Trades Council for a term of five years for County capital projects; and
- C. Adopt a Resolution establishing a policy for the use of Countywide Community Workforce Agreement for five years for County capital projects greater than \$10 million finding that said agreement furthers a legitimate governmental interest consistent with competitive bidding law by preventing costly project delays, assuring contractors access to skilled labor, and avoiding the potential for labor strife during the life of the County capital project; and
- D. 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) and 15061(b)(3), therefore no environmental document is required.

Summary Text:

In April, 2019 your Board directed staff to draft an ordinance governing the use of a Countywide Community Workforce Agreement (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 Tri-Counties Building and Construction Trades Council (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.

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, increase local hiring, and ensuring 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 contractors 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:

Staff has been diligently negotiating with the TCBT over the last few months to develop a template CWA in accordance with the direction of your Board. On February 1, 2021 your Board selected Option 1 out of four potential CWA frameworks. This Option directed staff to utilize your negotiation teams' recommended CWA, with agreement point modifications and exclusions described in that report, for future County capital projects over \$10 million and including rebid provisions. Since that time both

your County negotiation team and TCBT's negotiation team have been collaborating and compromising around the agreement points where most negotiations fail. Staff's primary goal during these negotiations has been to ensure maximum potential bidders for public projects while honoring the benefits of CWAs for the community and the County. There were concerns over a few key issues as proposed by TCBT and accepted by the City of Santa Barbara that could 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 in the future unless mitigated. Your negotiation team believes the proposed CWA (Attachment A) before your Board for approval today mitigates that concern. However, since the County has never utilized a CWA in the past, this cannot be fully evaluated until the County bids a few projects that meet the proposed threshold.

Staff continues to recommend a proposed threshold of \$10 million or greater for application of the proposed CWA to the County's Capital Improvement Program (CIP). Projects of this size can be complex, involve multiple trades, and last several months to a year or more. The County does, at times, draw interest in projects with costs greater than \$10 million from contractors outside of the tri-County area, however, the County currently receives a high level of local participation in bids received for projects less than \$20 million. Experience shows that on large County projects (over \$20 million) the County receives greater interest from the contracting community outside of our tri-County area. When this occurs, it affects our local labor workforce and a CWA could ameliorate this concern. Your Board's approval of the proposed resolution (Attachment B) today will establish a threshold of \$10 million or greater. This will ensure that our local contractors continue to bid these projects as they have in the past and if an outside contractor bids they must utilize local labor. Staff reviewed the CIP and found that there are twelve CWA eligible projects, which are estimated at over \$10 million, and total \$360 million over the next five years. The list of County CIPs is shown in Attachment C.

Proposed rebidding provisions would be allowed if bids received come in over the engineer's estimate. This provision would allow the Department Head, who originally bid the capital project, to rebid the project with or without a CWA. TCBT's position on rebidding is that all projects rebid should include the CWA, however, they realize this is at the Board's discretion.

If your Board approves the proposed CWA today it will become effective on April 1, 2023. This grace period will allow a reasonable time to accomplish a few items. First, TCBT must take the conceptually approved CWA from your Board's action today and have it signed by all of the affiliates (Unions) that fall within their jurisdiction in order for the document to be considered approved. The County requires that 100% of TCBT's affiliates sign this agreement. Without 100% participation by affiliates, the expeditious resolution of disputes contained within the CWA will not be enforceable. This signature process, as experienced in 2014, may take a few months to accomplish. Secondly, the County will need time to modify bid documents for projects that meet the minimum threshold to include a CWA for next summer's construction program. In addition, the County will need to make provisions to onboard a Countywide Community Workforce Coordinator as required by the proposed CWA. The majority of projects that will be affected by today's action fall within General Services, Public Works and Community Services.

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Attachments:

Attachment A: Community Workforce Agreement

Attachment B: Resolution

Attachment C: List of County Capital Improvement Projects

Authored by:

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

cc: Tri-Counties Building and Construction Trades Council