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Subject: City Capital Improvement Program Community Workforce Agreement Evaluation

Introduction

The purpose of this memorandum is to review typical provisions in community workforce agreements (CWAs) and evaluate the potential impacts of key provisions on the delivery of capital improvement projects by the City of San Luis Obispo (City). The memorandum is not intended to be an exhaustive review of every provision included in CWAs or to provide an opinion on the merit of a City-wide CWA.

Please note that the content of this memorandum is based largely on the previous CWA analysis prepared by the City and WSC for the SLO Water Plus (i.e., WRRF Upgrade) Project. It has been updated to reflect the City's recent experiences on the SLO Water Plus Project and discussions with other public agencies in the Central Coast who have recently evaluated or negotiated CWAs.

Background

CWAs are pre-hire collective bargaining agreements that establish standard terms and conditions that apply to a specific construction project. CWAs are typically negotiated between the project owner and the local building trades council or individual construction trades, although CWAs can be directly negotiated between contractors and construction trades. The general contractor and subcontractors of any tier must agree to be bound by the requirements of the agreement prior to performing any work on a CWA-covered project.

Key CWA provisions include the establishment of uniform work conditions, hiring procedures, wages and benefits, management rights, dispute resolution procedures, and procedures to prevent work stoppages. In addition, CWAs often include provisions to promote participation in covered projects from targeted workers and demographics including local residents, apprentices, historically underutilized residents and businesses, at-risk persons, veterans, minority-owned businesses and disadvantaged business enterprises.

It is important to note that CWAs typically only apply to the employment of workers in the construction trades who are represented by unions, and work classifications for which prevailing wage rates have been determined by the California Department of Industrial Relations (DIR). CWA coverage would not extend to the provision of professional services by consultants where work classifications and prevailing wage determinations have not been established by the DIR or to City employees.

Standard CWA Provisions

The following sections detail typical provisions included in CWAs, and potential considerations for the City's CIP projects regarding each provision.

Work Conditions

Uniform Work Conditions

CWAs commonly include provisions to establish uniform work conditions across each of the construction trades providing craft labor on the covered project. Conditions typically covered include work hours, holidays, meal periods, break periods, overtime and double-time pay, shifts, and shift differential pay. For contractors that are signatory to the unions, the Master Labor Agreement (MLA) with each individual trade sets forth standard work conditions. The MLA for each trade can include slightly different provisions related to work conditions, and a CWA can serve to standardize these conditions across all trades and simplify the management process. For example, a CWA could specify City holidays as the non-working days to be observed on covered projects by all construction trades, rather than each trade recognizing different holidays which could lead to inefficiencies in the delivery of the work.

Many of the work conditions typically covered in CWAs are also addressed in the California Labor Code including shift lengths, meal and break periods, and overtime/double-time pay. In addition, the construction contract sets forth allowable work hours and holidays observed by the project owner. In the absence of a CWA, California Labor Code and the construction contract will establish the work conditions for the project in question.

City CIP Project Considerations

Standard work conditions provisions in a CWA are not anticipated to provide a significant benefit on the City's CIP projects, as many of the provisions typically included are addressed in the California Labor Code and the construction contract documents.

Hiring Procedures

Union Recognition

CWAs designate trade unions and the local or regional building trades council as the exclusive source of craft labor on covered projects and the exclusive bargaining representatives for craft workers. In addition, employers must recognize the jurisdiction and scope of work specific to each trade as established in each MLA.

Referral Systems

CWAs require that established union referral systems be used exclusively to obtain craft labor on covered projects. If a union referral system is unable to refer workers within a defined period of time (typically 48 hours), contractors are allowed to hire employees from other sources. CWAs do not discriminate between union and non-union workers; however, non-union workers must register with the union hiring hall to become eligible for assignment to a covered project and must become a member of the union while working on a CWA-covered project. Union membership may include payment of regular union dues, although requirements for contribution of unions dues has recently changed based on the recent Janus decision by the U.S. Supreme Court (*Janus v. AFSCME*, 2018).

Core Workers

CWAs limit the number of workers that non-union contractors can employ on a project without utilizing the union hiring hall system. These employees are termed “core” workers, and typically include key positions such as foremen. Employees must meet specific requirements to be considered a core worker including being recently active on the contractor’s payroll (i.e., for 60 of the 100 working days immediately prior to the award of the contract), possessing licenses required for the performance of the project work, and having the ability to safely perform the duties and functions of the trade for which they are providing craft labor.

