

BEFORE THE MARYLAND STATE BOARD OF CONTRACT APPEALS

IN THE APPEAL OF

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ALLAN MYERS MD, INC.

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DOCKET NO. MSBCA 3347

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**UNDER MARYLAND
TRANSPORTATION AUTHORITY
IFB CONTRACT NO. KH-3046-0000**

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Appearance for Appellant

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OPINION AND ORDER BY CHAIRWOMAN CHO

In this Appeal, we must decide whether the requirement of a project labor agreement (“PLA”) in an invitation for bids issued by the Maryland Transportation Authority (“MDTA”) is arbitrary, capricious, unreasonable, or in violation of Maryland Procurement Law.

Appellant Allan Myers, Inc. (“Allan Myers”) filed a pre-bid protest challenging MDTA’s inclusion of a PLA requirement in its solicitation for a heavy highway construction project in Baltimore County, which MDTA denied. The Maryland State Board of Contract Appeals (the “Board”) held a hearing on the merits of the Appeal on July 16-17, 2026.

For the reasons detailed below, the Board sustains the Appeal in part. We find, first, that the procurement officer’s inclusion of a PLA requirement was arbitrary, capricious, and

unreasonable because MDTA's decision to require a PLA was not supported by any written findings mandated by Executive Order 01.01.2024.18, which formed the basis for MDTA's consideration of the PLA requirement. Second, the PLA requirement as written violates COMAR 21.04.01.

FINDINGS OF FACT

The Invitation for Bids

On October 10, 2025, MDTA issued Invitation for Bids for MDTA Contract No. KH-3-46-0000 I-95 / I-695 Interchange Express Toll Lanes Ramps MB & MH ("IFB"). The initial bid due date was December 3, 2025.¹ The Scope of Work ("SOW") for the Project is listed in the IFB:

The work to be performed under this contract is located along I-95 (John F. Kennedy Memorial Highway) at the I-695 interchange in Baltimore County. Along eastbound I-695, the limit of pavement is approximately 700 feet west of the Lillian Holt Drive overpass. Along westbound I-695, the limit of pavement is at the Stemmers Run overpass. Along I-95 Express Toll Lanes ETL, the limit of pavement is approximately 1,500 feet south of the Rossville Boulevard overpass. The overall limits of work extend past the limits of pavement to account for additional overhead signs, toll rate signs, and placement of the Toll Gantry along northbound I-95 ETL. The project includes additions of Ramps MB and MH to the I-95 and I-695 interchange. Ramp MH provides a connection from eastbound I-695 to Northbound (NB) I-95 ETL. Ramp MB provides a connection from westbound I-695 to NB I-95 ETL. Both these ramps merge into one lane before they go through the Toll Gantry on NB I-95 ETL

Joint Exhibit ("JE") 14.

The SOW also provides a list of the specific types of work, including the construction of a bridge, addition of ramps, building retaining walls, excavation, barrier installation, asphalt paving, tree removal, landscaping, etc. *Id.* The IFB also sets forth the referenced specifications regarding how the work on the Project was to be performed:

¹ Pending the protest and this Appeal, the bid opening date has been postponed at least two times. The current bid opening date is August 11, 2026.

GI-1 SPECIFICATIONS

All terms, conditions, and work on this project shall conform to the Maryland Department of Transportation, State Highway Administration's Specifications entitled, "Standard Specifications for Construction and Materials" dated July 2022 and all revisions thereof, or additions thereto that are specifically included in this Invitation for Bids. ...

Id.

In terms of contractor responsibility, the IFB required that a bidder "have a minimum of ten (10) years of experience performing interstate highway and steel bridge construction projects of a similar scope and complexity as required" in the IFB. *Id.*

Executive Order 01.01.2024.18

Before the IFB was issued, on May 31, 2024, Governor Wes Moore issued Executive Order 01.01.2024.18 "Procurement Guidelines: Authorizing Project Labor Agreements for Large-Scale Public Work Contracts and Promoting Apprenticeship Agreements and Community Hiring" (the "EO"). 51:12 Md. R. 612 (June 12, 2024). The EO defined "Project Labor Agreement" as "a pre-hire collective bargaining agreement between the successful bidder on a large-scale public work contract and one or more labor organizations that establishes terms and conditions of employment for all crafts performing work on a specific construction project."

Directed to "any State department, agency, authority, board, or instrumentality, within the executive branch of the Maryland State Government, that is under the control of the Governor," the EO stated:

[a] unit of State Government shall consider either (1) requiring the use of a project labor agreement or (2) including the use of a project labor agreement as an evaluation factor in connection with a large-scale public work contract that meets the criteria established in this Order.

A large-scale public work contract is one that commits \$20 million or more in State funds. *Id.*

Whether to require a PLA or its use as an evaluation factor must be made on a case-by-case basis.

As relevant here, the EO stated further:

- E. The decision to require the use of a project labor agreement or include the use of a project labor agreement as an evaluation factor in connection with a large-scale public work contract **shall be made only** where such an agreement will advance the State's interest in cost-effectiveness, efficiency, quality, health, safety, timeliness, employing a skilled labor force, and producing labor stability.
- F. In making the decision whether to require the use of a project labor agreement or include the use of a project labor agreement as an evaluation factor in connection with a large-scale public work contract, the **following factors must be considered**:
 - 1. The potential for labor disruptions, such as strikes, lockouts, or shutdowns, which could affect completion of the project;
 - 2. The number of trades and crafts anticipated to be used on the project;
 - 3. The need and urgency of the project and the harm to the public if completion of the project is delayed;
 - 4. The size and complexity of the project;
 - 5. The funding sources for the project and whether the project includes federal funds;
 - 6. The impact on project costs, if any, and the State's obligation to encourage maximum practicable competition favoring open competitive bidding during the procurement process;
 - 7. The impact on the State's socioeconomic policies, including the policy to advance women and minority-owned businesses and their ability to compete.
- G. With respect to the decision to require the use of a [PLA] or to include the use of a [PLA] as an evaluation factor in connection with a large-scale public work contract:
 - 1. The decision **shall be supported by written findings** that clearly demonstrate how the use of a [PLA] will benefit the project and the interests of the public and the State from a cost-effective, efficiency, quality, safety and timeliness standpoint; and notice of the decision shall be provided in the solicitation issued for the project.

* * *

Project Labor Agreements Not Required

- J. This Order does not require a unit of State Government to use or include the use of a [PLA] as an evaluation factor in connection with a large-scale public work contract.
- K. This Order does not promote the selection of any union, trade council, or labor organizations.

General Provisions

- Y. This Executive Order shall be implemented in a manner that is consistent with all applicable statutes and regulations. Nothing in this Executive Order shall operate to contravene any State or federal law or to affect the State's receipt of federal funding.

51:12 Md. R. at 613-15 (emphasis added).

