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September 15, 2020

Board of Supervisors
County of Ventura
800 South Victoria Avenue
Ventura, CA 93009

Subject: **Report Back Regarding the Advantages and Disadvantages of the Use of a Community Workforce Agreement for County of Ventura and County Dependent Special Districts Public Works Projects.**

Recommendations:

Receive and file a report on the advantages and disadvantages of the use of a Community Workforce Agreement for County of Ventura and County dependent special districts (collectively "County") public works projects; provide direction to staff.

Fiscal/Mandates Impact:

There are no fiscal impacts associated with this item. Potential impacts are to be determined.

Executive Summary:

This is staff's response to your Board's direction on the use of a Community Workforce Agreement (CWA) received on July 28, 2020. Staff worked against the deadline of September 15, 2020 set by your Board. Staff utilized the allotted time to talk with Board staff, community stakeholders, subject matter experts, and other agencies. In addition, staff reviewed all materials provided by these same groups and conducted additional internet research to the extent possible.

Based upon the discussions, material review, and research staff weighed the advantages and disadvantages associated with the adoption of the proposed CWA. A detailed discussion is contained in sections below.



Staff has concluded that the advantages of the proposed CWA are not proportional to the estimated cost of adopting the proposed CWA. Staff has also concluded that the estimated costs of the proposed CWA could be mitigated through negotiation of some of the key elements of the proposed CWA.

Staff does not recommend that your Board direct any further action concerning the proposed CWA. If your Board decides to direct further action concerning a CWA, staff recommends that your Board direct staff to return with a proposal for an “open” CWA negotiation process to be used to mitigate the potential costs of the implementation of the CWA.

Discussion:

On July 28, 2020 your Board directed staff to study the advantages and disadvantages of the use of a CWA for County public works projects. Your Board also directed staff to report back by September 15, 2020 and to include in their report their recommendations for implementation of a CWA.

It should be noted that oftentimes the terms Community Workforce Agreement, or CWA, and Project Labor Agreement, or PLA, are used interchangeably. This report will distinguish between CWA's and PLA's. As used in this report, CWA will mean a comprehensive agreement that includes all public works projects (Projects) above agreed upon thresholds. PLA will mean an agreement that is specific to an individual contract/project. Exhibit 1 to this letter is the CWA agreement (covering all Projects exceeding \$250,000) that the unions would like your Board to adopt. Staff reviewed the proposed agreement as part of the research for the preparation of this report.

Staff's preparation of this report involved the research, review and activities described below:

1. Your Board's CWA goals.
2. Key elements of the proposed CWA.
3. Some possible advantages of the proposed CWA.
4. Some possible disadvantages of the proposed CWA.
5. CWA/PLA activities of other local agencies.
6. Pertinent law and policy.
7. Meetings, email exchanges, and phone conversations with subject matter experts (SMEs).
8. Pertinent internet/website research.
9. Applicable aspects of earlier “public works” Projects.

The remainder of this letter is structured around a detailed discussion of these items.



Your Board's Goals for a CWA

Note that this section is not a discussion of the advantages and disadvantages of a CWA. Rather, this section tries to articulate your Board's goals for the adoption of a CWA. The advantages and disadvantages of CWA's will be discussed in later sections.

Upon review of the July 28, 2020 Board discussion, your Board desires to use the proposed CWA to increase the percentage of local labor on County Projects. As used in this report staff believes that your Board's intent is that "local labor" means workers whose primary residence is within Ventura County. Discussions pertinent to the assumed increase in local labor are further nuanced in that your Board's desire is that the CWA supply a mechanism to preferentially hire local labor and that any increase in local labor be carried out in a socially equitable fashion.

CWA proponents argue that CWA's will increase local labor participation on Projects through socially equitable and locally preferential hiring practices especially as it relates to apprenticeship. CWA proponents assert that a CWA will provide the following ancillary and positive impacts to the residents of Ventura County:

1. Supports preferential hiring of County residents
 - a. Keeps local dollars local – which creates an economic force multiplier
 - b. Keeps residents of Ventura County "close to home" while they work – better quality of life
2. Promotes social equity through targeted "apprenticeship" hiring of disadvantaged or underrepresented Ventura County communities
 - a. Develops a more skilled county workforce – reduces unemployment
 - b. Better pay for workers which ensures "living wage" – raises standard of living, which means less dependence on local aid

It is important to emphasize that this constellation of positive and desirable impacts relies on two major assumptions. First is the assumption that a CWA results in an increase in local labor. Another way of stating this assumption is that it is assumed that there will not be a resulting decrease in nonunion local labor, i.e., the CWA will provide a net increase in local labor. Yet another way of stating this is that there will be a decrease in "out of town" labor, caused by the requirement for all contractors (union and nonunion) to use local labor hiring halls which will increase the number of local laborers on a given project.

The second assumption is that the CWA is the best way to increase local labor on Projects. As discussed in later sections, there are other ways to increase local labor that do not involve the adoption of a CWA. The example discussed below details your Board's



direction on the Ventura County Medical Center Hospital Replacement Wing as it relates to increasing local labor participation.

