

EXECUTIVE ORDER 01.01.2013.05

Procurement Guidelines — Authorization of Project Labor Agreements, Authorization of Apprenticeship Agreements, and Community Hiring

WHEREAS, Strategic investments in public works projects and public-private partnerships in the State of Maryland are critical to building sound infrastructure necessary for essential government operations, including in our transportation, education, energy, and technology sectors;

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 works projects and public-private partnerships, including steps to guarantee a reliable and secure supply of properly skilled labor personnel through the promotion of apprenticeship programs and, in some cases, project labor agreements;

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, Under existing law, State agencies are encouraged to maximize the benefits of State purchasing to the Maryland economy by considering, among other things, the number of jobs expected to be generated for Maryland residents; and

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 long-term unemployment by expanding opportunities for individuals to develop their skills and compete for jobs in a rapidly changing economy.

NOW, THEREFORE, I, MARTIN O'MALLEY, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, DO HEREBY PROCLAIM THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY:

Promotion of Apprenticeships

A. On a project-by-project basis, a State department, agency, authority, board, or instrumentality that is under the control of the Governor, shall consider whether 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 is in the best interests of the State after considering the totality of the circumstances, including the following factors:

(1) The benefits to the public relative to cost, efficiency, timeliness, quality, health, safety, employment of a skilled labor force, and labor stability;

- (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, complexity, and cost of the project;
- (5) The impact on project costs, if any, and the State's obligation to encourage maximum practicable competition during the procurement process;
- (6) The impact on workforce development in construction and the potential for generating skills training and employment opportunities for State residents; and
- (7) The impact on the State's socioeconomic policies, including the policy to advance women-owned and minority-owned businesses.

B. If the State department, agency, authority, board, or instrumentality determines that it is in the best interests of the State to require or encourage the use of contractors who participate in registered apprenticeship training programs and offer a reliable plan for labor staffing on a particular public project or public-private partnership, the decision shall be supported by a written finding that sets forth the justification.

C. For public projects or public-private partnerships in which the use of such contractors who offer these qualifications and performance capabilities will be required or encouraged, applicable procurement documents clearly shall specify whether such qualifications are mandatory or will be considered as a factor for which credit will be given in awarding the contract. The Secretary of the Department of Labor, Licensing and Regulation shall determine, after consultation with the Apprenticeship and Training Council, whether a proffered apprenticeship program is in compliance with applicable program requirements before the contracting agency makes a decision on credit for that requirement or factor.

D. If the successful bidder participates in a registered apprenticeship program (defined as a program that is registered with the U.S. Department of Labor or the Maryland Apprenticeship and Training Council pursuant to the Labor and Employment Article of the Annotated Code of Maryland), the bidder shall execute either (1) a project labor agreement (see Presidential Executive Order 13502 for typical project labor agreement provisions) or (2) an agreement with an entity that operates a registered apprenticeship program. The agreement must demonstrate that the bidder will have access to a reliable supply of properly trained labor personnel who possess the requisite skill and safety training to ensure successful project delivery. The agreement must be approved by the State entity overseeing the project.

Community Hiring in High Unemployment Areas

E. On public projects or public-private partnerships with projected costs exceeding \$5,000,000, a State department, agency, authority, board, or instrumentality that is under the control of the Governor, 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 interests 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.

F. If the State department, agency, authority, board, or instrumentality 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 particular public works project or public-private partnership, the decision shall be accompanied by the following:

- (1) A written finding that sets forth the substantial 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.

Limitations

G. All State departments, agencies, authorities, boards, or instrumentalities shall implement this Executive Order in a manner consistent with the important public policy favoring advancement of women-owned and minority-owned businesses as set forth in Title 14, Subtitle 3 of the State Finance & Procurement Article of the Annotated Code of Maryland and Title 21 of the Code of Maryland Regulations.

H. All State departments, agencies, authorities, boards, or instrumentalities shall implement this Executive Order in a manner that is consistent with all applicable statutes and regulations. Nothing in this Executive Order shall be construed to contravene any State or federal law or to jeopardize federal funding. If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order that can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 20th Day of September, 2013.

MARTIN O’MALLEY
Governor

ATTEST:

JOHN P. MCDONOUGH
Secretary of State