MDTA's evaluation of a PLA requirement in the IFB

On November 21, 2024, Megan Peal, Quality Manager (Consultant) at MDTA's Office of Engineering & Construction, reached out by email to AECOM Tishman, an infrastructure consulting firm, stating that "KH 3046 need to be evaluated for a PLA" and that "AECOM is who we have do these evaluations for MDTA right now." JE 3 (MDTA_0709-10). In turn, Denila Deliallisi, Associate Vice President and Project Manager at AECOM, reached out to Allan Paull and Frank Noviello, both of AECOM, requesting to set up a meeting with MDTA "to scope the work." *Id.* (MDTA_0709). Allan Paull, Senior Vice President of Civil and Structural Engineering at AECOM, responded to Ms. Deliallisi:

Attached is a PLA Evaluation Report template² your staff can complete. We certainly can review the report before it is issued.

We do not need to attend any meetings for us to review the evaluation report that your staff can prepare.

² The PLA Evaluation Report template from Allan Paull was entered into evidence as JE 27.

We stopped preparing PLA evaluation reports since it took us away from our core function of support[ing] both Tishman and Hunt construction projects and that **it is highly unlikely any of these projects will require a PLA.**

Happy to jump on a call to discuss further but this function will have to be performed by your staff.

Id. (MDTA_0708) (emphasis added). Thereafter, personnel from MDTA Office of Engineering & Construction and AECOM went back and forth on drafts and their work continued into March 2025 to complete the PLA evaluation report.

Sometime in January 2025,³ someone at MDTA completed the “PLA Screening Form: MDTA KH-3046-0000 I-95/I-695 Interchange Express Toll Lane Ramps MB & MH Project,” which began:

Purpose: This form should be completed when determining if a project should include a project labor agreement (PLA) or not. This form should be filled out after the project has been allocated construction funding in the CTP and before the RFP⁴ has gone out. In order to complete this form, MDOT or the project’s mode needs to hire a consultant to perform a feasibility study, which will contribute many answers to the questions in this form.

JE 11 (“PLA Screening Form”). The form listed questions tracking the required factors in Section F of the EO that must be considered before deciding to include a PLA requirement in the solicitation. It contained four categories of questions: A. Project Information (A.01-A.07); B. Feasibility Study: Economic Impacts (B.01-B.02); C. Feasibility Study: Non-Economic Impacts (C.01-C.11); and D. Feasibility Study: Competition (D.01-D.02). Each question in the form was answered at some point. For all but the answers to A.01-A.07 and C.10, “Project Labor Agreement Preliminary Evaluation Report for I-95/I-695 Interchange ETL Ramps” was cited as the source.

³ The document contains two dates: January 9, 2025, at the top righthand corner of the document, and January 22, 2025, immediately under the title of the document. *See* JE 11 (MDTA_128-MDTA_132).

⁴ Although this document predates the issuance of the solicitation, MDTA ultimately issued an IFB, rather than a RFP.

AECOM produced its final report, “I-95/I-695 Interchange Express Toll Lanes Ramps MB & MH Project Labor Agreement Preliminary Evaluation Report,” dated March 13, 2025 (“AECOM Report”). JE 10 (MDTA_075-127). It was signed by Allan Paull. *Id.* (MDTA_090).⁵ In Section V of the AECOM Report, there are lists of twelve (12) PLA advantages and seven (7) PLA disadvantages. In between those two lists is a paragraph that states:

PLA advantages are not necessarily applicable when comparing open shop contractors to union contractors. These benefits are generally derived from the use of a PLA vs. the lack of a PLA for union contractors.

Id. The AECOM Report did not contain any findings as to whether a PLA requirement should be included in the Project.

On March 21, 2025, David Greenwood, Project Manager (Consultant) working for MDTA’s Office of Engineering & Construction, wrote an email making individuals at MDTA and AECOM aware that:

MDOT/TSO⁶ is evaluating whether MDTA will be required to incorporate a PLA into the contract for KH 3046. **The incorporation of a PLA now will cause a delay in procurement of KH 3046 and, as a result, would also have impacts on the I-695 TSMO program.** A final decision has not been reached yet but we wanted to alert you of this possibility at this time. TSO has been made aware that there will be schedule impacts for both projects if we move forward with the PLA.

JE 5 (MDTA_1552) (emphasis added).

A document entitled “TSO PLA Recommendation for: MDTA KH-0000 I-95/I-695 Interchange Express Toll Lane Ramps MB & MH Project” bearing the date of April 2025 was prepared by an unknown author at MDTA. JE 12 (MDTA_133-134) (“PLA Recommendation Memo”). The PLA Recommendation Memo represented “the TSO Workforce Development

⁵ Oddly, the PLA Screening Form cites the AECOM Report as the source for most of its answers, even though it predates the AECOM Report by two months.

⁶ The Secretary’s Office.

Initiative’s recommendation on whether to include a PLA on the project,” and citing the authority provided in the EO, MDTA chose “the first option” to require the use of a PLA. *Id.* (MDTA_133). As bases for the recommendation, the document noted that “[t]his project is sufficiently large, it includes several trades, and it will provide good opportunities for apprenticeships. The concern for limiting competition can be mitigated by the core workers clause that MDOT would require to be included in the PLA.” *Id.* (MDTA_134).

In a decision memorandum dated May 20, 2025 to Paul J. Wiedefeld, then-Secretary of MDOT, Joe McAndrew, Assistant Secretary, requested the approval of the inclusion of “a PLA requirement” on the Project. JE 9 (MDTA_070-074). Secretary Wiedefeld approved and signed the memorandum.

MDTA was notified by email on May 30, 2025 that Secretary Wiedefeld had signed the memorandum “approving the inclusion of a PLA requirement on MDTA’s I-695 ETL ramps project.” JE 7 (MDTA_063).

The PLA Requirement in the IFB

As issued, the PLA requirement is contained in at least two different parts of the IFB. In Part A, Contract Provision (“CP”) 1 sets forth “MDOT Project Labor Agreement Required and Options Provisions.” In particular, CP-1.2 states:

2. Bid Submission Requirements

Bidders must submit a **signed PLA Commitment Letter** with their bid, affirming their obligation to negotiate and execute a PLA that includes the required provisions listed above. The final PLA shall be submitted to MDTA for **review and acceptance** prior to issuance of the Notice to Proceed.

MDTA reserves the right to reject any PLA that does not substantially conform to the above requirements or that may impair labor harmony, timely project delivery, or workforce participation goals.

The PLA must fully conform to all State and federal statutes, regulations, and executive orders.

JE 14 (Contract Provisions at p. 15) (emphasis in original).

Part C contains more specific instructions for the PLA Commitment Letter.