While it is clear, by definition, that the CWA will cause an increase in unionized local labor, it is not clear that it will cause a net increase in local labor nor, if it does, what the relative magnitude of any attendant increase will be. Given the time constraints placed upon this report, it was not possible to fully research and analyze either of the two major underlying assumptions. Instead, staff has relied on limited research, and conversations with and the assertions of the many subject matter experts (SMEs) with an interest in this matter, including union officials, other local agencies, contractors, industry specialists, and construction trade groups. In addition, staff and the union representatives have researched the last five years of completed County projects to provide your Board with current statistics on both union and local labor participation.

Key Elements of the Proposed CWA

The proposed CWA is to be signed by 21 different craft representatives. All but two belong to the Tri-Counties Building and Construction Trades Council (TBCT). The remaining signatures belong to the Southwestern Region Council of Carpenters (SWRCC) and the Laborers Local 585 (Local 585). TBCT, SWRCC, and Local 585 have membership rosters, i.e., contractors who have signed up with them to use employees belonging to those unions on Projects. The TBCT roster indicates that a high percentage of its membership is from outside Ventura County. SWRCC did not provide a full roster for review. Local 585 did not provide enough information to allow staff to determine the percentage. The reason that these percentages are worth noting pertains to the methodology used to accumulate and determine the number of “Local Residents” on a project.

As proposed the CWA provides a distinct advantage to union contractors over signatory nonunion contractors in “core” workforce limitations. This advantage also yields artificially high local labor numbers due to the way “Local Resident” is defined (see # 6 below). To be specific a contractor on the roster with the unions is allowed to use all of its core staff and all of its union employees on a County Project. A nonunion signatory is only allowed the use of three (two in some cases) core employees – all of the rest must come from the union. In either case, regardless of county of residence, the employees are counted as “Local Residents” under the CWA.

Another factor for your Board’s consideration is that the proposed CWA is “closed” in the sense that it is proposed to be negotiated between the County (owners) and the unions (labor). In other words, it does not include in the discussion/negotiation a seat at the table for the subject matter experts (contractors). Without the input of the subject matter



experts, it is likely that some elements of the CWA overlook the nature of construction work.

It is the opinion of staff that contractors (the subject matter experts) should be included in any discussion/negotiation involving a CWA. Staff feels that the inclusion of the contractors in the CWA negotiation process will reduce unknowns, thereby reducing risk, thereby minimizing the additional costs of doing business under a CWA. Including the contractors in discussion is often referred to as an “open” CWA/PLA.

The following list of key elements does not attempt to be exhaustive. It simply points out some of the more pressing questions and concerns that arise in consideration of the proposed agreement, much of which is discussed in more detail in later sections of this report. All referenced pages and sections refer to the proposed CWA attached as Exhibit 1.

1. All apprentices used on the project shall be registered in a “Joint Labor Management Apprenticeship” program, i.e., other State-approved (i.e., unilateral, on the job) apprenticeship programs are not eligible to participate.

Discussion: There are three types of apprenticeship programs approved by the California Department of Industrial Relations, Division of Apprenticeship Standards. All programs must meet the same requirements. Limiting apprentices to those in Joint Labor Management Apprenticeship programs may adversely affect Projects as described below.

2. The hiring of an independent Community Workforce Coordinator (CWC) for a Project is required.

Discussion: This is another administrative cost and is discussed in more detail below. It is likely that multiple CWC's will be necessary to meet the requirements within the agreement. This requirement is another example of an administrative cost associated with the agreement.

3. A Project Joint Administrative Committee (JAC) may be established to monitor compliance with the terms and conditions of the CWA. Decisions of the JAC must be unanimous for implementation. According to the CWA, the JAC will consist of the CWC, 2 County representatives, and 3 union representatives.

Discussion: Although the agreement states that this committee is optional, it is a provision that the parties have invoked in the agreements reviewed. Staff anticipates that JACs would be established under the proposed agreement as well



be activated upon project initiation. This provision has added costs to other CWA's.

4. All contractors not signatory to a Master Labor Agreement, i.e., nonunion contractors, are limited to a maximum of 3 "core employees" per craft. The definition of "core employee" is in section 8.6 of the proposed CWA. Per the proposed CWA, core employees cannot live outside of Ventura County.

Discussion: The contracting community states that this requirement hinders their ability to perform efficiently. It also is a disincentive to those contractors that feel they have developed and maintained high functioning staff in order to be competitive in the market.

5. The proposed CWA sets a goal of 30% of total work hours (not wages) to be performed by "Local Residents." Article VIII, Sections 8.7 and 8.7.1 define "Local Residents" as union hall members dispatched from the hall and residing within Ventura County as well as "Santa Barbara, San Luis Obispo, Los Angeles counties as well as any veteran." The CWA states that the unions will "exert their best efforts" to provide members to County contractors in the following order of preference (tiers): first tier – any member who is a veteran (regardless of residency) and any Ventura County resident; second tier – any member who is a resident of Santa Barbara or San Luis Obispo counties; third tier – any member who is a resident of Los Angeles County. Note that the agreement asserts that all members of any tier are considered "Local Residents."

