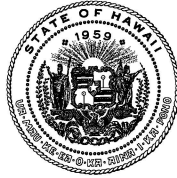


JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



KEITH A. REGAN
COMPTROLLER
KA LUNA HO'OMALU HANA LAULĀ

MEOH-LENG SILLIMAN
DEPUTY COMPTROLLER
KA HOPE LUNA HO'OMALU HANA LAULĀ


STATE OF HAWAII | KA MOKU'ĀINA O HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES | KA 'OIHANA LOIHELU A LAWELAWE LAULĀ
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

July 26, 2024

COMPTROLLER'S MEMORANDUM NO. 2024-20

TO: All Department Heads

ATTN: Construction Project Managers

FROM: Keith A. Regan, Comptroller 

SUBJECT: Guidelines - Project Labor Agreements (PLA) for State Construction Projects

This Comptroller's Memorandum 2024-20 dated July 26, 2024, supersedes Comptroller's Memorandum 2024-09 dated March 28, 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 July 26, 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 for any executive agency Covered Project, as defined in Article II, Definitions, of the PLA). 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 for which bids are opened 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 by the awarded bidder as required by the PLA;
- b. 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, and 103D-303, 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 offeror for the award of a project contract without reference to whether the offeror is unionized, so long as the bidder/offeror complies with the PLA and executes 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 to whom the award is made.

The agency shall include the following statements in the solicitation notice:

The definitions of the terms 'Contractor' and "Subcontractor" for the purposes of this solicitation are those contained in the agency's General Terms and Conditions for Construction, not as defined in the PLA.

The required form of the Contractor's Agreement To Be Bound may be found at ___. Any Letter of Assent shall take the substantial form of the Agreement To Be Bound.

Any subcontractor performing only trade work not represented by PLA signatories shall not be required to submit a Letter of Assent. However, any such subcontractor shall be required to timely provide to the awarded Contractor a written statement attesting that the subcontractor will be performing only work not subject to the PLA, which Attestation of Exemption shall be executed by a person authorized to bind subcontractor. The awarded Contractor shall provide any such Attestation of Exemption to the Department upon demand.

The Contractor who is awarded the project must:

1. Obtain either a Letter of Assent or Attestation of Exemption, as appropriate, from each subcontractor of any tier who may be employed on the project and make copies of such documents available to the Department upon demand.
2. Execute an Agreement-To-Be-Bound.
3. Submit to the Department of _____ a complete, fully executed Agreement-To-Be-Bound within fourteen (14) calendar days of project award, or as soon thereafter as is practicable as determined by the Department. Failure to timely submit any required

Agreement-To-Be-Bound or to provide upon demand any required Letter of Assent or Attestation of Exemption 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 a solicitation made under HRS 103D-302; or the next highest ranked offeror satisfying all solicitation requirements for a solicitation made under HRS 103D-303.

By submitting an executed Agreement To Be Bound the Contractor shall be deemed to have certified that all required Letters of Assent and Attestations of Exemption have been gathered and will be made available to the Department upon demand.

Contractors and their subcontractors (of any tier) are not required to be party to any collective bargaining agreement to participate in a Covered Project.

Conditions

The Contractor shall maintain in a current status throughout the life of the contract the Agreement-To-Be-Bound, and all Letters of Assent and Attestations of Exemption from subcontractors of all tiers

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