Non-union contractors can hire core workers on a one-to-one ratio with employees referred by the union hiring hall up to a maximum number of core workers. For example, the contractor can hire a member of its core workforce first, followed by an employee referred from the union hiring hall second, then another member of its core workforce. This process continues until the maximum number of core workers specified in the CWA is reached. Core worker provisions do not apply to union signatory contractors.

Union and Non-Union Contractor Comparison

For union contractors and on CWA-covered projects, MLAs clearly define the scope of work that can be performed by each individual trade, and workers are not allowed to work outside of their classification/jurisdiction. Non-union contractors on projects not covered by a CWA can allow their employees to perform a wider range of tasks. For example, a non-union employee can perform functions of multiple trades (e.g., laborer, operating engineer, cement mason), provided they are paid the appropriate prevailing wage rate for each classification while performing the work.

Hiring procedures included in CWAs limit the ability of non-union contractors to utilize their core workforce on covered projects. CWAs establish the maximum number of core workers that a non-union contractor can employ on a project and require non-union contractors to use union referral systems exclusively for obtaining craft labor. While non-union workers can register with the union and become eligible to work on the project, they are subject to the hiring hall rules of each specific trade. Union hiring halls maintain out-of-work lists, and members are typically dispatched to projects based on the order in which they registered with the hiring hall (i.e., first come, first served). It is important to note that the hiring procedures and hiring hall rules are specific to each local union.

Hiring procedures in CWAs do not significantly impact union signatory contractors. Signatory contractors routinely use union referral systems to obtain craft labor and can request specific employees by name, rather than requesting workers from the out-of-work list for each trade. In addition, core worker provisions do not apply to union contractors and union contractors are able to utilize their core workforce without limitation. Exceptions can include specific requirements in MLAs that restrict or limit participation of “traveling” union members from their home union to the local union at the project location.

City CIP Project Considerations

The impact of CWA hiring procedure provisions on the City’s CIP projects depends largely on whether prospective contractors are signatory to the individual unions. Non-union contractors will be impacted by limits placed on their ability to utilize their core workforce. Union contractors will not be significantly impacted by the hiring procedure provisions as the procedures reflect their standard work practices.

Specialty Subcontractors

In general, CWA hiring procedures will likely impact smaller, specialty subcontractors more than the general contractor and major subcontractors, depending on the size of the project. Specialty subcontractors (e.g., roofers, glaziers, tile installers, sheet metal workers, etc.) typically have a smaller role relative to the overall scope of project in question, provide fewer employees and fewer craft hours, and are more likely to be local contractors. Non-union specialty contractors with a small workforce rely more heavily on their core workers, and limitations on their ability to fully utilize their core workforce will disproportionately affect their ability to effectively perform their subcontracted scope of work. In addition, small non-union contractors often do not fully understand the CWA requirements when submitting subcontract bids and may refuse to sign the required letter of assent before beginning work on a CWA-covered project. This can result in cost and schedule impacts associated with subcontractor substitutions.

Careful consideration should be given to the impacts of a CWA on smaller specialty contractors if the City decides to move forward with an agreement. Negotiations with the building trades should include a discussion of potential exemptions from the typical CWA hiring provisions and core worker restrictions for small and specialty subcontractors performing limited scope on the City’s CIP projects.

Construction Inspection

Construction inspectors and other personnel performing quality assurance and quality control functions will also be impacted by the hiring procedures set forth in a CWA, as construction inspection is a prevailing wage classification and construction inspectors are represented by the Operating Engineers Union. Construction inspectors are typically employed by a third-party construction manager through a professional services agreement with the City. While professional services are exempt from CWAs, construction inspection is a prevailing wage classification, and personnel performing quality control and quality assurance functions would be subject to the provisions of the CWA, including the hiring procedures discussed in the preceding paragraphs.

