

Advantages & Disadvantages on the Use of a Community Workforce Agreement in the County of Ventura

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Public Works Agency

Board of Supervisors Meeting
September 15, 2020

INTRODUCTION

GOOD MORNING ??

Evaluation only.

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PURPOSE

Response to July 28, 2020 Board Direction:

“Study the advantages and disadvantages of the use of a Community Workforce Agreement. NENT Standard 21.3. County and dependent special district public works projects and report back with recommendations for implementation of a Community Workforce Agreement to the Board of Supervisors by September 15, 2020.”

SPOILER

Staff Recommendation:
(in the Context of Assumed Emergent Nature of the Issue)

Evaluation only.

1. Staff recommends that your Board reject the proposed Community Workforce Agreement (Exhibit 1)
2. Should your Board direct any action to negotiate a Community Workforce Agreement or a Project Labor Agreement, staff recommends that an “open” negotiation process be established

CONVENTIONS

1. **Community Workforce Agreement (CWA)** – an agreement that applies to a class of projects, i.e., more than one.
2. **Project Labor Agreement (PLA)** – an agreement that applies to a single project
3. **Open Agreement** – a CWA or PLA that is negotiated between Unions and County with the participation of community subject matter experts, e.g., contractors, community members
4. **Closed Agreement** – a CWA or PLA negotiated exclusively between Unions and County

DISCLAIMER

Report Preparation Process:

1. 20 days – research, calls, meetings, internet, analysis
(CoVid and vacations – problem)

2. 2 days – regurgitation (writing)

3. 5 days – reviews and edits

4. 2 days – SIRE process

5. 2 days – stakeholder meetings reviewing final letter

DISCLAIMER

1. While this report should be considered preliminary – broad & comprehensive but incomplete and with likely inadvertent omissions – Staff stands by the recommendation Evaluation only.

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2. Some advantages/disadvantages are qualitative (not quantitative) – allows for a range of conclusions

3. Objective and data-driven conclusion was the goal

OVERVIEW

Complex Public Policy Topic:

1. More than a century in the making
2. Discussions are often circular and self referencing with unstated underlying assumptions
3. Many arguments rely on “biased” research
4. Many arguments are qualitative - allowing for multiple conclusions from same information
5. **This presentation will explore two major questions underlying the benefits/costs of the proposed CWA:**
 - **Will the implementation of the proposed CWA result in an increase in “local” hires?**
 - **Will the implementation of the proposed CWA result in additional costs?**

CWA Highlights - Others

1. Riverside Community College District (RCCD)

5-year (2010 – 2015) CWA all Measure C funded projects over \$1M.
Achieved 62% “local resident” (anyone from San Bernardino or
Riverside County, including Los Angeles).
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2. Oxnard Harbor District/Port of Hueneme

3-year CWA approved 12/19 all projects over \$250k. “local resident”
goal 30%. 1 project completed to date – 73% “local resident”.

CWA Highlights - Others

3. Oxnard Union High School District

5-year (2019 - 2024) CWA for all Measure A bond funded projects over \$3M. Goal for “local resident” is 51%. Staff report project times increased by 4 – 6 weeks and cost additional 6 – 8%.

4. City of Berkeley

Have been in a CWA since 2011. Goal for “local resident” 30% - achieved 35 % “local resident” with 2% from city. Staff report that both labor and construction costs increased under the CWA.

CWA Highlights - Others

5. Kern County

No CWA/PLA activity of any kind.

6. Los Angeles County

CWA approved for 5 projects ranging in cost from \$215M to \$1.8B. Targeted hiring of those who face barriers to employment. Targeted goal 10% of labor hours and “local resident” goal of 30% of labor hours (including targeted hiring). No results to report.

CWA Highlights - Others

7. Santa Barbara County

Currently considering CWA for all projects over \$5M. Negotiations underway.

8. South San Luis Obispo Sanitation District

Negotiated PLA for \$30M wastewater treatment plant. Construction has not yet occurred.