Purpose:

As a condition of responsiveness, all Bidders are required to submit a signed Project Labor Agreement (PLA) Commitment Letter with their bid. This letter affirms the Bidder's obligation to negotiate and execute a PLA in accordance with the terms specified in the Invitation for Bid (IFB) documents.

Submission Requirement:

- The PLA Commitment Letter must be completed in full, signed by a duly authorized representative of the Bidder, and submitted as part of the Bid Package.
- Failure to submit a signed PLA Commitment Letter at the time of bid submission **may result in rejection of the bid as non-responsive.**

PLA Execution Requirement:

- The successful Bidder shall negotiate and execute a PLA incorporating all mandatory provisions as outlined in the IFB.
- The final executed PLA shall be submitted to the Maryland Transportation Authority (MDTA) for review and acceptance **prior to issuance of the Notice of Award.**
- Execution of the PLA is a condition precedent to beginning any on-site work or mobilization.

JE 15 (IFB Part C Instructions for PLA Commitment Letter, at p. 3).

Part C goes on to provide a "Project Labor Agreement Template" that bidders may use. *Id.* at pp. 7-20. In Article III (Union Recognition and Employment), the template contains a core workers clause, which states:

Section 6. [Core Workers] Each Contractor shall have the ability to bring a reasonable number of its key employees to work on the Project provided that (i) as a general rule such employee complement does not exceed thirty percent (30%) of its workforce in any given month, and (ii) such employee complement is consistent with Federal Equal Employment Opportunity requirements and affirmative action goals contained in the bid specification.

Id. at pp. 11-12.

On November 12, 2025, MDTA issued Addendum No. 2 to the IFB, which included, among other things, the agency's responses to bidders' questions. *See* JE 17.

Question 1: The specifications include a requirement for the contractor to sign on to a project labor agreement. This is the first time we've seen this requirement on any project that we have bid/built for MDTA. We have built numerous projects over the years for MDTA and weren't required to have a PLA. Even on recent large scale projects along the same I-95 corridor, a PLA wasn't required. For example, the I-95 / MD24 interchange was a \$200M project and didn't have this requirement. The majority of the local contractors working on the I-95 corridor are open shop. Including the PLA requirements will drastically reduce the number of local contractors bidding on the project. Please remove the PLA requirements.

Response 1: The project was evaluated for a PLA requirement in keeping with the Governor's Executive Order 01.01.2024.18, and it was determined that the project should require a PLA.

JE 17 (November 12, 2025 Addendum No. 2).

On November 25, 2025, MDTA issued Addendum No. 3 to the IFB, changing the bid due date to December 18, 2025, and listing additional responses to bidders' questions. As relevant here, the questions and responses were:

Question 20: The [IFB] includes a mandate that all bidders must negotiate and execute a [PLA] incorporating all mandatory provisions as outlined in the IFB. Per [the EO], the decision to require the use of a [PLA] ... shall be supported by written findings that clearly demonstrate how the use of a [PLA] will benefit the project and the interests of the public and the State from cost-effective, efficiency, quality, safety and timeliness standpoint. Per the [EO], notice of the decision shall also be provided in the solicitation issued for the project. Please provide a copy of the written findings that the [MDTA] contend[s] clearly demonstrate how the use of a [PLA] will benefit the Project and the interests of the public and the State from a cost-effective, efficiency, quality, safety and timeliness standpoint, as required by the [EO].

Response: Per the [EO], the notice of decision was included in the solicitation which specified that the project would require a PLA.

Question 21: Per the [EO], in making the decision whether to require the use of a [PLA], the [MDTA] must consider the factors that are identified in

Section F of the [EO], including: (1) The potential for labor disruptions, such as strikes, lockouts, or slowdowns, which could affect completion of the Project; (2) the number of trades and crafts anticipated to be used on the Project; (3) the need and urgency of the Project and the harm to the public if completion of the Project is delayed; (4) The size and complexity of the Project; (5) The funding sources for the Project and whether the Project includes federal funds; (6) The impact on Project costs, if any, and the State's obligation to encourage maximum practicable competition favoring open competitive bidding during the procurement process; and (7) The impact on the State's socioeconomic policies, including the policy to advance women and minority-owned businesses and their ability to compete. Please identify the facts reviewed by the [MDTA] in evaluating each of these required factors.

Response: Per the [EO], the factors mentioned in the [EO] were considered when making the decision to include a [PLA] on this project.

Question 61: Please remove the PLA requirement.

Response: The project was evaluated for a PLA requirement in keeping with the Governor's [EO], and it was determined that the project should require a PLA.

JE 18 (November 25, 2025 Addendum No. 3).

The Protest

On December 12, 2025, Appellant Allan Myers filed a pre-bid protest with MDTA, challenging the agency's inclusion of the PLA requirement in the IFB ("Protest"). Appellant's three grounds of protest were:

1. The PLA lacks a promulgating regulation and is therefore unlawful;
2. The inclusion of the PLA in the IFB violates Maryland Procurement Law's requirement for broad-based and maximum practicable competition without proper statutory authorization; and
3. Even if the PLA requirement were found to be valid, the inclusion of a PLA requirement in the IFB is not properly supported by the written findings required by the EO, clearly demonstrating how the use of a PLA will benefit the public and the State.

See JE 21 (December 12, 2025 Protest). MDTA denied the Protest by Procurement Officer's Final Decision letter dated February 10, 2026 ("POFD"), and, on February 20, 2026, Allan Myers noted a timely appeal to this Board.

The Merits Hearing

The Board held a merits hearing in this matter on July 16-17, 2026. Appellant called four witnesses: Richard Dungan, Paul Wiedefeld, Denila Deliallisi, and Jullian Johns.

Richard Dungan, President of Construction, has worked for Allan Myers for forty years and testified as its corporate representative. Allan Myers is a self-performed general contractor engaged in heavy highway civil construction projects. In the last five years, it has performed \$453 million work for MDTA, and over \$1 billion work for the Maryland Department of Transportation ("MDOT"). It has approximately 2,700 employees in the Mid-Atlantic region, about 500 of whom are in Maryland. Appellant is not a signatory to a union collective bargaining agreement and does not have a signed a PLA.

Mr. Dungan testified that Allan Myers was interested in bidding on the IFB but was prevented from doing so because of the PLA requirement. In reviewing the bid documents, he noted that the exhibit for the PLA requires that only up to thirty percent (30%) of workers on the Project on a monthly basis can be the contractor's own employees, such that "70 percent of the hours have to be registered with the union." He testified regarding the challenges posed by a PLA on Allan Myers' ability to bid and perform as an open shop contractor:

Q. How does a PLA prevent you from having your people on the project?

A. ... 70 percent of the people on the project performing our work may or may not be our people because the union would provide them, you'd have to sign up with the union or else you could not get awarded the project.

So you can't guarantee what you're going to get done, how the work's going to get done, because they won't necessarily know our means and methods. They won't know our safety requirements....

