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March 19, 2024

COMPTROLLER'S MEMORANDUM NO. 2024 – 05

TO: Department Heads

ATTN: Construction Project Managers

FROM: Keith A. Regan, Comptroller 

SUBJECT: Guidelines – Project Labor Agreement (PLA) for State Construction Projects

This Comptroller's Memorandum 2024-05 dated March 19, 2024, supersedes Comptroller's Memorandum 2024-03 dated February 16, 2024.

By Administrative Directive No. 24-01, Governor Green declared that the executive agencies of the State of Hawaii will adhere to the terms of the PLA executed by Governor Green (Attachment A) on a variety of construction projects in order to address obstacles that might arise due to a lack of labor coordination. Administrative Directive No. 24-01 tasked the Department of Accounting and General Services to establish guidelines to implement the directive.

Attached are the "Guidelines for Implementing Administrative Directive No. 24-01 relating to Use of Project Labor Agreements for State Construction Projects". These guidelines shall be effective immediately.

Attachments

Guidelines for Implementing Administrative Directive No. 24-01 relating to Use of Project Labor Agreements for State Construction Projects

**Issued by the Department of Accounting and General Services
Effective March 19, 2024**

Discussion

Large-scale construction projects pose special challenges to efficient and timely procurement and administration by the State Government. Construction employers typically do not have a permanent workforce, which makes it difficult for them to predict labor costs when bidding on contracts and to ensure a steady supply of labor on contracts being performed.

Challenges may also arise due to the fact that construction projects can typically involve multiple employers at a single location and labor disputes involving one employer can delay the entire project. Furthermore, lack of coordination among various employers, or uncertainty about the terms and conditions of employment of various groups of workers, may create friction and disputes in the absence of an agreed-upon resolution mechanism. These problems threaten the efficient and timely completion of construction projects undertaken by State contractors and, especially on larger projects, which are generally more complex and of longer duration, these problems tend to be more pronounced.

The use of a project labor agreement may prevent these problems from developing by providing structure and stability to large-scale construction projects, thereby promoting the efficient and expeditious completion of State construction contracts.

To that end, Governor Green signed a PLA that covers all executive agency construction projects in excess of one million five hundred thousand dollars (\$1,500,000). Under the PLA, executive agencies shall require contractors to adhere to the terms of the PLA through execution of an Agreement-To-Be Bound (Attachment A) as further described below.

The PLA does not specify an effective date, and it is recognized that agencies will require time to revise solicitation documents for affected projects already in the design and procurement processes. Therefore, the PLA shall apply to all Covered Projects, as that term is defined in the PLA, initiated and for which solicitations are issued in the period commencing July 1, 2024, through the date on which the PLA expires, currently December 31, 2026, unless extended pursuant to the provisions of PLA Article XXI; provided that the PLA shall not apply to any project for which the bid advertisement or the request for proposals is published after expiration of the PLA.

The provisions of the PLA shall apply to each Covered Project subject to the terms of the PLA until completion of the project without regard to expiration of the PLA prior to such completion.

Policy

Accordingly, in order to promote the efficient procurement, administration, and completion of State construction projects under the PLA, Governor Green issued Administrative Directive No. 24-01 (Directive) dated February 16, 2024, requiring all executive branch agencies to adhere to the terms of the PLA for all Covered Projects, as that term is defined by the PLA, in order to promote

economy and efficiency.

All construction contracts for Covered Projects shall:

- a. Bind all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents, as well as the execution of an Agreement-To-Be-Bound as required by the PLA;
- b. Allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;
- c. Fully conform to all statutes, regulations, and executive orders.

Solicitation Guidelines

Covered Projects shall comply with State procurement laws and administrative rules and follow the competitive sealed bidding and competitive sealed proposal provisions set forth in Sections 103D-302, 103D-303, and 103D-306 Hawaii Revised Statutes, respectively. The relevant agency shall make adherence to the terms of the PLA part of the solicitation documents for the project. The instructions to bidders/offerors shall provide that the agency has the right to select a qualified offerors for the award of project contracts without reference to whether the offerors are unionized, so long as the bidders/offerors comply with the PLA and execute the required Agreement-To-Be-Bound.

The instructions to bidders/offerors shall provide that the PLA shall be binding on all contractors and subcontractors on the project through inclusion of appropriate specifications in all relevant solicitation documents. Following award of the contract for the project, the Agreement-To-Be-Bound shall be finalized and executed by the contractor and all subcontractors.

The agency shall include the following statement in the solicitation document:

The Contractor who is awarded the project shall be required to submit to the Department of _____ a complete, fully executed Agreement-To-Be-Bound within fourteen (14) calendar days of project award. The Contractor must also obtain Letters of Assent from each subcontractor of whatever tier who may be employed on the project and submit copies of such Letters to the Department of _____ within fourteen (14) calendar days of project award. The required form of the Contractor's Agreement To Be Bound and the subcontractors' Letter of Assent may be found at _____. Failure to timely submit any required Agreement-To-Be-Bound or any required Letter of Assent shall be cause for the State in its sole discretion to rescind the subject award and to award the project to: the responsive and responsible offeror with the next lowest bid price for solicitations made under HRS 103D-302; or the next highest ranked offeror satisfying all solicitation requirements for solicitations made under HRS 103D-303.

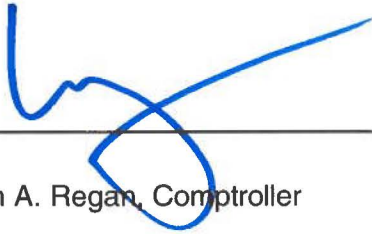
Conditions

The Contractor shall maintain in a current status throughout the life of the contract the Agreement-To-Be-Bound and any Letter of Assent entered into.

Agencies shall remain impartial concerning any dispute between labor and contractor management and not undertake the conciliation, mediation, or arbitration of a labor dispute. All labor disputes shall be resolved pursuant to the procedure set forth in the PLA.

Effective Date

This Guideline shall apply to all solicitations for projects subject to the PLA issued on or after July 1, 2024, and on or before the date on which the PLA expires.



Keith A. Regan, Comptroller