



The State of Maryland

Executive Department

01.01.2023.19

(Rescinds Executive Order 01.01.2013.05)

Procurement Guidelines: Authorizing Project Labor Agreements for Large-Scale Public Work Contracts and Promoting Apprenticeship Agreements and Community Hiring

- WHEREAS, When investing significant public resources, the State of Maryland has a compelling interest in taking steps to ensure the timely, safe, and economical completion of public work projects and public-private partnerships;
- WHEREAS, When investing significant public resources, the State of Maryland also has a compelling interest in considering the impact on the development of critical job skills needed in construction, the expansion of employment opportunities for residents, and the overall economic benefits to the State of Maryland and its economy;
- WHEREAS, Large-scale public work projects pose significant challenges to efficient and timely procurement by units within the executive branch of Maryland State Government;
- WHEREAS, Construction employers do not have a permanent workforce, which makes it difficult to predict labor costs when bidding on contracts and to ensure a steady supply of labor on contracts being performed. Challenges also arise because construction projects typically involve multiple employers at a single location and labor disputes involving one employer can delay the entire project;
- WHEREAS, Lack of coordination among various employers and uncertainty about the terms and conditions of employment of various groups of workers, can create friction and disputes in the absence of an agreed-upon resolution;
- WHEREAS, Labor and employment disputes threaten the efficient and timely completion of public work projects undertaken by State contractors; especially on large-scale projects which are generally complex and long-term;
- WHEREAS, Project labor agreements are often effective in preventing labor and employment-related disputes because they provide structure and stability to large-scale public work projects;

WHEREAS, In appropriate circumstances, project labor agreements can facilitate the timely and efficient completion of large-scale public work projects by making available a ready, reliable, and adequate supply of highly trained and skilled craft workers, permitting public and private owners and contractors to accurately determine project labor costs at the outset and to establish working conditions for the duration of the project, as well as provide a negotiated commitment as a legally enforceable means of assuring labor stability and avoiding disruptions such as strikes, lockouts, or slowdowns over the life of the project;

WHEREAS, The use of project labor agreements should only be considered in those limited circumstances when such an agreement clearly benefits the interests of the State from a cost-effective, efficiency, quality, health, safety, and timeliness standpoint;

WHEREAS, The potential benefits of any proposed project labor agreement must be carefully considered with respect to the effect such an agreement may have on competitive bidding, project costs, and women and minority- owned businesses;

WHEREAS, Project labor agreements are of great potential economic benefit to the State in appropriate construction projects which will extend for a substantial period of time, and involve a substantial number of contractors, subcontractors, trades, and craft workers, employment opportunities, and have a substantial dollar value;

WHEREAS, Encouraging the growth of apprenticeship training programs in the Maryland construction industry and employment in local communities where projects are located, particularly in areas with high unemployment, will help protect the State's interest in successful project delivery, promote critically needed workforce development in construction, and combat unemployment by expanding opportunities for individuals to develop their skills and compete for jobs in a rapidly changing economy; and

WHEREAS, It is the objective of the Moore-Miller Administration to advance policies that promote increased access to work, wages, and wealth.

NOW, THEREFORE, I, WES MOORE, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, HEREBY RESCIND EXECUTIVE ORDER 01.01.2013.05 AND PROCLAIM THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY:

A. Scope. These guidelines apply to any State department, agency, authority, board, or instrumentality, within the executive branch of the Maryland State Government, that is under the control of the Governor.

- B. Definitions. The following words have the meanings indicated:
1. "Community Benefit Agreement" means a contract signed by one or more recognized community association(s) and a labor organization that requires the labor organization to provide specific amenities, mitigations, economic impacts, local workforce training guarantees and/or other benefits in exchange for community support of a project.
 2. "Construction" means the (1) process of building, altering, improving, or demolishing an improvement to real property and (2) includes any major work necessary to repair, prevent damage to, or sustain existing components of an improvement to real property, as defined in Md. Code Ann., State Fin. & Proc. § 11-101(t)(1)-(2).
 3. "Labor Organization" means a labor organization as defined in Md. Code Ann., State Gov't § 20-601(i)(1)-(2) of which building and construction employees are members.
 4. "Large-scale public work contract" means a contract for construction of a public work, as defined in Md. Code Ann., State Fin. & Proc. § 17-201(k), for which the total monies committed by the State, including direct funding, issuance of bonds, and tax increment financing is \$20 million or more.
 5. "Project Labor Agreement" is a pre-hire collective bargaining agreement between the successful bidder on a large-scale public work contract and one or more labor organizations that establishes terms and conditions of employment for all crafts performing work on a specific construction project.
 6. "Recognized Community Association" means a community group located in an area impacted by the large-scale public work contract that is organized collectively around particular interests for the purpose of addressing issues and interests common to that community.
 7. "Registered Apprenticeship Program" means a program that is registered with, and approved by, the U.S. Department of Labor or the Maryland Department of Labor, evidenced by a certificate of registration or other appropriate document as meeting the apprenticeship standards.
 8. "Socioeconomic Procurement Programs" refer collectively to the State's Minority Business Enterprise Program; Veteran-owned Small Business Enterprise Program; and Small Business Reserve Program.