Your Board's Goals for a CWA

1. Support 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. Promote 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

Historical CWA – Advantages

1. The potential for Project work disruption is diminished
2. Increased local labor participation on Projects
3. Increase in the quality of the workers and the work
Projects
4. Increase in the quantity and quality of the apprentices
on Projects
5. Increased protection of workers from “wage theft”
6. Deterrent to unscrupulous contractors

Historical CWA – Disadvantages

- 1.Reduced number of Project bidders
- 2.Additional Project administrative burdens on all concerned
- 3.Places constraints on bidders which increase risk = increased Project cost
- 4.Closed agreement between County and Unions
- 5.Adds Project cost

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Proposed CWA - Highlights

Between County of Ventura, Tri-County Building and Trades Council (TCBT), and 21 different crafts (including Southwestern Regional Council of Carpenters (SWRCC), and Laborers Local 585 (Local 585)). –

1. Each craft is subject to a Master Labor Agreement (MLA) – in most cases where the CWA conflicts with the contents of the MLA, the CWA provisions prevail.
2. Staff did not have time to review the 21 MLAs to assess impacts to Project
3. More than 85% of membership roster of signatories is from outside the County of Ventura
4. Does not include signature line for Ventura County contractors nor any contractor associations, e.g., AGC, VCCA, etc.

Proposed CWA – Highlights

Unlevel playing field is created for Project bidders

1. Nonunion signatories limited to 3 core staff and then all members must come from union hall.
2. Union signatories use all of their own employees - No restrictions on Core staff or employees
3. Nonunion signatory Core employee restrictions
 - Must be resident of County for 100 days immediately prior to Project start
 - 2000 hours in craft prior two years
 - Work for contractor 90 of last 120 days
4. Nonunion signatories “take home” pay less when working under CWA (about 32% less) because staff must pay part of base-pay to unions under CWA

Proposed CWA – Highlights

Requires hiring of independent Community Workforce Coordinators (CWC)

1. Estimate cost at 5 FTEs = \$5M/contract period. (Add profit if consultant used as CWC)

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2. Cost could be reduced if work done in-house

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Requires establishment of Project Joint Administrative Committee (JAC)

1. Monitor compliance with the terms and conditions of the CWA
2. Decisions of the JAC must be unanimous for implementation
3. JAC = Project CWC, 2 County representatives, and 3 union representatives

Proposed CWA – Highlights

Sets a goal of 30% of total work hours to be performed by local residents

1. Local Resident defined in section 8.7 and can include veterans from anywhere, and all workers residing in Santa Barbara, San Luis Obispo, and Los Angeles counties – not exclusive to Ventura County
2. CWA's reviewed strive for 30%
 - Exception = Riverside Community College District (50%)
 - Contractors struggling to meet 30% requirement in Los Angeles
3. County of Ventura at 45% local labor for last 5-years
 - 3 data points indicate about 45% over last 11 years

Proposed CWA – Highlights

All apprentices used on the project shall be registered in a “Joint Labor Management Apprenticeship” program

1. Disqualifies local apprentices who have obtained their training in other State approved programs, i.e., requires they sign up for additional training and associated costs – less “take home” pay
2. May discourage bidders who employ these apprentices from bidding

Proposed CWA – Highlights

All employees of a nonunion “signatory” contractor are required to pay “monthly and working dues”

1. Nonunion contractors assert that this results in a 30% reduction in “take home” pay because of required “union dues”.
2. Unions assert that “union dues” are returned as benefits package
3. MLA benefits vesting requirements research beyond the scope
4. Employees prefer more “take home” pay early in their careers

Proposed CWA – Highlights

All building/construction inspectors and field soils and materials inspectors (any quality control or quality assurance personnel) are bound by provisions of the agreement and the MLA for that craft

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1. County uses both employees and consultants for quality control/assurance
2. County staff under SEIU agreement – cost impact unknown at this time
3. Consultant - cost impacts unknown at this time

Proposed CWA – Highlights

No termination language - agreement in place for 5-year period

1. Agreement can be terminated for breach only
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2. Breach determined by CWC, union, and arbitrator (not County and not JAC) under proposed agreement "grievance" procedures
3. If County not satisfied, can go to court to terminate

California Labor Code Requirements

County must:

1. Provide notice to the contractor that the Labor Code applies and the Department of Industrial Relations (DIR) will monitor and enforce compliance on the Project.
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2. Not award a contract to a contractor that is not registered with DIR or that will employ an unregistered subcontractor
3. Report all Project contract awards (above a certain dollar threshold) to DIR

California Labor Code Requirements

Contractor and all subcontractors must:

1. Register with the DIR
2. Pay workers not less than the prevailing wage as determined by the DIR
3. Maintain payroll records and submit certified payrolls to the DIR during the work
4. Meet standards for use of apprentices on the job

County Projects: 5-Year Stats

1. The County has closed approximately \$395M in Projects with 348 general contractors (GC's) who used 768 subcontractors (subs)
2. Union GC's were awarded \$304M (77%) of the total Project dollars
3. 243 of the 348 GC's (70%) were local (County of Ventura)
4. 257 of the 768 subs (33%) were local (County of Ventura)

Note: Most apprentices assigned to jobs in VC come from unions – few exceptions

Review and Discussion - BOS Goals

1. Support preferential hiring of County residents

Discussion: The CWA proposes goal (30%) that is less than current state. “Local Resident” is overly broad and not limited to residents of Ventura County. CWA does not support this BOS goal.