Discussion: The definition of "Local Resident" in the agreement does not comport with our understanding of your Board's goal to put Ventura County residents on the job. And your Board will find, as discussed below, that the percentage of labor whose primary residence is within Ventura County working on County Projects far exceeds the 30% goal proposed by the agreement.

6. All employees of a County contractor are required to pay "monthly and working dues" whether or not they are a member of the union or signatory to a Master Labor Agreement.

Discussion: For nonunion workers this will mean a 30% reduction in "take home" pay. This is discussed in more detail in following sections.

7. The proposed CWA calls for 21 craft representatives to be signatory to the agreement – see page 27. Each of the crafts have a Master Labor Agreement (MLA) governing the craft. In general, where there is conflict between the



provisions of an MLA and the provisions of the CWA, the provisions of the CWA will govern. But this is not true in all cases – see section 3.3.2.

Discussion: Staff did not have enough time to review the MLAs to discern their individual impacts. Their requirements are likely to increase administrative costs associated with the implementation of this agreement.

8. The unions are required to employ their own building/construction inspectors and their own field soils and materials inspectors.

Discussion: This is an unnecessary duplication of effort and further increases administrative costs. The County should not abdicate any of its responsibilities regarding compliance with the Project quality requirements.

Some Possible Advantages of the Proposed CWA

Proponents of the proposed CWA assert that implementation of the CWA offers the following advantages:

1. The potential for work disruption is diminished by the unions' agreement to refrain from "strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns, or other interferences with work."

Discussion: Strikes, stoppages, etc. have not been a problem for County Projects. The Public Works Agency (PWA) has delivered over \$1 billion worth of Projects in the last 11 years without any such incidents. Therefore, this advantage is not one that can be offered to the County. Further, it is important to note that the proposed agreement contains arbitration provisions to deal with work stoppages which might occur. So, even with a CWA, work stoppages are still a possibility.

2. There will be an increase in local labor employed on County Projects.

Discussion: The goal contained within the proposed CWA is to attain a "Local Resident" participation of 30% of Project work hours. "Local Resident" is defined as a worker who resides in Los Angeles, Ventura, Santa Barbara, and San Luis Obispo counties as well as any veteran regardless of where the veteran resides. Upon review of all County Projects completed within the last 5 years, it has been determined that local labor – from Ventura County only – represents about 45% of the workforce. The recently completed hospital project, not performed under a PLA, achieved 44% local labor participation despite the complex specialty work



involved. Current Project processes exceed the goal contained in the proposed CWA.

Overall about half the number of the Projects awarded by PWA go to union general contractors (GC's). By dollar value, the percentage of PWA work that goes to union GC's is much higher, at 82%, likely due to the fact that larger projects, with their larger staffing needs, can only achieve the larger staffing numbers using all available workforce resources, especially those of the unions.

3. The quality of the work on County Projects will increase due to a better trained union workforce, especially as it applies to apprenticeship training programs.

Discussion: The quality of training that a union apprentice receives is second to none. However, due to the time constraints placed on this item, it was not possible to research the quality of other State-approved apprenticeship programs. State law requires a percentage of work be performed by apprentices. All County Projects meet State requirements for apprentice participation. Also note that nonunion contractors have stated that they currently use apprentices dispatched from local union halls to meet State contracting requirements.

The quality of work on County Projects is specified in the construction documents. It is verified by Public Works inspectors, engineers and material testers who review and sign off on all work performed by the contractor and all materials used by the contractor. As written the draft CWA duplicates the inspection and materials testing using union members paid for by the contractor.

4. The CWA will increase the quantity and quality of apprentices on Projects.

Discussion: Under State law all contractors must employ apprentices registered with the State's Division of Apprenticeship Standards ("DAS") at the ratio of one apprentice hour to five journeyperson hours (20%). Contractors meet this requirement by employing their own DAS-approved apprentices (on the job training), and/or with apprentices registered under DAS-approved unilateral programs, and/or with DAS-approved "Joint Labor/Management Training" program apprentices as proposed by the CWA.

The apprenticeship requirements are enforced by the California Department of Industrial relations (DIR). Specifically, in California contractors working on a public works project valued at \$30,000 or more have an obligation to hire apprentices. With few exceptions, this duty applies to all contractors and subcontractors on a project, even if their part of the project is valued at less than \$30,000.



Under the CWA, all apprentices used on the project must be registered with a joint labor/management apprenticeship administered jointly by the contractor and the unions. Under the CWA, the contractor would not be able to use apprentices from other DAS-approved programs. This would likely force those apprentices to join the union or be ineligible to work on Projects under the CWA.