[W]e bid with a cost history of doing certain types of work that we know what it costs us to do those types of work. So when you're analyzing the bid, you're analyzing the work based upon the individual units of the work, and then you're projecting how long it's going to take you and what the price is that you can bid.

With 70 percent of your workforce being unknown, it prohibits you from bidding accurately and cost effectively for the project. And on top of that, the reality is when you work for the MDTA, you have to be on schedule. They do not like you to be late at all.

They will grant time extensions if it's warranted. But ... you have to meet their schedule and ... you have to have enough cost history to... bid the project.

July 16, 2026 Hearing Transcript ("H'rg Tr.") at 103:11-104:19.

Without a PLA requirement, Mr. Dungan estimated that this Project would need about 50 workers from Allan Myers daily. But the core workers clause in the IFB requires that only 30%, or 15, of Allan Myers' core workers would be allowed, and the remaining 35 workers must be supplied by the union. *Id.* at 114:11-19.

As to the challenges faced by Allan Myers in preparing a bid on this IFB because of the PLA requirement, Mr. Dungan testified:

Q. ... Why would [a] PLA create operational challenges for Allan Myers in both bidding and performing this contract?

A. ... [E]ach item of work that is on the bid, bid documents that has to be performed, we have cost history for those types of work.

In other words, we use typical production factors for ... that type of work. We have history against that, man hours per unit, all right, tons per hour, that type of thing. So with 70 percent of the workforce being either union or whoever we don't know, we can't use that bid history to put our pricing on the bid.

Q. You mentioned also previously that ... even if your existing employees were to leave Allan Myers employment and go join the union, you can't be certain that those employees -- the union would make those employees available to you. Why is that?

A. Well, the document, the PLA exhibit in the bid documents doesn't say who

you're going to get. If you got your employees to sign up with the union, you know, there's no guarantee that you would get those employees on the project.

In addition to that, there's rules and regulations that have to be followed with the union ... [W]here we upscale the operators, where they operate dozers and excavators and stuff like that, right? The union may or may not allow that, but we don't know that at, at the time of bid. So, the – it's, it's going to cost more to do the work than if we had done it without the PLA.

July 16, 2026 H'rg Tr. at 106:6-107:12. Because of the PLA requirement, Mr. Dungan testified, the State would not be able to get "Allan Myers' best price" due to the many unknown factors at the time of bid. *Id.* at 111:7-8.

- A. ... The reality is this, you're going to have more people on this project with the PLA than would be required normally. So, our price to bid on this stuff would be higher. ... It's an unknown. So, when you're bidding, when you have unknowns, then why -- it creates this risk factor. ...

In addition to that, we do not ever want any of our people hurt. So with unknowns becomes the potential for injury for our people. And the other thing is we have a very good relationship with the MDTA.

They know we deliver our projects on time and I would not want to be susceptible to being late on a job because I don't know what the capabilities are or what our employees would be allowed to do or not do.

Id. at 123:1-14. In short, at least 70% of workers on the Project must be union workers who are beyond the control of the contractor, which makes it difficult to price the bid based on the contractor's prior job history. More importantly, it means that there can be no contract award without signing up with a union.

Paul J. Wiedefeld was the Secretary of MDOT during the relevant time. While Secretary Wiedefeld confirmed that his signature appeared on the memorandum approving the inclusion of the PLA on the Project, he recalled "very little" about the Project. He testified that he "doubted very much" that he read any of the attachments to the approval memorandum before signing it. *Id.* at 156:8-159:20. The four attachments to the approval memorandum were "MDTA I-695

Evaluation Report,” “MDTA I-695 Screening Form,” “TSO MDTA I-695 Recommendation,” and “Email from Executive Director Gartner.” JE 9 (MDTA_073). His signing the memorandum as a routine administrative task was “the nature of the job” as Secretary, and he relied on his MDTA team to do “all the heavy lifting.” July 16, 2026 Hr’g Tr. at 159:14; 165:10-11.

Denila Deliallisi was called to testify about the preparation of the AECOM Report. As a civil engineer and associate vice president at AECOM, she testified that her involvement in the Project was to serve as the point of contact between Allan Paull, who was AECOM’s “subject matter expert” with knowledge about PLAs, and MDTA in generating the report. July 16, 2026 H’rg Tr. at 128:15-17. Ms. Deliallisi testified that she had no substantive input into the contents of the AECOM Report, and that her role was limited to “shuttling documents” back and forth between Mr. Paull and MDTA. According to Ms. Deliallisi, Mr. Paull generated the initial template that was used to prepare the final AECOM Report for this Project. *Id.* at 129:13-23.

Jullian Johns, MDTA’s procurement officer on this IFB (the “PO”) testified that the original language of the PLA requirement was supplied to him by MDTA’s Office of Engineering & Construction, and that he reviewed the language for “content, clarity, and completeness” and found “no issue with the PLA specification.” July 17, 2026 Hr’g Tr. at 29:7-18. He played no role in preparing the decision memorandum submitted to Secretary Wiedefeld seeking approval to include a PLA requirement in the solicitation, and the first time he saw it was when he received the “initial package” from the Office of Engineering & Construction. *Id.* at 50:18-51:4. Prior to drafting the IFB, Mr. Johns did not independently review the EO or the AECOM Report. *Id.* at 43:21-24. He did not review these documents until he was preparing his decision in response to Appellant’s Protest. Although he stated that the AECOM Report was the “written findings” referenced in the

EO, his understanding of the document was that it was a generic “feasibility study on the pros and cons of the PLA,” and did not have findings specific to the Project at issue. *Id.* at 11:6-21.

The PO testified that the “PLA specification” as written in the IFB did not require any bidder “to be signatory to a union or a collective bargaining agreement to participate in this project,” which “alleviate[d] some of that worry about restrictive competition.” *Id.* at 21:21-22:4.

Q And how does it do that?

A It does that by, one, making sure that anyone, whether they are open shop or non -- or union, can participate in this project. So, they don't have to be signatory to it.

Q But the paragraph we just read, [AECOM] found that, quote, reducing the bidding pool by requiring a PLA is a major concern. So that seems to be stating the opposite of what you just said.

A Right. So, this is referencing a generic understanding of how PLAs are traditionally structured. But again, we made sure to include language that would not prevent someone who's an open shop contractor from submitting a response to this project.

Q So you're saying this language is generic, it's not a specific finding.

A It's a feasibility study that was done to determine the pros and cons of PLAs.

Id. at 22:1-22.

Q. Did MDTA consider for this project accepting bids both with and without a project labor agreement?

A. No.

Q. And why not?

A. I wouldn't have the answer to that.

Q. Who would?

A. So the PLA in this project is a specification. So COMAR states that the agency is responsible for preparing the specifications and the procurement officer is responsible for reviewing the content and clarity of, of the specifications in accordance with the State Finance and Procurement Article. So, that's, that's not something I'd be able

to answer for you.