An evaluation of the inspection needs for each of the City's CIP projects and the CIP as a whole will be important to further evaluate the impacts of a CWA on construction inspection. When inspection is to be performed in-house by Utilities and Public Works employees, the CWA will not have an impact. When inspection is to be performed by a third-party construction management or inspection firm through a professional services agreement, the CWA will have a considerable impact. When soliciting proposals for third-party construction management and inspections services, the City's evaluation of respondents will be partially based on the qualifications of the proposed inspection staff. Construction inspectors must have experience commensurate with the complexity of the CIP projects for which they are being retained to support. As providers of professional services, most construction management firms are not signatory to construction unions and non-union firms will be subject to standard CWA hiring procedures, including core worker provisions. These provisions will impact the construction manager's ability to utilize its inspection staff on the City's projects and will require the firm to obtain a portion of its inspection staff through the union referral system described in the preceding paragraphs. Construction inspection is not a commodity service – inspector qualifications and specific experience with the improvements being constructed is critical to the successful performance of the work. Employment of union inspectors presents significant risk to the construction manager, as the inspector's qualifications are unknown, and the employer retains the liability for performance of the inspector's duties.

Specialty Inspection and Materials Testing

Construction management firms subcontract with specialty inspection and materials testing firms to inspect portions of the work (e.g., reinforced concrete, masonry, welding, high-strength bolting, soils, coatings, etc.) that require special certifications (e.g., International Code Council (ICC), American Concrete Institute (ACI), Certified Welding Inspector (CWI), etc.) in accordance with the contract documents and code requirements. The City also contracts directly with specialty inspection firms and maintains a list of on-call providers. Specialty inspection firms also perform materials testing in off-site laboratories. CWAs present unique challenges for specialty inspection and materials testing firms, as the hiring provisions require employment of inspectors from the union hiring hall, who might not have the requisite experience or certifications to perform the required inspection. Additional concerns regarding employer liability and worker's compensation insurance coverage present significant risk and barriers to participation on CWA-covered projects for non-union specialty inspection and materials testing firms.

On the SLO Water Plus Project, the only local, full-service specialty inspection and materials testing firm expressed their unwillingness to provide services on the project if the CWA provisions extended to construction inspection and quality assurance. If the City had not successfully negotiated the exclusion of inspection and quality assurance from the SLO Water Plus CWA, specialty inspection and materials testing services would likely have been required from as far away as Ventura County (the nearest union-signatory specialty inspection and materials testing firm), resulting in significant additional cost to the City for travel time as well as considerable logistical challenges associated with timely performance of specialty inspections.

Professional Land Surveying

Like construction inspection, land surveying is a prevailing wage classification and providers of professional surveying services to the City would be subject to the provisions of the CWA including, but not limited to, core worker limitations and payment of fringe benefits to union trust funds. Employer concerns regarding employer liability and insurance requirements for workers referred by the union as described in the sections above would likely also extend to professional surveying firms.

Should the City elect to move forward with a CWA, negotiations with the building trades should include a discussion of potential exemption from the typical CWA hiring provisions and core worker restrictions for project staff performing quality assurance work, including construction inspectors, specialty inspectors, and materials testers.

Wages and Benefits

Wages

Wages for craft workers on public works projects are paid in accordance with applicable state and federal prevailing wage rates. CWAs do not supersede applicable prevailing wage rates and wages paid to craft workers are the same for CWA and non-CWA projects.

Benefits

The DIR establishes basic hourly rates and fringe benefit amounts that must be provided to the employee by the employer. Fringe benefits include health and welfare, pension, vacation/holiday, training, and “other” benefits. “Other” benefits include contributions to management relations boards, industry advancement funds, and other miscellaneous initiatives specific to each trade. Non-union contractors must provide benefits of equivalent value as the fringe benefit amounts established by the DIR or pay fringe benefits directly to their employees as wages. Training benefits must be paid directly to a State-approved apprenticeship program and are not paid directly to the employee as wages.

Union contractors provide fringe benefit payments on behalf of their employees directly to union trusts, who in turn provide benefits to their members. As with non-union contractors, training benefits must be paid directly to a State-approved apprenticeship program and are not paid directly to the union trust fund. In addition, some union MLAs require contractor contributions to industry advancement funds and various union trust funds. These contributions are made on a per hour basis for each employee.

Union and Non-Union Contractor Comparison

On CWA-covered projects, all contractors, regardless of union affiliation, must pay fringe benefit contributions directly to the union trust fund for each employee for the duration of the project. Union contractors are not affected by this requirement as it reflects their normal business practice and is in alignment with the MLAs between the construction trades and union employers.

The extent to which payment of fringe benefits to union trusts affects non-union contractors depends largely on the benefits employers offer to their employees. If non-union contractors provide benefits such as 401k plans, paid vacation, or health insurance, these benefits would no longer be provided through the employer and would be provided through the union trust. For non-union contractors that pay fringe benefit contributions directly to employees as wages, the contractors would begin making these payments to the union trust on their employees' behalf.