It should be noted that with or without a CWA, should a contractor request dispatch of union apprentices from a local apprenticeship program, the contractor would have an affirmative defense or safe harbor if the local program dispatches less than the needed apprentices and the contractor employs all apprentices the local program does dispatch – which means that limiting the use of apprentices to only union-trained apprentices might result in lower than desirable apprentice participation on a Project.

5. The CWA will protect workers from wage theft and discourage unscrupulous contractors from bidding.

Discussion: Yes, there are unscrupulous contractors that bid on County Projects. And occasionally such a contractor will be the low bidder on a Project. As with all other contractors, the contractor and its staff will be checked for compliance with prevailing labor laws and prevailing wage payments. If it is determined that a contractor is cheating an employee(s), compliance will be demanded, and penalties applied.

Note that your Board adopted an ordinance which provides a process for the suspension and debarment of such unscrupulous contractors. In addition, compliance with prevailing wage and other Labor Code requirements (including wage theft) on all County Projects is monitored and enforced by the DIR. Outside of PWA Projects, Procurement also requires vendors/contractors to register with the DIR for public works in excess of \$25,000 for construction and \$15,000 for maintenance; this ensures certified payrolls are available, prevailing wages are paid, and apprentices are used.

It is reasonable to assume that a CWA would provide yet another layer of wage theft protection in as much as it would provide further oversight (CWC) and a formal grievance procedure for any alleged wage theft.

Of the 5 CWA advantages discussed above, staff review of past County Projects indicates that advantages 1 – 4 are not applicable to County Projects – this is explained in more detail in a following section but is largely due to the fact that the County does not experience the problems that these advantages propose to address.

Advantage 5, which argues that a CWA would provide a third level of wage theft protection, is an undeniable but difficult to quantify advantage.



Some Possible Disadvantages of the Proposed CWA

1. May reduce the number of bidders on County Projects.

Discussion: Opponents of CWA's insist that CWA's and PLA's discourage bidders from participation for many reasons. Opponents universally believe that the increased administrative burdens reduce profits to an unsatisfactory level – because a competitive bid already requires that contractors use small profit margins. In other words, the contractors contend that the increased administrative burden is substantial and that, to remain competitive, they must reduce profit by the amount of the increased administrative cost.

Another disadvantage cited by the contractors, which reduces the chances that nonunion contractors will bid CWA Projects, is that their employees will not take home as much money. Several contractors contend that their employees lose “take home” money when a CWA is involved. For example, an employee earning \$65/hr (prevailing wage/take home) while working on a nonunion job will only take home \$44/hr because \$21/hr (32% of gross wages) is given to the union under the CWA. In both cases the employee receives prevailing wage, but in the latter case the employee takes home less. Opponents argue that due to the transitory nature of construction work, their employees prefer more take home pay.

Proponents of CWA's argue that the money the employee provides is given back to the employee. In order for this to occur that employee must be vested under a Master Labor Agreement (MLA). There was inadequate time to research the vesting requirements in any of the MLA's.

Opponents also assert that CWA's are disproportionately hard on smaller contractors (those who bid on Projects of less than \$2 million). They argue that core workforce requirements do not provide them with the full complement of tested and true employees that they use on a regular basis. Unknown employees translate into unknown productivity (risk) which means increased costs and less competitive bids unless already thin profit margins are further reduced. The result is to avoid bidding on CWA jobs.

A letter from City of Berkeley staff to the Mayor and City Council comports with the assertions of the opponents. In the letter, City staff reports the results of their experience with the city's CWA. They found that construction labor costs were 5%-10% higher on CWA jobs than on non-CWA jobs, that the CWA discouraged bidders (several cases are described), and that recent bid results indicated there may be significant (30%+) increases in construction costs on CWA jobs. Their conclusions were based upon 5 years of data and experience.



2. May place constraints on contractors which increase risk.

Discussion: Any contractor working under a CWA must negotiate a hiring plan with the unions. Until the contract is awarded, the contractor will not know the outcome of the negotiation. The risk this presents to the contractor can be significant. It is oftentimes contingent upon the way the unions will share the work. For example, much of the work on a particular job might have craft overlap, i.e., more than one craft can perform the work. The proposed CWA allows the unions to split the work among the crafts as they deem appropriate – which might interfere with the efficiency of the contractor.

Another example of a constraint upon the contractor involves the “use of new technology and/or labor-saving devices and methods of performing the work” (section 14.3 of the proposed CWA). Although the unions agree not to restrict such devices or methods, it retains their right to challenge the use of such devices or methods through the grievance procedure.

The foregoing are just two examples of unknowns to the contractor which will not be known until after the job is awarded. When unknowns exist on a project, the contractor is forced to build the risk of dealing with outcomes into its bid to mitigate potential losses. In the Project world unknowns (risks) equal increased costs.

3. Places additional administrative burdens on all concerned.

Discussion: Opponents of CWA’s assert that the contractor’s administrative costs associated with extra reporting, hiring plans, committee participation, and work procedures are significant. Proponents of CWA’s argue that administrative costs of CWA’s are de minimis and offset by the ancillary benefits associated with using a CWA. Staff’s research of the matter to date suggests that it “depends” upon the content of the CWA.

