



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
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DEC 16 2011

CECT-P (715e)

MEMORANDUM FOR USACE COMMANDS (ATTN: PRINCIPAL ASSISTANTS RESPONSIBLE FOR CONTRACTING, REGIONAL CONTRACTING CHIEFS, CENTER CONTRACTING CHIEFS, AND DISTRICT CONTRACTING CHIEFS)

SUBJECT: Procurement Instruction Letter (PIL) 2011-01-R1, USACE Policy Relating to the Use of Project Labor Agreements (PLAs) for Federal Construction Projects

1. REFERENCES:

- a. Executive Order 13502, Use of Project Labor Agreements for Federal Construction Projects (Enclosure 3)
- b. Office of Management And Budget (OMB) Memorandum M-09-22, Implementing the President's Executive Order on Project Labor Agreements (Enclosure 4)
- c. FAR Part 22.5 – Use of Project Labor Agreements for Federal Construction Projects

2. APPLICABILITY: This PIL is applicable to any solicitation, or task order request for proposals (RFPs), for construction within the United States and issued after 15 October 2010 that have an anticipated contract value of \$25 million or greater. With respect to solicitations to establish new MATOCS and SATOCS issued after 15 October 2010, the following language shall be included at an appropriate location in the solicitation: "Pursuant to FAR 22.503, a Project Labor Agreement (PLA) may be considered for certain projects under Task Orders meeting the criteria set forth in Executive Order 13502. Each Task Order may be evaluated on a project by project basis for possible application of a Project Labor Agreement." Active solicitations as of 15 October 2010, shall be amended to include this language. With respect to solicitations of task orders under previously awarded MATOCS and SATOCS, if the project delivery team (PDT) determines that the project is appropriate for a PLA, the underlying MATOC or SATOC shall be modified to include the language above.

3. PURPOSE: This PIL revision, 2011-01-R1, replaces the original PIL 2011-01 in its entirety. This memorandum establishes the USACE policy, framework and implementation plan relating to Executive Order 13502. In the publication of the FAR rule, Case 2009-005 – 75 FR 19168, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council concluded that the structure and organization of a contracting agency's review team, the agency or external resources consulted, and the documentation supporting any decisions relating to the use of a PLA, should be left to the discretion of each agency. Accordingly, USACE implementation guidance is provided in the paragraphs below.

4. BACKGROUND: A PLA is 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. PLAs are permissible pre-hire agreements under sections 8(e) and (f) of the National Labor Relations Act, which authorizes the use of these agreements between labor organizations and employers engaged primarily in the building and construction industry. Since USACE is not an employer engaged primarily in the building and construction industry, USACE will neither negotiate

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nor become signatory to a PLA. Since it is recognized that USACE has had limited experience with PLAs in general, we have attached, as Enclosure 1, Frequently Asked Questions (FAQs) in order to provide basic answers to the most commonly raised questions regarding PLAs.

5. ACQUISITION PLANNING: The FAR was revised at 7.103(x), agency-head responsibilities, by adding a requirement to encourage agency planners to consider the use of a PLA for large scale construction projects (defined in the Executive Order as projects where the total cost to the Federal Government is \$25 million or more). In addressing this requirement on a project-by-project basis, USACE PDTs should consider the factors identified at FAR 22.503(b) and (c). The factors set forth at FAR 22.503(b) are those specifically identified in the Executive Order while the factors set forth at 22.503(c) were developed in response to public comments submitted to the proposed FAR rule.

Additional factors USACE PDTs may deem appropriate for consideration include:

- (1) The unique and compelling schedule requirements of a particular project. In this regard, projects that are tied to court-imposed deadlines or mission-critical schedules may also provide a basis for a PLA requirement.
- (2) Skilled labor shortages might be anticipated for projects located in a remote location where a contractor may encounter difficulties in recruiting and retaining a skilled workforce for an extended period.
- (3) Skilled labor shortages may also result where there may be competition within the contractor community for skilled labor arising from concurrent large-scale construction contracts in the project vicinity.

