

9 NYCRR § 5.49

NEW YORK CODES, RULES AND REGULATIONS

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TITLE 9. EXECUTIVE DEPARTMENT
SUBTITLE A. GOVERNOR'S OFFICE
CHAPTER I. EXECUTIVE ORDERS
PART 5. EXECUTIVE ORDERS (GEORGE E. PATAKI)

9 NYCRR § 5.49 (2006)

§ 5.49 Executive Order-No. 49: Establishing Procedures to Consider, in its Proprietary Capacity, the Utilization of One or More Project Labor Agreements

WHEREAS, it is in the best interests of the People of the State of New York to promote the timely completion of public construction projects undertaken by State agencies while at the same time limiting the costs of such projects to the greatest extent possible consistent with the law and principles of fairness and equity;

WHEREAS, the New York State Court of Appeals issued a decision in the MATTER OF NEW YORK STATE CHAPTER, INC., ASSOCIATED GENERAL CONTRACTORS OF AMERICA, ET. [AL. V. NEW YORK STATE THRUWAY AUTHORITY, 88 N.Y.2d 56, 666 N.E.2d 185, 643 N.Y.S.2d 480 \(1996\)](#), which found that project labor agreements are "neither absolutely prohibited nor absolutely permitted in public construction contracts"; and

WHEREAS, it is now clear that project labor agreements are one of many tools which may be used by management and labor and which may, under certain circumstances, assist in achieving the goals described above;

NOW, THEREFORE, I, GEORGE E. PATAKI, 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: Each State agency shall establish procedures to consider, in its proprietary capacity, the utilization of one or more project labor agreements with respect to individual public construction projects. The utilization of a project labor agreement shall be considered only where the standards established by the Court of Appeals can reasonably be expected to be met. In reaching a determination on the use of a project labor agreement with respect to a specific project the agency shall consider whether the utilization of such an agreement is justified because it meets the interests underlying the State's competitive bidding laws of:

- (1) obtaining the best work possible at the lowest possible price; and
- (2) preventing favoritism, improvidence, fraud and corruption in the awarding of public contracts. In considering whether to proceed with a project labor agreement, agencies should be mindful that, in the past, the courts of the State of New York have struck down any such agreement wherein a contracting entity was unable to show a proper business purpose for entering

into such agreement.

No project labor agreement shall be approved by an agency unless the decision to enter into the project labor agreement has, both as its purpose and likely effect, the advancement of the interests of the State's competitive bidding statutes.

In the event that an agency enters into a project labor agreement and lets one or more contracts for work to be performed pursuant to such agreement, it shall then be forwarded to the Commissioner of Labor. Upon receipt of the project labor agreement, the Commissioner of Labor shall determine the interaction, if any, between Article 8 of the Labor law and the agreement.

Signed: George E. Pataki
Dated: February 12, 1997

Statutory Authority: Executive Law; Art. 2

Added 5.49 on 2/12/97.