The proposed CWA requires the hiring of at least one Project full-time employee – “the community workforce coordinator” (CWC) – who is an independent third party “facilitator.” It is likely, given the 5-year workload of multiple projects, that more than one CWC will be necessary to cover the work should your Board decide to implement a CWA – the best projection at this time is one CWC per each of the listed agencies. Staff estimates that it will cost about \$150,000 annually per fully burdened CWC – not including additional administrative costs (oversight, specialty software, IT support, etc.).

Staff will also face additional administrative burdens associated with the proposed CWA. Included additional administrative burdens are associated with compliance with the terms and conditions of the Project and the terms and conditions of the



CWA. The JAC, described above, is one example of such additional administration.

4. As proposed, the CWA is a “closed” agreement, i.e., exclusively between the County and the unions.

Discussion: As discussed above, the proposed agreement is between the County and the unions. There is no place at the bargaining table for the subject matter experts (the contractors). Neither the County (the owner) nor the unions are general contracting experts. We therefore risk missing terms and/or conditions that would be favorable to the contractor’s management of the project. From a logical perspective, should your Board decide to implement a CWA or PLA, it makes sense to include the contractors in the discussion of terms and conditions. Doing so would be the optimal way to reduce risk to the contracting community and therefore minimize costs associated with a CWA or PLA.

5. Added Project cost.

Discussion: Based upon the evidence presented and reviewed, staff concludes that it is reasonable to expect that costs will increase under a CWA. As discussed in the foregoing, there are quantifiable increases in administrative costs to all concerned. Both “open” and “closed” CWA’s create risks for the contractor which translate into increased cost. Local agencies have experienced Project cost increases as a consequence of CWA implementation, which have been substantial.

Opponents of CWA’s produce studies and data showing alarming Project cost increases that they associate with the imposition of CWAs – sometimes exceeding 40% (e.g., City of Berkeley).

Proponents argue that costs will not increase and/or that any cost increase is offset by the ancillary benefits of a CWA. Opponents also produce studies which back their claims.

Given the time constraints associated with the preparation of this item, staff was not able to research cost increases in the necessary detail to provide your Board a precise number. But for planning and comparison purposes, it is safe to assume that the cost increase will vary from Project to Project and that cost increases are most likely to range between 10% and 20%. It is also safe to assume that some mitigation of the cost increase can be achieved by insisting upon an “open” CWA negotiation process.



CWA/PLA Activities of Other Local Agencies

Your Board and your Board's staff have asked about other local agencies and their experience with CWA's and PLA's. Due to the time constraints placed on this matter an exhaustive review of other local agency experiences with CWA's/PLA's was not possible. What follows describes materials presented to staff during meetings with CWA stakeholders as well as data collected from neighboring counties.

1. Riverside Community College District (RCCD).

Discussion: RCCD Board of Trustees approved a 5-year (2010-2015) PLA for all "Measure C" funded projects over \$1 million. Local labor defined as workers residing in Riverside or San Bernardino counties and all veterans. PLA goal for local labor was 50% of workers. Attainment for local labor was 62% of workers across 14 projects for 3 different community colleges.

2. Port of Hueneme/Oxnard Harbor District.

Discussion: Port/Harbor Commissioners approved a 3-year PLA (2018-2021) for all harbor projects over \$250,000. Local labor defined as workers residing in the cities of Port Hueneme, Oxnard, and Ventura, the counties of Santa Barbara and San Luis Obispo, as well as all veterans. PLA goal for local workers is 30%. One PLA has been implemented to date with 51 workers classified as "local."

3. Oxnard Union High School District.

Discussion: District Board members approved a 5-year CWA (2019-2024) for all District projects which use Measure A bond funding and are over \$3 million. Local labor defined as any veteran or graduate of MC3 apprenticeship program regardless of residence, any worker residing within a zip code within the District's boundaries, and any worker residing in Ventura, Santa Barbara, and San Luis Obispo counties. PLA goal for local labor is 51%. District staff report that project start times are pushed out 4-6 weeks and projects cost an additional 6%-8% under the CWA.

4. City of Berkeley.

Discussion: City Council approved a 3-year CWA in 2011 for all City projects over \$1 million. At the time local labor was defined as any worker residing in Berkeley, any worker residing in the East Bay Green Corridor and any worker residing in Alameda County. CWA goal for local labor was 30%. The CWA accomplished 35% local labor. Upon review by the City Council in 2015, because only 22 of 1791 workers resided in the City of Berkeley, the City Council changed the definition of local labor to "residents of the City of Berkeley" only. It also lowered the local labor



goal to 15% and reduced the contract price to \$750,000. City staff reported that construction labor costs on CWA projects increased by 5%-10% on CWA projects and that recent bid results indicated that construction costs under a CWA increased significantly (30%+) citing several examples in their report.

5. Kern County.

Discussion: No CWA's. No PLA's.

