



STATE OF NEW YORK
DEPARTMENT OF STATE
FILED MAY 25 1960
H. S. Siffert
Secretary of State

State of New York

Executive Chamber

No. 125

E X E C U T I V E O R D E R

ESTABLISHING A COUNCIL OF CONTRACTING AGENCIES

WHEREAS, it is the established policy of the State of New York to award certain state contracts to the lowest responsible and reliable bidder as will best promote the public interest;

WHEREAS, the statutes requiring competitive bidding of state contracts and approval of subcontractors have been interpreted by the courts to authorize contracting agencies to examine the responsibility of bidders for contracts and proposed subcontractors, on a case by case basis, including, but not limited to an examination of the skill, judgment, integrity, good faith, sufficiency of financial resources, quality of execution, performance and conduct on prior similar contracts, and labor practices of a bidder and/or of a proposed subcontractor; and to investigate and consider the background of such bidders and subcontractors for this purpose, including their ownership, management, affiliation, history of past performance, and compliance with relevant state and federal laws and regulations;

WHEREAS, various state agencies, public authorities and public benefit corporations required to award contracts by competitive bid maintain information concerning the background and responsibility of bidders, contractors and subcontractors seeking or performing public works contracts and subcontracts from the State, and the Department of Labor maintains information concerning the labor practices of such bidders, contractors and subcontractors pursuant to Labor Law section 220-b, which may be relevant to other contracting agencies' case-by-case contract award determinations or subcontract approvals;

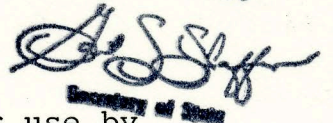
WHEREAS, the development of a uniform, simplified questionnaire to be used by State agencies when soliciting relevant information from contractors will reduce the paperwork burden placed on the contractor community; and

WHEREAS, the public interest would be served by the systematic exchange of such information among the State's contracting agencies and the Department of Labor;

NOW, THEREFORE, I, MARIO M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and Laws of the State of New York, do hereby order as follows:

I. Council of Contracting Agencies

1. There is hereby created within the Executive Department a council to be known as the Council of Contracting Agencies which shall establish procedures to ensure the systematic collection and timely exchange of information relevant to agency determinations of responsibility and reliability of bidders, contractors and proposed subcontractors including, but not limited to: (a) actions relating to responsibility taken by any contracting agency, law enforcement authority or the Department of Labor against bidders, contractors and subcontractors; (b) debarments pursuant to express statutory authorization; and (c) summaries of pending agency reviews with the potential for adverse actions relating to responsibility against bidders, contractors and subcontractors.



2. The Council shall develop a uniform questionnaire for use by contracting agencies when soliciting from bidders, contractors and subcontractors, information bearing on the responsibility of such bidders, contractors and subcontractors.

3. Council members shall include the Commissioner of General Services, who shall serve as the Chair of the Council; the Commissioners of Environmental Conservation; Parks, Recreation and Historic Preservation; Transportation; and Labor; the Executive Director of the Facilities Development Corporation; the General Manager of the State University Construction Fund; the Executive Director of the Dormitory Authority; and the Director of the Division of the Budget or their designees. Other public authorities and public benefit corporations are encouraged to participate in the work of the Council. The Council shall consult with representatives of organized labor, contractor associations, law enforcement authorities and any other parties the Council deems appropriate in developing procedures to facilitate the timely collection and exchange of information.

4. Beginning April 1, 1991, the Council shall make an annual report of its activities to the Director of State Operations and Policy Management. The report shall include such recommendations for modifications of the program directed by this Order as the Council may deem necessary or appropriate to accomplish the goals of this Order.

II. Definitions

1. The term "contracting agencies" shall mean the Office of General Services, the Department of Transportation, the Department of Environmental Conservation, the Office of Parks, Recreation and Historic Preservation, the Facilities Development Corporation, the State University Construction Fund, the Dormitory Authority and such other additional agencies as may be designated by the Council.