9. "Socioeconomic Procurement Program Goals" refer to the State's goals of directing 29% of all procurement expenditures towards certified Minority Business Enterprise firms and 1% towards certified Veteran-Owned Small Business Enterprise firms.

10. "Unit of State government" means an agency or unit of the Executive Branch of State government.

Authorizing Project Labor Agreements for Large-Scale Public Work Contracts

C. A unit of State government shall consider either (1) requiring the use of a project labor agreement or (2) including the use of a project labor agreement as an evaluation factor in connection with a large-scale public work contract that meets the criteria established in this Order.

D. The decision to require the use of a project labor agreement or include the use of a project labor agreement as an evaluation factor in connection with a large-scale public work contract shall be made on a project-by-project basis.

E. The decision to require the use of a project labor agreement or include the use of a project labor agreement as an evaluation factor in connection with a large-scale public work contract shall be made only where such an agreement will advance the State's interest in cost-effectiveness, efficiency, quality, health, safety, timeliness, employing a skilled labor force, and producing labor stability.

F. In making the decision whether to require the use of a project labor agreement or include the use of a project labor agreement as an evaluation factor in connection with a large-scale public work contract, the following factors must be considered:

1. The potential for labor disruptions, such as strikes, lockouts, or slowdowns, which could affect completion of the project;
2. The number of trades and crafts anticipated to be used on the project;
3. The need and urgency of the project and the harm to the public if completion of the project is delayed;
4. The size and complexity of the project;
5. The funding sources for the project and whether the project includes federal funds;

6. The impact on project costs, if any, and the State's obligation to encourage maximum practicable competition favoring open competitive bidding during the procurement process;
7. The impact on the State's socioeconomic policies, including the policy to advance women and minority-owned businesses and their ability to compete.

G. The decision to require the use of a project labor agreement or include the use of a project labor agreement as an evaluation factor in connection with a large-scale public work contract shall be made prior to selecting the method of contracting for the project and shall be supported by written findings that clearly demonstrate how the use of a project labor agreement will benefit the project and the interests of the public and the State from a cost-effective, efficiency, quality, safety and timeliness standpoint. The fact that a project labor agreement will be used or included as an evaluation factor shall be set forth in the solicitation of bids issued for the project.

Requirements for Project Labor Agreements

- H. Any project labor agreement reached pursuant to this Order shall:
1. Bind all contractors and subcontractors on the construction project through the inclusion of appropriate bid specifications in all relevant solicitation provisions and contract documents;
 2. Allow all union and non-union contractors, subcontractors, and material suppliers who agree to abide by the terms of the project labor agreement to compete for work to be performed and materials to be provided without regard to whether they are otherwise parties to collective bargaining agreements;
 3. Contain guarantees against strikes, lockouts, slowdowns, or other similar disruptions;
 4. Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising before the work is completed;
 5. Guarantee equal opportunities in employment and prohibit discrimination in recruiting, interviewing, hiring, upgrading, setting work conditions, or discharging employees or workers as required by federal and State law;
 6. Demonstrate access to a reliable supply of properly trained labor personnel who possess the requisite skill and safety training to ensure successful project delivery;

7. Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality or work, safety, and health;
8. Outline a diversity plan that details efforts and commitments to conduct outreach and recruitment for employment and apprenticeship positions in the large-scale public work contract for minority group members, members of disadvantaged communities, and women; and
9. Outline a plan that details how expenditures for the large-scale public work contract will support the State's Socioeconomic Procurement Program Goals.
10. Fully conform to all State and federal statutes, regulations, and executive orders.

Incorporating Community Benefit Agreements

I. If a unit of State government decides to require the use of a project labor agreement in connection with a large-scale public work contract, the State unit shall consider requiring bidders to incorporate a community benefit agreement for appropriate projects.

Project Labor Agreements Not Required

J. This Order does not require a unit of State government to use or include the use of a project labor agreement as an evaluation factor in connection with a large-scale public work contract.