6. Los Angeles County.

Discussion: Los Angeles County Board of Supervisors approved a CWA common to 5 specific projects on November 19, 2019: MLK Outpatient Center, \$322 million; Harbor-UCLA Master Plan Improvements, \$1.8 billion; Consolidated Correction Center (subsequently cancelled), \$1.7 billion; Mira Loma Women's Detention Center (subsequently cancelled), \$215 million; and Rancho Los Amigos South Campus (constellation of bundled facility/infrastructure improvements), \$418 million. The CWA provisions define both "targeted worker" and local workers. Targeted workers are workers who face one or more of 14 barriers to employment such as lack of education, veteran status, or previous involvement with the criminal justice system defined in the CWA. Local workers are workers who reside within a five-mile radius of one of the projects and residents who reside within specified zip codes. The CWA goal for targeted workers is 10% of total labor hours. The goal for local labor (includes targeted labor) is 30% of total construction labor hours.

7. Santa Barbara County.

Discussion: Santa Barbara County attempted to negotiate a CWA for the \$110 million-plus North County Jail project. Full agreement was never reached, and the project was awarded without a CWA. The County is currently under CWA negotiations for projects greater than \$5 million.

8. The South San Luis Obispo County Sanitation District.

Discussion: The South San Luis Obispo County Sanitation District has negotiated a CWA for its \$30 million-plus wastewater treatment plant. The project bid award has not yet occurred.

Pertinent Law and Policy

State Law – Labor Code



Construction, alteration, demolition, installation, repair or maintenance work performed for the County under contract (rather than by County employees) is subject to the requirements of the California Labor Code pertaining to public works.

Using the CWA between the Port of Hueneme (the Oxnard Harbor District) and the TBCT, AFL-CIO, et al. as an exemplar, the question is this: how provisions of the CWA pertaining to wages and use of apprentices differ from the Labor Code regulation of the same topics that already apply to County projects.

Under the Labor Code the County must:

- give notices to the contractor that the Labor Code applies, of certain of the contractor's obligations under the Labor Code and that the DIR will monitor and enforce compliance with the Labor Code on the project;
- not award a contract to a contractor that is not registered with the DIR or that will employ an unregistered subcontractor; and
- report the award of a contract for work subject to the Labor Code (above a certain dollar threshold) to the DIR.

Under the Labor Code the contractor and subcontractors must:

- register with the DIR;
- pay workers not less than the prevailing wage as determined by the DIR;
- maintain payroll records and submit certified payrolls to the DIR during the work; and
- meet certain standards for use of apprentices on the job.

The DIR establishes the prevailing wage rates for trades and areas and monitors and enforces compliance with the Labor Code, an effort funded by contractor registration fees.

The CWA and the Labor Code both require payment of the same prevailing wage rates. Employer contributions to certain benefits programs/trusts are credited toward the employer's obligation to pay prevailing wage, up to the amount specified in the applicable prevailing wage determination. Under the CWA, employer payments must be made to the trusts established under the unions' Master Labor Agreements, whether or not the contractor is a direct party to those agreements and whether or not the employee in question is a member. However, a contractor that is not a party to a union's collective bargaining agreement is not required to exceed the contribution amount specified in the applicable prevailing wage determination. While wages under the CWA and under prevailing wage law are at the same rates, under the CWA employee "take home" pay would be reduced significantly.

Under the Labor Code, the contractor must employ apprentices registered by DAS, the DIR's Division of Apprenticeship Standards, as training under DAS-approved apprenticeship standards on the project in at least the ratio of one apprentice hour to five



journeyperson hours. Under the Labor Code contractors may meet this requirement by employing their own apprentices, if DAS-approved and registered, and with apprentices registered under approved programs outside the area of the project. However, if a contractor requests dispatch of apprentices from a local, DAS-approved program, it has an affirmative defense or safe harbor if the local program dispatches less than the needed apprentices and the contractor employs all apprentices the local program does dispatch.

Under the CWA, all apprentices used on the project must be registered with a joint labor/management apprenticeship administered jointly by the contractor and the unions. Under the CWA, the contractor would not be able to use apprentices from other DAS-approved programs. This would likely force those contractor's apprentices to join the union or be ineligible to work on Projects under the CWA.

As noted above, the DIR is responsible for enforcing many Labor Code requirements. Under the CWA, the owner is responsible for monitoring Labor Code compliance in the first instance, but any party may refer potential Labor Code violations to the DIR if they are not resolved within 30 days.

County Policy Options – Recruiting Activity Requirements

The County can require certain recruiting activities designed to promote local hiring. Those activities cannot be restricted to County residents. For example, the contractors can be required to hold job fairs within the County to attract local workers but attendance at the job fair cannot be restricted to County residents.