Q. You don't know who would make that decision?

A. It would be -- the initial decision to include it would come from the end user, in this case the Office of Engineering and Construction, but ultimately, if I review the PLA and it violates the State Finance and Procurement Article or COMAR in any way, it doesn't stay. I would escalate the issue.

Id. at 25:3-22.

Q. ... Doesn't it seem like in this particular procurement allowing bidders to bid both with or without a PLA would resolve any anticompetitive or competitively restrictive concerns?

A. No. Maximum practical [sic] competition is going to be obtaining as much competition from as many firms as possible but also balancing that requirement with the State's needs.

Q. All right. What are the State's needs in this procurement?

A. For this project, it's a fairly large and complex project, and due to some of the possible coordination challenges, a PLA was, was determined to be in the best interest of the State for this project.

Id. at 26:6-19.

STANDARD OF REVIEW

A procurement officer's decision will be overturned only if it is shown by a preponderance of the evidence that the agency's action was biased, arbitrary, capricious, unreasonable, or in violation of law. *See Hunt Reporting*, MSBCA 2783 at 6 (2012).

DECISION

I. The PLA Requirement is Not a Regulation That Requires Formal Rulemaking.

As its first issue of protest and appeal, Appellant alleges that the IFB's PLA requirement triggered formal rulemaking under the Administrative Procedures Act ("APA"), and MDTA's failure to issue regulations allowing for the inclusion of PLAs in its solicitations violates Maryland Procurement Law. Appellant argues that the MDTA adopted the PLA requirement, which never

has been used before, to promote “a practice of requiring PLAs that ‘affect[s] directly the rights of the public or the procedures available to the public,” and that this demonstrates that the PLA requirement was “the implementation of a regulation that must go through proper notice and comment procedures.” Notice of Appeal, at ¶ 56.

Respondent asserts that the inclusion of the PLA requirement in this IFB was a “project specific determination” which is not a regulation subject to the APA’s notice and comment requirements, because it lacks “general applicability” and has no “future effect.” *See* STATE GOV’T § 10-101(g)(1). Respondent states that this is merely a project-specific application of the EO, which directs executive agencies to *consider* using PLAs in large-scale public work projects on a case-by-case basis, and which was done in this case. *See* Agency Report, at 10.

On this ground of protest and appeal, the Board agrees with Respondent. No evidence has been presented supporting Appellant’s argument that the PLA requirement in this IFB is a “regulation” that must follow rulemaking procedures under the APA. Appellant’s appeal on this first ground of protest is denied.

II. The PLA Requirement in the IFB Violates Procurement Law Because It Was Not Written to Procure Heavy Highway Construction Services in a Cost Effective Manner or to Permit Maximum Practicable Competition.

As the second basis for its protest and appeal, Appellant argues that the IFB’s PLA requirement violates Maryland law mandating broad-based and maximum practicable competition, because there is no statutory authorization that allows for requiring a PLA in solicitations. There are exceptions that allow State agencies to restrict competition in certain circumstances, such as, for example, in requiring small and minority business enterprises participation in contracts. Appellant urges, however, that such exceptions must be specifically authorized by an act of the General Assembly and, because there is no statute or regulation that authorizes PLAs, the inclusion in the IFB of a PLA requirement “is contrary to Maryland’s maximum practicable and broad-based

competition because it prejudices and disqualifies otherwise responsible offerors who do not enter into a PLA.”

MDTA responds that the inclusion of a PLA requirement in the IFB need not be based on statutory authorization. According to Respondent, a PLA is not a mandatory requirement under Maryland law, but rather a “specification” for the procuring agency to consider putting into any given solicitation under the guidelines provided in the EO. The EO itself “does not require a unit of State Government” to require a PLA in a large-scale public work contract. In the event MDTA chooses to *consider* including a PLA requirement in a solicitation, “it must, on a case-by-case basis, perform an analysis of the EO 01.01.2024.18’s Section F factors to assess whether a PLA would be in the best interests of the public and the State.” JE 23 (POFD), at 4.

A. No Specific Statutory Authorization is Necessary to Include a Valid Contract Requirement that Meets the State’s Minimum Needs.

Allan Myers does not challenge the validity of the EO in this Appeal. While STATE FIN. & PROC. § 13-205(a)(1) and COMAR 21.04.01.04 provide that “specifications” in a solicitation should be drafted to encourage maximum practicable competition without modifying the requirements of the State, *see Balfour Beatty Constr. v. Dept. of Gen. Servs.*, 220 Md. App. 334, 362 (2014), the Board is not aware of any authority that limits procuring agencies to draft potentially restrictive contract requirements only to the extent expressly allowed by statute. Consequently, this portion of the appeal on the second basis of protest is denied.

B. The PLA Requirement in the IFB Violates Procurement Law Because It Was Not Written to Permit Maximum Practicable Competition.

Applicable Law

Specifications in Solicitations

STATE FIN. & PROC. § 13-205(a)(1) and COMAR 21.04.01.02A provide that specifications in a solicitation should be drafted to encourage maximum practicable competition without modifying

the requirements of the State. *Balfour Beatty Constr. V. Dept. of Gen. Servs.*, 220 Md. App. 334, 362 (2014). In drafting specifications, a state agency is in a unique position to determine those that most accurately reflect the minimum needs of the State. *Id.* at 362-63 (citations omitted). Because State agencies are afforded broad discretion in determining their own needs, when reviewing the specifications, the Board will defer to the technical judgment of the procuring agency unless it is clearly erroneous. *Id.*

To defend its specifications, the State must assert a reasonable cause for a restrictive bid or proposal requirement. *Balfour Beatty Constr.*, MSBCA 2803 at 5 (2012). “The more restrictive a specification ... the greater the justification that the State may be fairly required to assert.” *Id.* at 5-6. Once the State makes this showing, the protester has a “considerable burden” to prove by a preponderance of the evidence that the restriction is unreasonable. *Id.* at 5.

COMAR 21.04.01.04 provides that the responsibility for review and approval of the specifications rests with the procurement officer:

The procurement officer ... shall be responsible for reviewing the specifications for content, clarity and completeness and to ensure that the specification is nonrestrictive. Final approval of the specifications shall rest with the procurement officer and subsequently with the Department. Specifications may be revised by the procurement officer for purposes of clarification as long as elements of the specifications remain the same. Revisions which change the technical elements of the specification may be made in consultation with the using agency.

Responsibility vs. Responsiveness

Responsibility and responsiveness are two fundamental determinations that must be made by the procuring agency before a contract award may be made in any procurement.