For non-union contractors that do not provide benefits to their employees, fringe benefits are paid in the form of wages. Employees have the freedom to purchase their own health insurance or invest in savings and retirement as they see fit.

Information published by the United States Department of Labor Bureau of Labor Statistics indicates that union workers have greater participation rates in medical benefit plans than non-union workers, 79% versus 46%, respectively. In addition, union workers have greater participation rates in retirement plans than non-union workers, 82% versus 47%, respectively (United States Department of Labor Bureau of Labor Statistics, 2017).

City CIP Project Considerations

Union members must work a minimum number of hours to become vested in union pension programs (typically 10,000 hours or 5 years). Non-union workers for whom fringe benefits are paid to the union trust by their employer on City CIP projects might not work sufficient hours to become vested and may not ultimately realize any benefit from the trust fund contributions made on their behalf. This issue may be more pronounced for non-union specialty subcontractor employees performing limited scope on the City's projects (e.g., roofers, glaziers, tile installers, etc.). These employees will likely not work sufficient hours to become vested in union trust funds because they will be performing a discrete scope of work that will be completed in a short period of time on the project.

For non-union workers performing limited scope for a limited period of time on the City's CIP projects, employers may elect to continue providing their standard retirement and health benefits while also providing fringe benefit payments directly to the union trust. Provision of benefit payments to both the union trust and directly to the employee can result in increased costs to the employer. In addition, employer contributions to industry advancement and various union trust funds as required by MLAs would result in additional cost to the employer.

If the City decides to consider a CWA for all CIP projects above a specified value, negotiations with the building trades should include a discussion of potential exemptions from the required union trust fund benefit payments for small contractors performing limited scope on the City's projects or for contractors whose employees work insufficient hours to become vested in union pension programs.

Management Rights

CWAs include provisions detailing the rights maintained by management under the agreement. CWAs typically give management exclusive rights to plan and direct the work; hire, layoff, and promote employees; determine the number of employees required to prosecute the work; determine means and methods of construction; select craft foremen; and assign and schedule the work. The intent of these provisions is to preserve the ability of management to perform key duties that are critical to the successful performance of work under the covered project.

City CIP Project Considerations

Management rights provisions are not anticipated to impact the City's CIP projects. These provisions are simply intended to clearly express to signatories that contractors retain the right to manage the labor force on a covered project as they see fit.

Work Stoppages

CWAs include provisions expressly prohibiting strikes, picketing, work stoppages, slowdowns, and lockouts to ensure the continued performance of work and to prevent schedule delays on covered projects, with limited exceptions. When employers and employees are unable to agree on the terms and conditions of employment, employees may implement work stoppages such as strikes or slowdowns and employers can implement lockouts. Work stoppages are used to compel either the employer or the employees to agree to the terms and conditions of employment in dispute. Some CWAs allow unions to withhold craft labor in the event a contractor is delinquent in payment of its weekly payroll or payments to the union trust.

Work stoppages can significantly impact a construction project as they interrupt the availability of craft labor and delay performance of the work. Union employees are prevented from striking on the basis of economic conditions when bound by an active collective bargaining agreement and can only strike after a good faith effort has been made at collective bargaining. Union employees are not constrained in their ability to strike on the basis of unfair labor practices when certain conditions are met. It is beyond the scope of this memorandum to detail the circumstances and laws surrounding employers' and employees' ability to implement work stoppages.

City CIP Project Considerations

The construction trades in California have a long history of successful collective bargaining with the construction industry. A review of work stoppage data compiled by the United States Department of Labor Bureau of Labor Statistics did not identify any work stoppages by the construction trades in California involving 1,000 or more workers over the last ten years (United States Department of Labor Bureau of Labor Statistics, 2021). Work stoppages resulting from a lapse in the collective bargaining agreements between the construction trades and the construction industry do not present a significant risk to delivery of the City's CIP.

Previous public works projects constructed by the City have been picketed by the construction trades, and in isolated incidents, workers have refused to cross picket lines. In the event of a picket at one of the City's construction sites, union workers might refuse to cross picket lines, impacting performance of the work. A CWA would expressly prohibit strikes, picketing, and work stoppages and would mitigate this concern. It is recommended that additional analysis be performed to better understand the membership rules of each trade regarding the ability of union members to cross picket lines. This analysis would help quantify the risk of a work slowdown resulting from a picket if a CWA is not in place for the City's CIP projects.

