

# **Bond Case Briefs**

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## **PUBLIC CONTRACTS - MARYLAND**

### **Balfour Beatty Const. v. Maryland Dept. of General Services**

**Court of Special Appeals of Maryland - December 2, 2014 - A.3d - 2014 WL 6769898**

Contractors sought review of Board of Contract Appeals' decision affirming Department of General Services' (DGS) denial of their pre-award bid protest challenging inclusion of project labor agreement (PLA) as evaluation factor in state's request for proposals (RFP) for construction of new detention facility. The Circuit Court affirmed Board's determinations. Contractors appealed.

The Court of Special Appeals held that:

- Inclusion of PLA did not constitute regulation mandating predicate rulemaking under Administrative Procedure Act (APA), and
- Evidence was sufficient to support Board's determination that PLA specification was not unreasonably restrictive and advanced legitimate state interests.

First-time inclusion of project labor agreement (PLA) as evaluation factor in state's request for proposals (RFP) for construction of new detention facility, without more, did not constitute regulation under Administrative Procedure Act (APA), such that inclusion of PLA in RFP did not mandate predicate rulemaking under APA. Inclusion of PLA did not change existing procurement law or formulate new policy or widespread application of future effect, but rather use of PLA was pilot project.

Evidence was sufficient to support Board of Contract Appeals' determination, in affirming Department of General Services' (DGS) denial of contractors' pre-award bid protest challenging state's inclusion of project labor agreement (PLA) as evaluation factor in state's request for proposals (RFP) for construction of new detention facility, that inclusion of PLA evaluation factor was not unreasonably restrictive and advanced legitimate interests of state. There was evidence that project would meet critical need for community and that importance of project would benefit from organization and guarantees provided by PLA, record indicated that DGS spent considerable amount of time evaluating PLAs and consulting with various entities regarding efficacy of PLAs, and prediction offered by contractors' expert that inclusion of PLA would unduly restrict competition was not borne out, as DGS received seven proposals.