6. CONTRACTING OFFICER RESPONSIBILITIES RELATING TO THE DETERMINATION WHETHER OR NOT A PLA SHOULD BE REQUIRED FOR A PROJECT. For each construction project with an anticipated value of \$25M or more USACE PDTs may wish to solicit the perspectives of Division and HQUSACE offices (i.e. CECT-P; CECW-CE, CESB, CECC-C) with particular expertise in affected program areas. As an essential component of their market research, PDTs should examine the project location's labor market by soliciting the views of various construction community stakeholders as they specifically address the factors set forth at FAR 22.503(b) and (c) as well as the additional factors noted above. Market research shall be conducted in accordance with the instructions provided within the PLA Determination Tool, Enclosure 2 of this PIL. The Contracting Officer shall prepare a PLA Decision Memorandum for all construction projects with an anticipated contract value of \$25M and above. The memorandum will address whether or not the particular project satisfies the criteria set forth in FAR 22.503(b) and (c) and shall follow the "Review Checklist" template provided within the Enclosure 2, PLA Determination Tool. The Contracting Officer's decision memoranda shall be included in each applicable contract file, accompanied by the market research report, and other research information applicable to the decision whether or not an action is appropriate for a PLA. The market research and completion of the decision memorandum (required for every evaluation whether or not a PLA is to be requested for proposal) should be undertaken prior to the issuance of the solicitation.

When it is determined that a PLA may be accompanying offerors' proposals, the Source Selection Plan shall address how an offeror's proposed use of a PLA will be evaluated during the source selection. If it is determined that a PLA will be pursued on the project, the use of Invitation for Bid

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(IFB) or Low Price Technically Acceptable (LPTA) procedures shall not be used as such approach would not enable the Source Selection Authority to weigh an offerors' proposed use of a PLA in the source selection process.

7. INSTRUCTIONS: When the decision is made to pursue a PLA on a given project, the following instructions apply:

a. Insert the following language into the synopsis: "Offerors will be invited to submit a proposal subject to Project Labor Agreement (PLA) requirements (a PLA proposal), a proposal not subject to PLA requirements, or both. If a PLA proposal is accepted by USACE, the awardee shall be required to execute a Project Labor Agreement (PLA) with one or more appropriate labor organizations for the term of the resulting Contract."

b. Insert in an appropriate location in the solicitation (or for a task order in the Request for Proposal): "Offerors may submit a price proposal subject to the Project Labor Agreement requirements set forth in *[insert section]* of this solicitation (a PLA proposal), a price proposal not subject to the PLA requirements set forth in *[insert section]* of this solicitation, or both. Any price proposal submitted shall clearly identify whether it is subject to such PLA requirements."

c. Insert in the appropriate location in the solicitation (or for a task order in the Request for Proposal): "Note: FAR Provision 52.222-33, Alternate II only applies to proposals submitted subject to the PLA requirements of this solicitation." *[Insert FAR Provision 52.222-33, Alternate II]*

d. Insert in the appropriate location in the solicitation (or for a task order in the Request for Proposal): "Note: FAR clause 52.222-34, Alternate I and the included supplementary requirements are binding on the Contractor if the proposal selected for award was subject to PLA Requirements. If the proposal selected for award was not subject to PLA requirements, this section is not binding on the Contractor." *[Insert FAR clause 52.222-34, Alternate I]*

Supplementary Requirements to 52.222-34(c) Alternate I IAW FAR 22.504(c):

1. Within ___ calendar days following award, or such other time as agreed to by the Contracting Officer, the Contractor shall furnish the Contracting Officer with an executed PLA meeting the minimum requirements, and containing the mandatory terms, of this section. The Contractor shall not be entitled to issuance of Notice to Proceed (NTP) until it has furnished such evidence of an executed PLA. Note: The number of days for submission of the executed PLA cannot be more than the number of days to NTP.