Dispute Resolution

Dispute resolution provisions are included in CWAs to establish a uniform and timely process to resolve project issues without slowing down or stopping the work. Disputes regarding the jurisdiction of individual trades are settled in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the Plan). The Plan is a broadly recognized dispute resolution procedure established by the AFL-CIO and construction employer associations that has been in place since 1984. When a jurisdictional dispute between trades arises on a project covered by a CWA (e.g., laborer versus pipefitter scope for the installation of underground pipelines), the issue is referred to the Plan for settlement. CWAs include provisions that prohibit work slowdowns and stoppages while jurisdictional disputes are being resolved.

CWAs also include provisions related to resolution of grievances and disputes not specifically related to jurisdictional issues. CWAs establish a defined, step-wise process for dispute resolution that encourages resolution of project issues on the lowest possible level. The dispute resolution process typically culminates with arbitration if not settled at a lower level. As with jurisdictional disputes, parties to a CWA cannot stop or slow down the work as a result of a grievance or dispute.

City CIP Project Considerations

It is difficult to evaluate the impacts of CWA dispute resolution provisions on the City's CIP projects. Disputes on construction projects are typically resolved informally by the general contractor and subcontractor management teams or through the formal dispute resolution and claims process detailed in the contract documents on non-CWA projects. Labor disputes that impact performance of the work rarely occur on public works construction projects and are rarely elevated to the project owner.

Jurisdictional issues are more likely to arise between union contractors or on CWA-covered projects where workers are not allowed to work outside of their classification, but where the scope of work for multiple trades overlaps. For example, the scope of work for both laborers and pipefitters includes installation of piping in water and wastewater treatment facilities. This overlap in scope may result in a jurisdictional dispute depending on the amount of work in question and the willingness of the trades to pursue resolution through the Plan. If a contractor signatory to the laborers union on a project assumes laborers will install the mechanical piping and uses prevailing wage rates for laborers in its bid, but the piping work is later found to be within the jurisdiction of the pipefitters at pipefitter prevailing wage rates, the contractor would incur significant additional costs. The contractor would be required to pay the difference in the prevailing wage rate between laborers and pipefitters for all hours worked as restitution, and pipefitter hourly rates are approximately 30% higher than laborer hourly rates. Non-union contractors on projects not subject to CWA agreements would not be faced with a jurisdictional dispute and could elect to perform the work with laborers; however, the pipefitters could file a complaint with the DIR that the workers were not being paid the appropriate prevailing wage rate, which would be subject to an investigation by the Division of Labor Standards Enforcement.

On the SLO Water Plus Project, the prime contractor assigned the pipe installation scope of work to the laborers in accordance with their obligations under the MLA with the laborers. The pipefitters union claimed jurisdiction over the pipe installation scope of work and alleged the City and the contractor did not comply with the requirements of the City's Community Workforce Agreement. The issue was ultimately resolved, but required significant effort from the City, its Program Manager and its Community Workforce Coordinator.

Targeted Worker Participation

Many CWAs include provisions to increase participation in covered projects by targeted workers. Targeted workers typically include local residents, apprentices, at-risk persons, veterans, and disadvantaged business enterprises. CWAs establish goals for the percentage of total craft hours on the covered project to be performed by the targeted workers. Construction contractors can be required to retain the services of a jobs coordinator, who works with the contractor, unions, local workforce development agencies, and apprenticeship programs to help the contractor meet the participation goals for each demographic set forth in the agreement.

CIP Project Considerations

Targeted worker provisions can be effective in increasing participation in the WRRF Project by the targeted demographics and developing the local workforce. The success of targeted worker participation provisions depends on commitment to the process by all parties to the CWA through ongoing and active management. Absent a CWA, unions are not able to prioritize dispatch of targeted workers and must follow their normal referral procedures as defined in the MLA.

On the SLO Water Plus Project, the local worker participation goal of 30% has consistently been exceeded, and 79% of all craft hours performed on the project to date have been by local workers. It is important to note that the definition of a “local worker” in the SLO Water Plus CWA is not limited to City of San Luis Obispo residents. Residents of San Luis Obispo County, Santa Barbara County, Monterey County and Ventura County are all considered local workers. Unions refer workers to the WRRF Project based on a tiered system, with priority given to the lowest tier. The tiers are defined as follows: Tier 1 – City of San Luis Obispo; Tier 2 – County of San Luis Obispo; Tier 3 – Santa Barbara and Monterey Counties; and Tier 4 – Ventura County.