K. This Order does not promote the selection of any union, trade council, or labor organization.

Apprenticeship Programs for Public Projects and Public-Private Partnerships

L. A unit of State government shall consider whether it is in the best interest of the State to use contractors who participate in registered apprenticeship programs and offer a reliable plan for labor staffing on a public project or public-private partnership.

M. The decision to require or encourage the use of contractors who participate in registered apprenticeship programs and offer a reliable plan for labor staffing on a public project or public-private partnership shall be made on a project-by-project basis.

N. The decision to require or encourage the use of contractors who participate in registered apprenticeship programs and offer a reliable plan for labor staffing on a public project or public-private partnership shall be

made only where such an agreement will advance the State's interest in cost-effectiveness, efficiency, quality, health, safety, timeliness, employing a skilled labor force, and producing labor stability.

O. In making the decision to require or encourage the use of contractors who participate in registered apprenticeship programs and offer a reliable plan for labor staffing on a public project or public-private partnership, the unit of State government shall consider the totality of the circumstances, including the following factors:

1. The number of trades and crafts anticipated to be used on the project;
2. The need and urgency of the project and the harm to the public if completion of the project is delayed;
3. The size and complexity of the project;
4. The impact on project costs, if any, and the State's obligation to encourage maximum practicable competition favoring open competitive bidding during the procurement process;
5. The impact on the State's socioeconomic procurement program policies, including the policy to advance women and minority-owned businesses and their ability to compete; and
6. The impact on workforce development and construction and the potential for generating skills training and employment opportunities for state residents.

P. The decision to require or encourage the use of contractors who participate in registered apprenticeship programs and offer a reliable plan for labor staffing on a public project or public-private partnership shall be made prior to selecting the method of contracting for the project or partnership and shall be supported by written findings that set forth the justification.

Q. For public projects or public-private partnerships where the use of contractors who participate in registered apprenticeship programs and offer a reliable plan for labor staffing will be required or encouraged, applicable procurement documents shall clearly:

1. Specify whether such qualifications are mandatory or will be used as an evaluation factor in awarding the contract; and
2. State any applicable apprenticeship utilization targets or thresholds that will be considered in the determination.

R. The Maryland Department of Labor shall determine whether a proffered apprenticeship program is in compliance with applicable program requirements before the contracting agency makes a decision.

S. A successful bidder shall demonstrate how the bidder will have access to the reliable supply of properly trained labor personnel who possess the requisite skill and safety training to ensure successful delivery through either sponsoring an apprenticeship program that will supply apprentices to the project or reaching an agreement with an entity that operates a registered apprenticeship program that will ensure such supply.

T. The bidder's fulfillment of the requirements under section (S) of this Order must be approved by the State unit overseeing the project.

Community Hiring in High Unemployment Areas

U. On public projects or public-private partnerships with projected costs exceeding \$5 million, a unit of State government shall consider whether all or a substantial part of the project is within an area of higher than average unemployment and, if so, whether it is in the best interest of the State to weigh as a factor in the procurement or public notice of solicitation whether a bidder voluntarily submits a community hiring, training, and/or outreach plan for high unemployment areas.

V. If a unit of State government determines based on the totality of the circumstances, that it is in the best interests of the State to encourage the voluntary submission of a community hiring, training and/or outreach plan on a public project or public-private partnership, the decision shall be accompanied by the following:

- I. A written finding that sets forth the reasons supporting the decision
2. A definition of "high unemployment area" and delineation of that area for purposes of the procurement or public notice of solicitation; and
3. An explanation of how the proffer of a community hiring, training, and/or outreach plan will be evaluated and weighed in the procurement or public notice of solicitation.

General Provisions

W. The guidelines contained in this Executive Order do not constitute or create an express or implied contract. It is not intended to, and does not, create contractual obligations with respect to any matter it covers.

X. Nothing in this Executive Order shall preclude a unit of State government from considering either (1) requiring the use of a project labor agreement or (2) including the use of a project labor agreement as an evaluation factor in connection with a large-scale public work contract where the State commitment is below \$20 million.

Y. This Executive Order shall be implemented in a manner that is consistent with all applicable statutes and regulations. Nothing in this Executive Order shall operate to contravene any State or federal law or to affect the State's receipt of federal funding.

Z. If any provision of this Executive Order or its application to any person, entity, or circumstance is held invalid by any court of competent jurisdiction, all other provisions or applications of the Executive Order shall remain in effect to the extent possible without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are severable.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Baltimore, this 17th Day of November 2023.



Wes Moore
Governor

ATTEST:



Susan C. Lee
Secretary of State