Matters that do not affect the obligations of the contractor to perform the terms of the contract are matters of responsibility, and refer to the status of the contractor, not its obligations under the contract. Matters of responsibility may be cured after bid opening. *Century Constr. Inc.*, MSBCA 2385 at 5 (2004). Even where solicitation documents mandate submission of an item, a

procurement officer may waive as a minor informality the failure to supply at time of bid opening any requested documents or information that bear on responsibility. The bidder may supply such requested information after bid opening but before award of contract. *Id.* at 3 (citing *DeBarros Constr. Corp.*, MSBCA 1467 (1989)).

In contrast, a responsive bid is one which “conforms in all material respects to the invitation for bids.” STATE FIN. & PROC. § 11-101(s)(2); COMAR 21.01.02.02(78). To be responsive, a bid must constitute a definite and unqualified offer to meet the material terms of the solicitation. The test in determining the responsiveness of a bid is “whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the invitation, and upon acceptance will bind the contractor to perform in accordance with all the terms and conditions thereof.” *Century Constr.*, at 3 (citation omitted).

Analysis

COMAR 21.04.01.01 defines “a specification” as “a clear and accurate description of the functional characteristics or the nature of an item to be procured.” A specification must be written to procure “an item in a cost effective manner. It is the policy of the State that specifications be written so as to permit maximum practicable competition without modifying the State’s requirements. Specifications may not be drawn in such a manner as to favor a single vendor over other vendors.” COMAR 21.04.01.02. The procurement officer “has broad discretion in drafting specifications to meet the State’s minimum requirements when weighed against the State policy of fostering the maximum practicable competition.” *Admiral Servs., Inc.*, MSBCA 1341 at 2 (1987).

The IFB mandates that the work on the Project conform to the Maryland Department of Transportation, State Highway Administration’s Specifications entitled, “Standard Specifications

for Construction and Materials” dated July 2022 and all revisions thereof (“MDOT/SHA Standard Specifications”).

To begin with, the PLA requirement in the IFB is not a “specification” as defined in COMAR, nor a provision in MDOT/SHA Standard Specifications. It does not describe the functional characteristics or the nature of the services to be procured which, in this case, are different types of work in heavy highway construction. It is an additional contract requirement that obligates contractors to use union workers, and it is not directly related to the work to be performed. Calling it is a “specification” does not make it one.

But even were we to treat it as a “specification,” the PLA requirement was written in a way that violates COMAR. It was not “the basis for procuring an item in a cost effective manner,” because all evidence points to the fact that a PLA would increase bid prices and, consequently, the cost of services to the State. Moreover, it was written “in such a manner as to favor” one group of vendors (union contractors) over other vendors (non-union contractors), and therefore it restricts competition.

It is important to recognize that the solicitation at issue here is an invitation for bids, as distinguished from a request for proposals. An IFB is issued pursuant to STATE FIN. & PROC. § 13-103 and COMAR 21.05.02, where the contract is to be awarded to the responsible and responsive bidder who offers “the most favorable bid price or most favorable evaluated bid price.” “Upon determination of the most favorable bid, review of the bid for responsiveness, and satisfaction that the bidder is responsible, the procurement officer shall, after obtaining all required approvals, award the contract to that bidder.” COMAR 21.05.02.13D. In short, the award is to be made to the responsible and responsive lowest bidder, because the only evaluation criterion under an IFB is price.

In contrast, a Request for Proposals (“RFP”) issued under STATE FIN. & PROC § 13-104 and COMAR 21.05.03 requires the procuring agency to conduct separate and independent evaluations of technical and financial proposals that often receive different weight in the determination of ranking and contract award. As a result, there are potentially additional subjective reasons to support the inclusion of a PLA requirement in an RFP where, for example, the nature and quality of the workforce to be employed in the project may be factors in evaluating technical proposals.

In this case, however, the basis of award is a competitive sealed bid, where the agency is required to evaluate bids based on only one factor: price. The agency “**shall** award the procurement contract to the responsible bidder who submits a responsive bid that is the lowest bid price.” STATE FIN. & PROC § 13-103(e)(1) (emphasis added). Because an IFB is used to obtain specific goods or services for the State at the most favorable price available, including restrictive specifications in the solicitation that do not directly relate to meeting the State’s minimum needs requires the State to show a rational basis. *See National Elevator Co.*, MSBCA 1266 (1986) (IFB requirement that elevator maintenance and repair services be provided by the successful contractor using only personnel from a list of qualified and experienced personnel furnished at the time of award unreasonably restricted competition, where the procuring agency failed to establish a *prima facie* case that the requirement is reasonably related to its minimum needs). Here, MDTA has made no showing that its decision to require a PLA in this IFB was rationally related to the State’s minimum needs in obtaining heavy highway construction services described in the SOW.

MDTA takes the position that the PLA requirement *as written* is not unduly restrictive because the “specification” has been “structured” in a way that allows “anyone” – both union and non-union contractors – to bid. Respondent presumably refers to the fact that the IFB, on its face, requires only a PLA Commitment Letter to be submitted with the bid, rather than a fully executed

PLA. But this freedom to bid is illusory, because no contractor can be awarded the contract without engaging with a union first. Furthermore, this “structure” is legally problematic and creates very significant uncertainty in the procurement process.

Just as the PLA requirement as included in the IFB is not a “specification,” the submission of an executed PLA is a matter of contractor responsibility and not responsiveness. “A matter of responsibility cannot be made into a question of responsiveness by the terms of the solicitation. Information concerning a bidder’s responsibility thus may be submitted after bid opening notwithstanding a solicitation provision stating that such information must be submitted with the bid as a pre-requisite to a finding of responsiveness.” *National Elevator*, MSBCA 1252 at 4 (1985); *Cam Constr. Co.*, MSBCA 1393 at 9 (1988) (“a matter of responsibility cannot be converted into one of responsiveness by virtue of the language in the IFB.”).

Also unclear is the IFB’s language concerning when the executed PLA must be submitted to MDTA and, by extension, when contract award will be made. In one place, the IFB states that the “final PLA shall be submitted to MDTA for review and acceptance prior to the issuance of the Notice to Proceed,” and in another place, “the final executed PLA shall be submitted ... prior to issuance of the Notice of Award.” Notice to Proceed and Notice of Award are two independent concepts and events in procurement.

The PO’s responsibility is to review “the specifications for content, clarity and completeness and to ensure that the specification is nonrestrictive.” *See* COMAR 21.04.01.04. In this case, the PO violated COMAR in the execution of his duties because (1) the PLA requirement should not have been a part of the IFB, for reasons stated in **Part III**, below, (2) the written language is not at all clear what it means to submit a “responsive” bid, and (3) it was “drawn in such a manner as to favor” union contractors over non-union contractors, rendering it restrictive.

Consequently, the Board sustains a portion of Allan Myer's second basis of protest and appeal because the PLA requirement as written violates COMAR as unduly restrictive.