Cost

Impacts of a CWA on construction costs are difficult to quantify and are beyond the scope of this memorandum to assess. Proponents of CWAs assert that these agreements save money while opponents argue that CWAs increase project costs. Information regarding the arguments on both sides of this issue is readily available through previously published articles and research. The City will need adequate budget for CWA negotiation, contract document development, development of standard procedures to facilitate uniform CWA application on all City projects, and budget to retain the services of a CWA administrator to administer the CWA on behalf of the City.

SLO Water Plus Project Experience

The City entered into a CWA with the Tri Counties Building and Construction Trades Council (Trades Council) for the SLO Water Plus Project in December 2018. A summary of key takeaways and lessons learned from the SLO Water Plus Project to date is as follows:

- The City successfully negotiated the exclusion of construction inspection and materials testing from the scope of the CWA as described in previous sections of this memorandum. Exclusion of construction inspection and materials testing prevented significant cost and logistical challenges for provision of inspection services by the City’s construction manager.
- The pipefitters union claimed jurisdiction over pipe installation work assigned to the laborers by the contractor. While not elevated to a formal jurisdictional claim, resolution required significant coordination by the City and its Community Workforce Coordinator.
- The contractor informally expressed challenges with securing subcontractor bids for portions of the work (e.g., elevators, architectural metal work and finishes, etc.) related to the Water Resource Center (WRC), which could be attributed to the CWA. In the absence of subcontractor bids for this work, the contractor used conservative placeholder numbers in its bid, increasing the cost of the WRC additive alternate bid item, which ultimately exceeded the City’s available budget.
- Local worker participation through the end of February 2022 is 79% – over 2.5 times the 30% goal set forth in the agreement.
- Of the 26 contractors who have worked on the SLO Water Plus Project through February 2021, six were non-union contractors performing relatively minor scopes of work (e.g., fencing, asbestos abatement, welding, demolition and concrete pumping).
- CWA administration services are estimated to be \$312,000 (based on a 42-month construction duration), or 0.3% of the original construction contract amount.

Other Agency Experience

Several public agencies in the Central Coast have recently negotiated, or are in the process of negotiating, CWAs for specific projects or for projects over a specified value. The following sections provide some background and discussion on these CWAs based on WSC's research and discussions with project owners.

South San Luis Obispo County Sanitation District

The South San Luis Obispo County Sanitation District (SSLOCSD) entered into a Community Workforce Agreement (CWA) with the Trades Council in August 2019 for their Wastewater Treatment Plant Redundancy Project. The CWA is modeled after the City's WRRF Project agreement, including exclusion of inspection and quality assurance from the scope of the CWA. Inspection and quality assurance were excluded after vocal opposition from consultants pursuing construction management services for the project.

The District received outside funding from the USDA Rural Development Loan Program, and USDA was reluctant to affirm compatibility of the CWA with their loan program. The District ultimately received approval from USDA, and construction started in January 2021. Like the WRRF, pipefitters claimed jurisdiction over the project mechanical work although the work was assigned to the laborers by the general contractor. The dispute has been settled informally by the District and its Community Workforce Coordinator. The District has not had any significant issues or concerns since the start of construction, though the project is in the early stages of construction.

The Port of Hueneme

The Port of Hueneme entered into a CWA with the Trades Council in December 2018 for all projects with estimated construction costs of \$250,000 or greater. Port representatives noted that on isolated occasions for specialized projects (e.g., dredging, waterside construction, etc.), local workers did not have the requisite skillsets to perform the work, requiring workers from out of the area. The Port acknowledged increased costs associated with fulfilling administrative requirements of the CWA but noted implementation of the agreement has been straightforward and employment of local workers has been a benefit to the neighboring communities.

The City of Santa Barbara

The City of Santa Barbara finalized a CWA with the Trades Council in July 2021 for all projects with estimated construction costs of \$5 million or greater. The City reviewed certified payroll reports from past public works projects and discovered a relatively high participation rate from local workers on projects with a construction cost of \$5 million or more (55-60%). The City ultimately included a 50% local worker participation goal in the final CWA.

Negotiations between the City of Santa Barbara and the Council centered around local worker participation goals, core worker hiring procedures, the maximum number of core workers allowed, exemption from union trust contribution requirements for local contractors, and exclusion of construction inspection and quality assurance from the scope of the agreement.

