



EXECUTIVE CHAMBERS

HONOLULU

NEIL ABERCROMBIE
GOVERNOR

May 22, 2012

ADMINISTRATIVE DIRECTIVE NO. 12-05

TO: All Department Heads

SUBJECT: Use of Project Labor Agreements for State Construction Projects

Discussion

Large-scale construction projects pose special challenges to efficient and timely procurement 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 also arise due to the fact that construction projects 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, can create frictions and disputes in the absence of an agreed-upon resolution mechanism and 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.

Policy

Accordingly, in order to promote the efficient administration and completion of State construction projects, I direct all executive branch agencies as follows:

1. It shall be the policy of the State Government to encourage executive agencies to consider requiring the use of project labor agreements in connection with

large-scale construction projects in order to promote economy and efficiency in State procurement.

2. In awarding any contract in connection with a large-scale construction project, or obligating funds pursuant to such a contract, executive agencies may, on a project-by-project basis, require the use of a project labor agreement by a contractor where use of such an agreement will (i) advance the State Government's interest in achieving economy and efficiency in State procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters, and (ii) be consistent with law.

3. If an executive agency determines under section 2 of this directive that the use of a project labor agreement will satisfy the criteria in clauses (i) and (ii) of that section, the agency may, if appropriate, require that every contractor or subcontractor on the project agree, for that project, to become a party to a project labor agreement with one or more appropriate labor organizations.

4. Any project labor agreement reached pursuant to this directive 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;

(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) Contain guarantees against strikes, lockouts, and similar job disruptions;

(d) Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the project labor agreement;

(e) Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and

(f) Fully conform to all statutes, regulations, and executive orders.

5. This directive does not require an executive agency to use a project labor agreement on any construction project, nor does it preclude the use of a project labor agreement in circumstances not covered by this directive, including leasehold arrangements and projects receiving Federal financial assistance.

6. Definitions.

- (a) The term "labor organization" as used in this directive means a labor organization as defined in 29 U.S.C. section 152(5).
- (b) The term "construction" as used in this directive means construction, rehabilitation, alteration, conversion, extension, repair, or improvement of buildings, highways, or other real property.
- (c) The term "large-scale construction project" as used in this directive means a construction project where the total cost to the State Government is \$25 million or more.
- (d) The term "executive agency" as used in this directive means all of the principal departments established in section 26-4 of Hawaii Revised Statutes and their offices, departments, instrumentalities and administratively attached agencies.
- (e) The term "project labor agreement" as used in this directive means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. section 158(f).

7. Within 120 days of the date of this directive, the Department of Accounting and General Services in coordination with any other interested State executive agency, to the extent permitted by law, shall take whatever action is required to establish guidelines for the implementation of this directive.

8. **Severability.** If any provision of this directive, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this directive and the application of the provisions of such to any person or circumstance shall not be affected thereby.

9. **General.**

- (a) Nothing in this directive shall be construed to impair or otherwise affect:
 - (i) Authority granted by law to an executive department, agency, or the head thereof; or
 - (ii) Functions of the Department of Budget and Finance relating to budgetary, administrative, or legislative proposals.
- (b) This directive shall be implemented consistent with applicable law and subject to the availability of appropriations.
- (c) This directive is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party

against the State, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

10. Effective Date. This directive shall be effective immediately and shall apply to all solicitations for contracts issued on or after the effective date of the implementation guidelines established under section 7 of this directive.

NEIL ABERCROMBIE,
Governor, State of Hawai'i