Perhaps the argument of Respondent's counsel made in closing best illustrates the ambiguous and confusing nature of how the PLA requirement as written in the IFB is supposed to work. Counsel argued that the core workers clause in the "PLA specification," making allowance for up to 30% of the contractor's own workforce on the Project, means that the contractor is free to use 100% of its own employees, as long as 30% of the total number of its employees are available to work on the Project. To put it in the context of this Appeal, counsel interprets the core workers clause to mean that Allan Myers would be able to put all 50 of its own workers on this Project because 30% of Allan Myer's 500 employees in Maryland would equal 150, which is obviously more than the number required on the job. If this argument were true, why even require a PLA in this IFB?

III. The Inclusion of the PLA Requirement in this IFB Was Arbitrary, Capricious, Unreasonable Because the Decision to Require a PLA was Not Supported by the Written Findings as Mandated by the EO.

Appellant's third basis for protest is that the "written findings" required under the EO upon which MDTA relied do not reasonably support the agency's ultimate decision to include the PLA requirement in the IFB. Appellant in its Protest asked the PO "to produce documentation supporting [MDTA's] decision to require a PLA in accordance with the EO," asserting that "[a]bsent such documentation, the IFB's PLA requirement conflicts with the EO's requirements and should be removed from the IFB." *See* JE 21 (Protest) at p. 14.

The PO, in denying this ground of protest, responded that "MDTA complied with the EO's written finding requirement" because "the procurement file contains written findings that justify the inclusion of the PLA specification." JE 23 (POFD), at 6. He further took the position that the EO "did not require for the written findings to be published with the solicitation—only that 'notice'

of the decision to include the PLA be published. MDTA complied with the EO's written finding requirement." *Id.*

During discovery, MDTA continued to maintain that the actual "written findings" were not relevant to any issue in this Appeal and refused to produce the AECOM Report. The Board granted Appellant's two motions to compel, and Respondent ultimately produced both a copy of the "template" and the final AECOM Report, which were entered into evidence as Joint Exhibits 27 and 10, respectively.⁷

Respondent argues that, because the legality of the EO is not being challenged here, and because MDTA followed the EO's directive merely to *consider* the inclusion of a PLA and commissioned the "written findings," the PLA requirement was properly included in the IFB. MDTA takes the position that the mere existence of the AECOM Report, which it asserts to be the "written findings," is sufficient evidence that the inclusion of the PLA requirement was reasonable. MDTA believes that the authority to require a PLA is discretionary in that it can "set the requirements in its contracts that it chooses," and because it concluded after looking at the AECOM Report that requiring a PLA was in the best interest of the State, the Board cannot look behind that decision to second guess its "choice." July 17, 2026 H'rg Tr., at 83, 87.

We disagree. The Board finds that the PO's inclusion of the PLA requirement in this IFB was arbitrary, capricious, and unreasonable, because it violated the terms of the EO, which was MDTA's basis for requiring the PLA.

There is no genuine dispute that a PLA requirement restricts competition. In this case, the documents that evidence Respondent's evaluation of this factor show clearly that MDTA

⁷ Appellant filed a Motion for Sanctions on July 10, 2026 seeking relief in connection with Respondent's discovery conduct throughout the litigation of this appeal. The Board heard argument on the Motion for Sanctions on July 16, 2026, the first day of the merits hearing, and reserved on ruling on it at that time.

recognized the restrictive nature of the PLA. In the PLA Screening Form, for example, MDTA's summary of the findings in the "feasibility study" with respect to competition states:

D. Feasibility Study: Competition

D.01 - What is the impact of a PLA on open bidding during the procurement process?

The evaluation suggests that the PLA could discourage non-union contractors from bidding on this contract. Because some contractors may not be amenable to the PLA terms, the MDTA would need to work closely with industry to facilitate competition. Since there is not a large supply of union contractors that pursue highway construction projects in Maryland, the MDTA will need to reach out to the larger region to encourage competition and help keep down project costs. MDTA will need to increase the costs of Partnering with a Contractor unfamiliar with working in Maryland.

D.02 - What is the impact of a PLA on the State's socioeconomic policies, including the policy to advance women and minority-owned businesses and their ability to compete?

The introduction of a PLA makes it difficult to attain the set MBE goals because MBE contractors have fewer employees and do not employ union labor. This may necessitate concessions by the State in setting a lower MBE goal due to a reduced level of union labor participation. The MDTA and MDOT will need to be prepared to explain these factors during the procurement process.

JE 11, at MDTA_132. As of January 2025, MDTA evidently recognized that a PLA would discourage bidding from non-union contractors, as well as making it more difficult to meet the State's set MBE goals.

Section E of the EO mandates that a decision to include a PLA as a bid requirement or evaluation factor "shall be made only where such an agreement will advance the State's interest in cost-effectiveness, efficiency, quality, health, safety, timeliness, employing a skilled labor force, and producing labor stability." "In making the decision whether to require the use of a [PLA] ... in ... a large-scale public work contract," the seven factors under Section F "must be considered." And any "decision to require the use of a [PLA] ... shall be supported by written findings that

clearly demonstrate how the use of a [PLA] will benefit the project and the interests of the public and the State from a cost-effective, efficiency, quality, safety and timeliness standpoint.” 51:12 Md. R. at 614 (G.1).

The PO testified that the AECOM Report constituted the “written findings” required by the EO. But nothing in the AECOM Report shows any evaluation of the EO’s Section F factors as applied to the IFB. Although its stated purpose was “to investigate whether it is reasonable to pursue a [PLA] for the I-95/I-695 Interchange Express Toll Lanes Ramps MB & MH Project,” MDTA_078, nowhere in the AECOM Report is there any specific factual finding, conclusion or recommendation as to whether the inclusion of a PLA requirement in this Project is reasonable.

When compared side by side, the majority of the language in the AECOM Report was copied verbatim from the template document, with the only exceptions being the project name and the project description. The PLA advantages and disadvantages in Section V of the AECOM Report are identical to those listed in the template, including the paragraph that states that “PLA advantages are not necessarily applicable when comparing open shop contractors to union workers.” But the most remarkable feature of the AECOM Report is what is absent from it:

VI. Findings.

Based on the information presented in this report we find a PLA for the {Enter Project Name} Project satisfies legal requirements, provided measures are taken during procurement to encourage bidding participation by open shop Contractors, and is feasible to pursue for this project.

JE 27 at MDTA_0729. The above paragraph of “Findings,” which was part of the template provided to MDTA from AECOM, is missing from the AECOM Report. There is nothing in the AECOM Report that plausibly supports the conclusion that it constitutes the “written findings” required by Section F.

The PLA Screening Form – unknown as to both authorship and exact date of creation – are apparently not the “written findings” but it is the only evidence in the record that supports that any kind of Section F evaluation was done. Given the absence of any specific analysis, evaluation or conclusion in the AECOM Report, it is unclear what the “source” of the answers was in preparing the PLA Screening Form.