Santa Barbara County

Santa Barbara County (County) has been actively negotiating a CWA with the Trades Council for the last year. Previous negotiations between the County and the Trades Council for the Northern Branch Jail Project in 2014 stalled when the Operating Engineers Union declined to sign the negotiated agreement. The County chose not to finalize an agreement that did not include all of the construction trades, as the Operating Engineers could still effect a work stoppage, which diminished the benefits of the agreement from the County's perspective.

The County used the City of Santa Barbara CWA as a starting point for negotiations with the Trades Council. Current negotiations have focused on the CWA cost threshold, exemption of inspection and materials testing from the CWA, benefits, and exclusion of MLAs from being incorporated by reference.

The Trades Council has proposed a \$5 million project cost threshold consistent with the City of Santa Barbara CWA and the County has proposed a \$10 million threshold. The \$10 million threshold has been suggested to reduce impacts to local contractors who typically bid County projects while maximizing potential CWA benefits on larger projects that are more likely to be bid by non-local contractors.

County staff is advocating for exclusion of inspection and materials testing scope from the agreement for similar reasons as those described earlier in this report.

The County has also proposed that existing employee benefits programs provided by non-union contractors be allowed to remain in place, rather than mandatory union trust fund contributions. The County has taken this position to address contractor concerns with the time required to vest in union pension programs, the disruption associated with changing health care providers from existing employer plans to new union plans, and the risk of potential underfunded pensions and ongoing underfunded pension liability.

County staff is advocating for removal of CWA language that incorporates MLAs from all signatory unions by reference. The County is concerned with 1) provisions in specific MLAs that might not be compatible with County Code (e.g., mandatory employment of persons of a certain age), 2) the burden for non-union contractors to become familiar and comply with numerous MLAs for the trades, 3) the fact that the County is not a party to the MLA negotiations, and 4) risk associated with MLAs expiring during the term of the CWA, and new MLA requirements becoming effective that were not initially known.

Recommendations

The following sections describe various issues for the City to consider when evaluating the merit of a CWA for its CIP projects.

Alignment with Major City Goals

A CWA could be one component of a suite of solutions intended to enhance local economic vitality that could include utilization of local vendors, amendments to the City charter to prioritize purchasing from local businesses and alternative project delivery. While a CWA could help achieve economic vitality goals for large projects, it might not be the most appropriate approach for smaller projects where other tools would be more successful.

Review of Historical Local Worker Participation

The City should review certified payroll reports for past City CIP projects to determine historical local worker participation percentages. A better understanding of historical local worker participation would facilitate negotiations with the building trades and establish a baseline that could be compared to future projects if covered by a CWA.

Agreement Provisions

The following provisions should be considered when negotiating a CWA with the local building trades:

- Inspection, Materials Testing and Land Surveying – Inclusion of inspection and quality assurance in the CWA will fundamentally change the way the City secures these services from professional consulting firms. The City should evaluate these potential impacts to determine whether to pursue exclusion of this scope from the CWA.
- Construction Value – The cost threshold for CWA-covered projects could be tied to an index (e.g., CPI or ENR CCI) or a percentage of the City's Sewer Fund to account for cost variability over time. Alternatively, the City could identify 2-3 of its largest CIP projects that are conducive to a CWA and limit the agreement to a specific list of projects rather than a cost threshold.
- Sunset Clause – The CWA should be allowed to expire within a reasonable time frame, allowing the City to evaluate alignment of the agreement with City goals and performance of projects completed under the CWA.
- Core Workers – Increasing the number of core workers that non-union contractors can hire will reduce barriers to entry.
- Equivalent Benefits – Consideration of equivalent benefits paid by non-union contractors and exemption from union trust funds will reduce barriers to entry for non-union contractors.
- Regional Projects – The CWA should exclude projects with regional partnerships or projects where other public agencies provide project funding. As the City considers future regional water supply projects with multiple stakeholders, this exclusion could be important for stakeholder alignment.

Works Cited

United States Department of Labor Bureau of Labor Statistics. (2017, July 21). Economic News Release. Retrieved from United States Department of Labor Bureau of Labor Statistics: www.bls.gov/news.release/ebs2.nr0.htm

United States Department of Labor Bureau of Labor Statistics. (2021, April 6). Work Stoppages. Retrieved from United States Department of Labor Bureau of Labor Statistics: <https://www.bls.gov/web/wkstp/monthly-listing.htm>