Most contractors engage in recruitment activities on large projects. They prefer to use local labor as much as possible because it reduces costs (e.g., per diem, travel, etc.) and makes it possible for them to bid more competitively. Listed below are some of the recruitment activities that could be required in the Project contract. This list is based on contractor input and includes activities with which they are experienced:

1. Prior to commencing work, require the contractor to submit a plan and schedule for the hiring of a sufficient, qualified workforce.
2. Advertise valid existing and projected position vacancies through the local media, such as a community television network, local newspapers of general circulation, trade papers or minority focused newspapers.
3. Place a valid job order for existing and projected position vacancies with the local office of the California Employment Development Department and other specified hiring centers, for no less than 10 consecutive calendar days.
4. Advertise existing and projected position vacancies, job informational meetings, job application workshops, job application centers and job interviews by posting



notices which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process, in specified and conspicuous public places, including but not limited to city halls, schools, post offices, and libraries.

5. Conduct job informational meetings to inform community members of employment opportunities and assist them in applying and interviewing for jobs in the construction industry. These meetings may be held at locations within Ventura County and approved by County staff and may be hosted by multiple contractors.
6. Provide ongoing assistance to all applicants in completing job application forms.
7. Establish a job application center located in Ventura County, where job applications may be obtained, delivered to and collected.
8. Conduct job interviews at locations within Ventura County.
9. Provide monthly reports on the use of Ventura County residents on the project to include but not be limited to:
 - a. The total estimated number of construction hours that will be expended to complete the project;
 - b. The number of California Craft Project hours completed to date, i.e., certified payroll wages;
 - c. Total number of all workers, local and non-local (apprentices, journeypersons, forepersons, and superintendents), hours worked, and wages earned on the project per worker classification by zip code.

Outreach activities were agreed to and used on a large project in the County (the Hospital Replacement Wing) and the contractor achieved a 43% county resident participation discussed in more detail in the next section.

Applicable Aspects of County Projects (See Exhibits 2 – 6)

Staff have reviewed the last 5 years of completed Projects to determine both union and local labor participation on Projects.

Public Works Agency (PWA) Projects

Examining the available data from the most recent 5 years of completed PWA Projects, staff determined the union affiliations for 162 PWA Projects yielding the following statistics:



PWA has closed a total of 162 Projects over the last five years at a total cost of \$370 million. The total dollar value of Projects awarded to a union GC is \$303 million representing 82% of the total dollar value of awarded Projects.

By numbers of Projects awarded, union GC's represented 43% of the total number of Projects awarded; 50% of the 162 GC's had a company address within Ventura County; and 56% of the GC's had an address within Ventura, Santa Barbara, or San Luis Obispo counties.

There were 587 subcontractors (subs) employed by the 162 GC's. We do not have the dollar value of the work completed by each of the subs for any but 11 of the 162 projects – nor is this data readily available. By number, the union subs represented 20% of all subs; 29% of the subs had a company address within Ventura County; and 33% had an address within Ventura, Santa Barbara, or San Luis Obispo counties.

On 11 of the 162 projects it is possible to delineate that dollar amount of work completed by each of the subs (see Exhibit 7 (LCP Tracker)). The total number of hours of work completed by the subs on the 11 projects represents 44% of all labor hours on these projects.

Per your Board's direction, detailed data on subs and local labor usage were required to be kept by the GC – Clark Construction – for the Ventura County Medical Center Hospital Replacement Wing project. Recall that your Board asked that the GC hold job fairs and perform community outreach designed to maximize Ventura County resident participation on the Project. In the final analysis the GC's outreach efforts achieved a 43% Ventura County resident participation by hours, collecting 42% of the wages earned. Of the 704 persons employed on the Project, 211 (30%) were apprentices participating in a DAS-approved apprenticeship program.

General Services Agency (GSA) Projects

GSA has closed a total of 69 Projects over the last two years at a total cost of \$16 million. The total dollar value of Projects awarded to a union GC is \$0M representing 0% of the total dollar value of awarded Projects.

By numbers of Projects awarded, union GC's represented 0% of the total number of Projects awarded; 100% of the 69 Projects had a GC with a company address within Ventura County; and 100% of the GC's had an address within Ventura, Santa Barbara, or San Luis Obispo counties.

There were 150 subs employed by the 69 GC's. We do not have the dollar value of the work completed by each of the subs nor is this data readily available. By number, the union subs represented 25%; 46% of the subs had a company address within Ventura



County; and 48% had an address within Ventura, Santa Barbara, or San Luis Obispo counties.

Fire Protection District (Fire) Projects

Fire has closed a total of 83 Projects over the last five years at a total cost of \$6 million. The total dollar value of Projects awarded to a union GC is \$0M representing 0% of the total dollar value of awarded Projects.

By numbers of Projects awarded, union GC's represented 0% of the total number of Projects awarded; 75% of the 83 GC's had a company address within Ventura County; and 75% of the GC's had an address within Ventura, Santa Barbara, or San Luis Obispo counties.

There were 23 subs employed by the 83 GC's. We do not have the dollar value of the work completed by each of the subs nor is this data readily available. By numbers, the union subs represented 26%; 61% of the subs had a company address within Ventura County; and 61% had an address within Ventura, Santa Barbara, or San Luis Obispo counties.