2. Promote social equity through targeted ‘apprenticeship’ hiring of disadvantaged or underrepresented Ventura County communities

Discussion: Nothing in the CWA exceeds already established State requirements for apprentice hiring, or prevailing wages. CWA may hinder existing efforts by others in this regard by limiting the type of apprentices to “Joint Labor Management” programs. CWA does nothing to enhance current state.

Review and Discussion – Proposed CWA Advantages

1. The potential for Project work disruption is diminished

Discussion: There have been no problems with work disruption on PWA Projects for the last 11 years. There have been problem contractors who were slow due to other problems, e.g. financial. This advantage is not applicable in the case of Ventura County – possibly due to the open and competitive bidding environment that exists today. **N/A**

2. Increased local labor participation on Projects

Discussion: No evidence has been presented to date in support of a “net” increase in local labor. An example has been presented (Orange County Union Contractor) that could increase local labor on a project, but the underlying assumptions/conditions forcing the increase are not present in the agreement. County projects currently enjoy a high percentage of labor from residents within Ventura County. **N/A**

Review and Discussion – Proposed CWA Advantages

3. Increase in the quality of the workers and the work Projects

Discussion: Respectfully disagree. The quality of the work depends upon the plans, specifications, materials testing, and inspection on the Project – all of which is the responsibility of County staff. The quality of the workers is the problem of the contractor and is not an explicit Project consideration. This assertion may have been true in past decades but it is not true in Ventura County today. **N/A**

4. Increase in the quantity and quality of the apprentices on Projects

Discussion: The State has set standards for the quantity and quality of apprentices on the job. All County Projects meet or exceed these standards. For example, the State requires that 20% of all labor hours go to apprentices. Currently County Projects average 30% of labor hours to apprentices. **N/A**

Review and Discussion – Proposed CWA Advantages

5. Increased protection of workers from “wage theft”

Discussion: The CWA would increase protection against wage theft by adding a third level of protection to projects. The CWC would provide additional personnel for review of “deviation” complaints. **Agree**

6. Deterrent to unscrupulous contractors

Discussion: The County of Ventura already provides a meaningful deterrent to unscrupulous contractors – your debarment ordinance. Not clear how the CWA would deter unscrupulous contractors – other than unscrupulous contractors may not bid a CWA job. No evidence provided in support of this assertion. **N/A**

Review and Discussion – Proposed CWA Disadvantages

1. Reduction in number of bidders on Projects

Discussion: Nonunion contractors maintain that they cannot competitively bid CWA Projects. They cite inherent risks of different staffing, administrative burden, and union contractor built-in advantages among those factors that reduce their competitiveness by increasing the cost of doing work. So whether they bid or not there will be an associated cost increase: if they bid they build in cost, if they don't bid, there is reduced competition by definition.

2. Constraints on contractors which increase risk

Discussion: We have discussed many of the CWA requirements that increase risk to the contractor. Easy to identify, impossible to quantify given the time constraints.

Review and Discussion – Proposed CWA Disadvantages

3. Additional administrative burdens on all concerned

Discussion: It is clear that there will be an increased administrative burden. Easy to identify, difficult to quantify in the time allotted. CWC's, JAC's, grievance procedures, hiring plans, MLA's are examples of administrative creep.

4. “Closed” agreement omitting those responsible for the work

Discussion: A large portion of the Ventura County contracting community and all of the nonpartisan representative construction associations locally and nationally are opposed to “closed” agreements. However some of the opposed contractors and the associations support an “open” agreement. This allows subject matter experts (contractors and their reps) to weigh in on the CWA's contents – reducing uncertainties, reducing risks, and reducing costs associated with CWA implementation.

Review and Discussion – Proposed CWA Disadvantages

5. Added Project costs

Discussion: By definition there will be a cost increase associated with the implementation of a CWA. So the increase question is clearly one of magnitude.

Opponents of CWA's suggest cost increases that exceed 40%. Proponents of CWA's are dismissive of cost increases, suggesting a few percent at most. All studies given to staff and found on websites to date have inherent bias, were not prepared by practitioners, and/or were inconclusive. While a definitive, unbiased study may exist, staff did not find it. And it is unlikely to exist. Laws, policies, practices, Projects, and conditions vary in the extreme spatially (location) and between agencies with differing missions.