A. Project Information

A.05 - Does this project address a public safety concern?

Not directly. ...

A.06 - Is there an urgent need to complete the project in a constrained budget setting such that including a PLA on the project would cause a delay to project completion?

Yes. ...

A.07 - Is there sufficient evidence that including a PLA on the project would impede achieving the State’s interest in cost-effectiveness, efficiency, quality, health, safety, and/or timeliness?

There is a risk to achieving the State’s interest in timeliness. Efforts would be needed to ensure a timely negotiation of a PLA to prevent a delay in the advertisement schedule for KH-3046-0000.

B. Feasibility Study: Economic Impacts

B.01 - What is the impact of a PLA on project costs?

Union membership in the Maryland Construction industry is low per US Department of Labor Union Membership reports. It is unclear if Open Shop Contractors will bid on a project with a PLA requirement. If Contractors that are not signatory to collective bargaining agreements decide not to bid, it will reduce competition and increase bid prices.

B.02 - Will a PLA advance the State’s interest in cost effectiveness?

No. A primary advantage to a PLA on this project would be to reduce the risk of labor disruptions delaying the project. A preliminary study found the risk of a labor disruption on this project to be low. ...

C. Feasibility Study: Non-Economic Impacts

C.01 - Comment on the size and complexity of the project, in particular the value a PLA may add. ...

... While a PLA will ensure stability of the workforce during construction, Maryland has successfully constructed multiple projects of similar size and complexity in the ETL program without a PLA.

C.02 - Describe if/how a PLA will advance the State's interest in efficiency.

Union work rules have the potential to negatively affect the project efficiency by forcing the use of unnecessary labor. This can be mitigated when negotiating the PLA.

C.03 – Describe if/how a PLA will advance the State's interest in producing labor stability.

... While this region has little to no history of labor disruptions in the heavy civil construction industry, a potential shortage of skilled workers anticipated in the next 5 years could result in a disruption.

C.04 - Describe if/how a PLA will advance the State's interest in timeliness.

While a PLA will eliminate the risk of labor disruption by providing access to a ready supply of skilled labor, this risk is low. Any delay in advertisement and construction NTP would negatively affect the State's interest by delaying concurrent completion with the I-95 ETL Northbound Extension Program and I-695 SHA TSMO Project.

C.05 - Describe the potential for labor disruptions, such as strikes, lockouts, or slowdowns, which could affect the completion of the project.

There is little to no history of work disruption by open shop workers in Maryland. In recent years there has been minimal disruptive activities by unions affecting projects in Maryland. The likelihood of any action disrupting this project is low.

C.06 - Describe the need and urgency of the project and the harm to the public if completion of the project is delayed.

.... A delay in the Advertisement of the KH-3046-0000 project due to PLA negotiations will prevent the project completing construction on time. MDTA has a history of projects of similar size and complexity successfully with open shop contractors without the use of a PLA.

C.07 - Describe if/how a PLA will advance the State's interest in employing a skilled labor force.

A PLA would utilize union workforce development network of apprenticeship programs to advance the State's workforce development policies.

C.08 – Describe if/how a PLA will advance the State's interest in quality.

In providing access to union hiring halls and union apprenticeship programs, a PLA will provide for a higher skilled workforce that will enhance quality, safety, and labor stability.

C.09 - Describe if/how a PLA will advance the State's interest in safety, specifically safety compliance on project sites.

The preliminary evaluation report did not specifically address the topic of safety and safety compliance on the work site. ...

C.10 - Describe if/how a PLA will advance the State's interest in health.

This area was not evaluated in the preliminary evaluation report.

C.11 – Describe if/how a PLA will advance the State's interest in promoting apprenticeships.

Unions have Maryland-registered apprenticeship programs. A PLA provision for apprenticeships would advance the State's interest in developing a skilled labor force both for future projects and for the sake of supporting opportunities for Marylanders seeking skilled trade careers.

JE 11. These answers do not, individually or collectively, “clearly demonstrate how the use of a [PLA] will benefit the project and the interests of the public and the State from a cost-effective, efficiency, quality, safety and timeliness standpoint.” In fact, almost all answers provide support for *not* requiring a PLA due to concerns over higher costs, anti-competitiveness and delay in not just this Project, but another SHA project that must be coordinated with this one. Notably, advancing the State's interest in promoting apprenticeships is not one of the factors that must be “clearly demonstrated” in the “written findings.”

In short, there is no evidence of any “written findings” that “clearly demonstrate” that the use of a PLA in this Project “will benefit the project and the interests of the public and the State from a cost-effective, efficiency, quality, safety and timeliness standpoint.” The AECOM Report

contains nothing approaching the “written findings” mandated by the EO. Although Respondent argues that “the written findings do not dictate to the State what to do,” in the absence of any written findings under Section G.1 of the EO, MDTA violated the EO’s mandate in Section E that the “decision to require the use of a [PLA] ... **shall be made only** where such an agreement will advance the State’s interest in cost-effectiveness, efficiency, quality, health, timeliness employing a skilled labor force, and producing labor stability.” MDTA cannot, on the one hand, point to the EO as the basis for including the PLA requirement in the IFB and, on the other hand, disregard the content – or the lack thereof – of the “written findings” that failed to clearly demonstrate that the State’s interests will be advanced. Therefore, the Board finds that the PO’s decision to include a PLA requirement in this IFB was arbitrary, capricious, and unreasonable.

ORDER

Based on the foregoing, the Board finds, this 5th day of August, 2026, that MDTA’s inclusion of a PLA requirement in the solicitation was arbitrary, capricious, and unreasonable, and that the PLA requirement was written in such a manner as to violate Maryland Procurement Law. We therefore sustain the appeal on the second basis of protest in part, and the third basis of protest in full. The first ground of protest and appeal is denied.

/s/
Sonia Cho, Esq., Chairwoman

I concur:

/s/
Lawrence F. Kreis, Jr., Esq., Member

/s/
Jill P. Carter, Esq., Member

Certification

COMAR 21.10.01.02 **Judicial Review.**

A decision of the Appeals Board is subject to judicial review in accordance with the provisions of the Administrative Procedure Act governing cases.

Annotated Code of MD Rule 7-203 **Time for Filing Action.**

(a) Generally. - Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

- (1) the date of the order or action of which review is sought;
- (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or
- (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

(b) Petition by Other Party. - If one party files a timely petition, any other person may file a petition within 10 days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later.

* * *

I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals Opinion and Order in Docket No. MSBCA 3347, Appeal of Allan Myers MD, Inc., under Maryland Transportation Authority IFB Contract No. KH-3046-0000.

Date: August 5, 2026

/s/
Ruth W. Foy
Clerk