Department of Airports (Airports) Projects

Airports has closed a total of 30 Projects over the last five years at a total cost of \$1.6 million. The total dollar value of Projects awarded to a union GC is \$26,400 representing 2% of the total dollar value of awarded Projects.

By numbers of Projects awarded, union GC's represented 5% of the total number of Projects awarded; 93% of the 30 GC's had a company address within Ventura County; and 93% of the GC's had an address within Ventura, Santa Barbara, or San Luis Obispo counties.

There were 8 subs employed by the 30 GC's. We do not have the dollar value of the work completed by each of the subs nor is this data readily available. By number, the union subs represented 0%; 50% of the subs had a company address within Ventura County; and 50% had an address within Ventura, Santa Barbara, or San Luis Obispo counties.

Harbor Department (Harbor) Projects

Harbor has closed a total of 4 Projects over the last five years at a total cost of \$255,525. The total dollar value of Projects awarded to a union GC is \$0M representing 0% of the total dollar value of awarded Projects.



By numbers of Projects awarded, union GC's represented 0% of the total number of Projects awarded; 75% of the 4 GC's had a company address within Ventura County; and 75% of the GC's had an address within Ventura, Santa Barbara, or San Luis Obispo counties.

There were no subs employed by the 4 GC's on Harbor projects.

Upcoming Projects (next 5 years)

Using the proposed thresholds in the currently proposed CWA, all capital projects and most maintenance projects would be subject to the CWA requirements. Not included in the estimates below are any potential projects necessary to deal with emergencies (recovery) nor any activities associated with immediate emergency actions (response). Also not included are the many upcoming maintenance projects in excess of the \$50,000 single craft threshold – probably \$3-\$4 million in contracted projects over the next 5 years.

Board-approved and planned capital expenditures for the next 5 years include:

1. PWA - \$615 million
2. Airports - \$70 million
3. GSA - \$50 million
4. Fire – Unknown
5. Harbor – Unknown
6. Emergencies – Unknown
7. Maintenance Projects – Unknown

Total - \$745-\$750 million-plus

CONCLUSION

Upon review and consideration of the foregoing, staff concludes that the major advantages of the proposed CWA are nominal under current conditions. Work stoppages are nonexistent on Projects. The CWA will not guarantee an increase in local labor, but it will in fact allow workers from other counties to be classified as “Local Residents.” As articulated above, County Projects already enjoy an admirable percentage of local labor contingent (from Ventura County only). The claimed advantage of higher quality work is not supported by experience. The quality of work on Projects is assured through the plans, specifications, inspection, and approval processes already in place – it would not be improved by a CWA. As demonstrated in the foregoing discussion, Project apprentice participation is already in excess of State law-required minimums (20%) and consistent with the goals of the CWA's reviewed (30%). Staff attributes this to fact that contractors currently are not limited to the use of union-trained apprentices, but instead are allowed the use of union-trained and other DAS-approved training program apprentices – allowing the contractor and the apprentices more flexibility and choice.



A definite advantage of a CWA is that it would provide a third layer of “wage theft” protection by adding staff to a Project (the CWC), but this advantage is not commensurate with the cost of the additional staff nor the cost of a CWA. Further, this third layer of wage theft protection could be achieved through other less costly means.

The major disadvantages of the proposed CWA are notable and, potentially, significant. Although there are five listed major disadvantages of the proposed CWA, those disadvantages are really a “parsed” discussion of the factors that tend to increase the cost of doing business under a CWA. In other words, the key factual disadvantage of the CWA is that it will increase costs. The arguments presented are designed to articulate the root causes of the associated cost increase.

Staff predicts that the number of bidders on a Project will be reduced, especially on smaller projects. Additional administrative costs will be borne by all involved. CWA’s typically present risks to contractors (risks = increased costs), especially when the CWA is “closed” in nature. Staff concludes, based upon the evidence reviewed, that a reasonable estimate of the minimum “closed” CWA Project cost increase anticipated is 10%. So, for planning purposes, any benefits that the CWA provides should be weighed against the anticipated 5-year, \$75-million estimated cost of the CWA.

In summary, your Board and the community currently enjoy a highly flexible, responsive and responsible contracting environment which produces high percentages of local labor involvement and high percentages of DAS-approved apprentices within a competitive bidding environment. Considering the foregoing discussion, staff does not recommend that your Board direct any further action concerning the proposed CWA. Should your Board decide to direct further action concerning a CWA, staff recommends that your Board direct staff to return with a proposal for an “open” CWA negotiation process to minimize the costs associated with the implementation of the CWA.

This item has been reviewed and approved by the County Executive Office, the Auditor-Controller’s office, County Counsel, Airports, Fire, General Services, and Harbor.

Sincerely,



Jeff Pratt
Director
Public Works Agency

Exhibit 1 – Proposed Community Workforce Agreement



Exhibit 2 – PWA Data
Exhibit 3 – GSA Data
Exhibit 4 – Fire Data
Exhibit 5 – Airports Data
Exhibit 6 – Harbor Data
Exhibit 7 – LCP Tracker