2. Additional Requirement. The PLA must establish wage rates applicable for the duration of the PLA, regardless of whether corresponding collective bargaining agreements expire.

3. Mandatory PLA Terms. The PLA shall include the following terms, or substantially identical language as approved by the Contracting Officer:

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(a) "During the term of this PLA, there shall be no strikes, pickets, work stoppages, slowdowns or other disruptive activity for any reason by Labor Organizations or their members, and there shall be no lock out by the Contractor or its subcontractors. The Labor Organizations agree that they shall not incite or encourage participation in any such disruptive activity and shall undertake all reasonable means to prevent or terminate it."

(b) "This PLA supersedes any other collective bargaining agreement that may conflict or differ from the terms of this PLA. In the event of a conflict between the terms of this PLA and any collective bargaining agreement, this PLA shall govern. If any collective bargaining agreement contains provisions that are not covered by this PLA, such collective bargaining agreement provisions shall bind the parties to the collective bargaining agreement with respect to employees covered thereby."

(c) "Deductions for Labor Organization dues, if any, for employees who are not members of Labor Organizations shall not be more than an amount necessary to cover the Labor Organization's costs of collective bargaining, contract administration, and grievance adjustment. Contributions to employee benefit funds of a Labor Organization from employees who are not members of that Labor Organization may be required only if, and to the extent that, the benefits immediately accrue to the direct benefit of such employees and do not require membership in the Labor Organization."

(d) "Nothing in this PLA shall be deemed to limit a Contractors or its subcontractors' right to reject proposed employees, provided that such right is exercised in good faith, or to use their own employees."

8. EVALUATION OF PROPOSED USE OF PLA: The proposed use of a PLA must be evaluated during the source selection process. Therefore how the proposed use of a PLA will be evaluated along with any proposal submission requirements must be addressed in the source selection plan and the solicitation. The weight of importance given to the use of a PLA will vary depending on the project and the perceived benefit of the use of a PLA to the Government. Contracting Officers will have discretion in determining how best to consider the proposed use of a PLA during source selection. Offerors proposing the use of a PLA may be evaluated more favorably. However, since proposing a PLA is optional, offerors who do not propose the use of a PLA still meet the minimum requirement. Possible areas of evaluation include, requiring the submission of a PLA Implementation Plan Narrative and/or previous experience with projects that include PLAs as part of the offeror's technical proposal which will be rated during source selection.

9. REVIEW OF THE PLA: When the Contractor submits the fully executed PLA after contract award the Contracting Officer, Office of Counsel, Contractor Industrial Relations Officer, and any other parties deemed necessary by the PDT will review the PLA for compliance with the contract requirements. Identified areas of non-compliance will be addressed with the Contractor and corrected. Notice to Proceed shall not be issued until a PLA that is fully compliant with the contract requirements is received by the Contracting Officer.

10. QUARTERLY REPORTING REQUIREMENT: On 10 July 2009, the Director of OMB issued OMB Memorandum M-09-22 tasking Heads of Executive Departments and Agencies with a quarterly reporting requirement relating to each agency's implementation of Executive Order 13502. Specifically, OMB has directed agencies to submit these reports on 1 February, 1 May,

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1 August and 1 November providing the following details on each "large scale construction project" (i.e. contract value of \$25M and above). Each report shall contain the following data fields:

- a. Contract Number
- b. Dollar Value of the Total Contract Award
- c. Product and Service Code Describing the Project
- d. Whether a PLA was Required in the Solicitation
- e. Brief explanation of the Considerations in Deciding Whether a PLA was Appropriate for the Project
- f. Organizational Level at Which the Decision was Made

At the beginning of each quarter HQ NCO will run a report out of the Army Contracting Business Intelligence System (ACBIS) identifying all USACE construction contracts awarded the previous quarter that were \$25M or greater. This report will then be sent out to all District/Center Contracting Officer to verify the information concerning if a PLA was used on the contracts listed and a brief explanation of the consideration in deciding whether a PLA was appropriate for the project, shall be provided.