Staff did review the “biased” materials presented and concluded that as many studies exist claiming cost increases as studies that show no/minimal cost increase.

Review and Discussion – Proposed CWA Disadvantages

5. Added Project costs (continued)

While most CWA proponents acknowledge cost increases of CWA's, they argue that the ancillary benefits (dependent increased local hiring) that accrue offset and exceed the cost increase.

All of the listed CWA disadvantages represent a constellation of issues that involve some amount of added cost. Some of the cost increase factors can be demonstrated quantitatively, e.g. CWC. Others must be discussed qualitatively/statistically, e.g., increased risk and reduction in bids.

Based upon review of the CWA requirements, discussions with City of Berkeley and OUHSD staff, and extensive experience with construction administration – staff concludes that a reasonable and conservative estimate of increased costs is 10%. Given that County planned work that would be covered by this agreement is \$750M over the term of the agreement – a minimum cost of CWA implementation is estimated at \$75M or \$15M/year.

Estimated Cost - Impacts

1. PWA – deferred maintenance, delayed public safety projects (levees), lowered PCI, water and sanitation rate increases
2. GSA – deferred maintenance, fewer projects, increased costs later
3. Fire – adverse impact to projects – especially outdated fire stations and existing communications infrastructure
4. Airports/Harbor – delayed or cancelled projects, rate increases

IN ALL CASES FEWER PROJECTS – MEANING LESS LOCAL LABOR

Alternatives to Proposed CWA

1. Project public outreach → VCVC Hospital Replacement Wing
2. Preliminary Study (shallow end of the pool)
 - Pilot - Single project PLA
 - Data Collection – LCP Tracker or equivalent on all Projects
3. “Open” CWA or PLA agreement
 - Assign a “committee” or team and its members
 - Set schedule for negotiations
 - Report back to the BOS on arranged date
4. No CWA or PLA – annual data collection w/reports to BOS on progress
5. Further study w/report back – staff or expert consultant
6. Wage Theft Ordinance
7. Other?

Proposed CWA - Staff Findings of Fact

1. Proposed CWA falls short of ensuring Board goals – See percentage (30 v. 44), “Local Resident”, et al – will not increase local labor – **cannot be mandated (aspirational only)**

Evaluation only.

2. There will be cost increases associated with CWA implementation
3. Project wages the same with or without CWA. However, there will be local labor whose “take home” pay is reduced by 30% or more
4. The number of County Projects will be reduced – impacts to local labor
5. Open CWA negotiation will reduce/mitigate cost increases

Proposed CWA - Staff Findings of Fact

6. No significant or statistically significant local experience with CWA's or PLA's
7. Laws, policies, practices, Projects and conditions vary in the extreme spatially (location) and between agencies with differing missions – there is no “one size” fits all
8. County of Ventura not plagued by work stoppages
9. Will create an unlevel playing field among contractors
10. Staff has cumulative “100's” of years of construction management and oversight experience

Proposed CWA - Staff Findings of Fact

11. It will not increase the quality of work on County Projects
12. It will not increase the quality of apprentices on projects
13. CWA requires full compliance with all craft ML A's
14. Ties your Boards hands for 5-years – no termination language
15. Creates uncertainty and risk for most contractors – increased risk = increased cost
16. OTHER VIABLE ALTERNATIVES HAVE NOT BEEN EXPLORED

Proposed CWA - Staff Findings (Qualitative)

1. Will increase the cost of Projects – conservatively estimated at 10%
2. Will reduce the number of Project bidders
3. Cost increases lead to three primary impacts – deferred maintenance, reduction in projects (delayed) and/or rate increases
4. Any proposed CWA should be an open negotiation process
5. Laws, policies, practices, Projects, and conditions vary in the extreme spatially (location) and between agencies with differing missions – CWA's should be situationally specific, NOT one size fits all

Proposed CWA - Staff Findings (Qualitative)

6. Nonunion signatories to CWA will not receive the benefits for which they must pay – vesting and safe harbor requirements unknown at this time
7. There will not be an increase in the quantity of local apprentices on a job – DIR requirements, and dispatching practices experienced by local contractors
8. It will reduce the number of County Projects with resultant impacts to local labor who would otherwise have been eligible to work on projects – dependent upon the cost of CWA

Staff Recommendations

1. Staff recommends that your Board reject the proposed Community Workforce Agreement (Exhibit 1)

Evaluation only.

2. Should your Board direct any action to negotiate a Community Workforce Agreement or a Project Labor Agreement, staff recommends that an “open” negotiation process be established



Questions?

Evaluation only.

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