2. The term "contract" shall mean any construction or service contract covered by Article 8 or 9 of the Labor Law, exceeding a dollar value not more than ten thousand dollars (\$10,000) to be determined by the Council, that is required by statute to be let by competitive bid to the lowest responsible bidder.

3. The term "bidder, contractor and subcontractor" shall mean a person or business entity submitting a competitive bid for, receiving the award of, or submitted for approval as a subcontractor on, a contract as herein defined let by any one of the contracting agencies.

4. The term "review" shall mean any deliberation by a contracting agency concerning a pending bid for a contract or a request for approval of a proposed subcontractor, or an enforcement proceeding by the Department of Labor pursuant to Article 8 or 9 of the Labor Law.

III. Procedures

The Council shall establish procedures, no later than April 1, 1990, to ensure the systematic collection and timely exchange of information. At minimum, the procedures shall provide for the following:

1. Each contracting agency shall:

(a) pursuant to the statutory authority applicable to its own contracting program, collect and maintain information on the ownership, management, affiliations, business and labor practices, compliance with relevant state and federal laws and regulations, past performance of bidders, contractors and subcontractors and other information relevant to a determination of responsibility, and, where the Council deems appropriate, provide such information to other contracting agencies in the manner the Council shall determine;

(b) utilize a uniform questionnaire adopted by the Council to collect the information identified in paragraph (a) above from contractors and their subcontractors. Procedures governing the use of the questionnaire shall ensure that information is current and appropriate for each agency's contracting program. Nothing herein shall prohibit a contracting agency from soliciting additional information it deems appropriate consistent with the statutory authority applicable to its own contracting program; and

(c) regularly compile information relating to responsibility, including, but not limited to, performance and conduct on prior contracts, rejection of bids, termination of contracts or disapproval of proposed subcontracts, regarding bidders, contractors and subcontractors and pending agency reviews relating to responsibility with the potential for adverse actions against such firms, and, where the Council deems appropriate,

provide such information to other contracting agencies in the manner the Council shall determine.

2. The Department of Labor shall continue to maintain information on contractors found to be in violation of the Labor Law and routinely disseminate such information in accordance with Council procedures. Such information shall include but not be limited to debarments currently in effect pursuant to Labor Law section 220-b, any and all enforcement determinations rendered against bidders, contractors and subcontractors pursuant to the Labor Law, and any and all pending reviews by the Department of Labor with the potential for enforcement determinations.

3. Nothing in this Order shall preclude the Council from establishing separate or different procedures for the systematic collection and timely exchange of information relating to subcontractors.

IV. Determinations of Contractor Responsibility

1. Contracting agencies shall, prior to deciding on the award of a contract or the approval of a subcontractor, follow procedures established by the Council for the systematic collection and timely exchange of information relating to responsibility compiled pursuant to section III above and shall consider such information when determining the responsibility of a bidder in accordance with statutory or regulatory criteria governing the award of contracts and the approval of subcontractors by contracting agencies.

2. Nothing contained in this Order shall impair the right of contracting agencies to determine the responsibility and reliability of contractors.

V. Availability of Data

Nothing in this Order shall be deemed to expand the availability of information held by any contracting agency beyond that required by the Freedom of Information Law and agency regulations regarding trade secrets.

VI. Cooperation of other State agencies

All State agencies, boards, bureaus, departments, divisions, commissions, and offices shall provide any assistance deemed necessary by the Council to carry out the purposes of this Order, including but not limited to, providing information at the request of the Council as may be determined to be necessary to carry out the purposes of this Order.



G I V E N under my hand and the Privy Seal of the State in the City of Albany this 22nd day of May in the year one thousand nine hundred eighty-nine.

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED MAY 25 1989

AS
Secretary of State

BY THE GOVERNOR

James M. Crow
James M. Crow
Secretary to the Governor