10. Questions regarding this PIL should be addressed to Robin A. Baldwin, Chief, Contracting Policy Division, (202) 761-8645, robin.a.baldwin@usace.army.mil . Questions relating to Contractor Industrial Relations issues in general should be addressed to Vanessa Shaw-Jennings, Contractor Industrial Relations Officer, CECC-C, (202) 761-8559, vanessa.l.shaw-jennings@usace.army.mil.

4 Encls



THEODORE C. HARRISON
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Director, National Contracting Organization

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Enclosure 1 – Frequently Asked Questions (FAQs):

1. Are there particular types of contracts, e.g., fixed price, cost reimbursement, incentive fee, etc., for which PLAs should never be used?

No. PLAs have been successfully used on all types of contracts in the public and private sector.

2. Should field operating activity personnel be discussing this with potential offerors?

Yes, FAR 22.504(c) encourages seeking the views of both prospective bidders and union representatives in an effort to identify and facilitate agreement on appropriate terms and conditions for a particular PLA. USACE Contractor Industrial Relations Specialists (CIRS) are generally in the best position to do identify the appropriate points of contact among the respective labor organizations in the initial considerations regarding the use of a PLA.

3. What about Using a Master PLA, as part of the solicitation?

We understand that other Federal agencies routinely use master PLAs and have found them very helpful in achieving economy and efficiency. However, at this point, we don't believe any USACE activities have sufficient experience to develop a master PLA to be added to solicitations as a requirement for all offerors.

4. Are PLAs legal?

Yes. Federal Acquisition Circular 2005-14 specifically authorizes using PLAs on Federal construction contracts. In addition, PLAs may lawfully be used on construction projects consistent with Sections 8(e) and (f) of the National Labor Relations Act. Agencies should ensure that their actions are tailored to reflect their proprietary interests and do not prescribe how government contractors and subcontractors handle their labor relations beyond performance of the specific government construction project involved. See Building and Trades Council v. Associated Builders, 113 S.Ct. 1190 (1993) (“Boston Harbor”); Chamber of Commerce of U.S. v. Reich, 74 F.3d 1322 (D.C. Cir. 1996), *rehearing denied*, 83 F.3d 439 (1996); *rehearing en banc denied*, 83 F.3d 442 (1996) (“Reich”); Building and Construction Trades Dept., AFL-CIO, et al. v. Allbaugh, et al., 295 F.3d 28, 30 (D.C. Cir. 2002).

5. Should USACE be signing the PLA or participate in part of the negotiations?

No. Federal agencies may be the owner of the facilities, but (with the possible exception of federal corporations such as the Tennessee Valley Authority) they are not the employer of the contractor work forces employed to construct the facilities. As owners and proprietors, federal agencies may be party to bid specifications or solicitations that anticipate or require use of PLAs. However, because a federal agency is not generally the employer of the workers involved, it should not directly participate in collective bargaining determining terms and conditions of employment, or become party to labor agreements such as PLAs.

6. Besides the items in FAR 22.204(b), what could USACE additionally require be put into a PLA?

Although the contractors, as employers, negotiate the terms and conditions of a PLA, USACE may require that a contractor negotiate a PLA containing any additional requirement consistent with USACE's interests as the proprietor of the project, that otherwise contributes to the efficiency and economy in attaining USACE's mission, or that reflects legitimate socio-economic factors.

7. What projects are included in this change?

The President's Executive Order provides that it shall be the policy of the Federal Government to encourage the use of PLAs in connection with large-scale construction projects (defined as projects where the total cost to the Federal Government of the project is at least \$25 million) as appropriate to promote economy and efficiency in Federal procurement.

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8. Are contracts for construction projects that involve less than \$25 million also covered?

Executive Order 13502 encourages agencies to use PLAs on projects below \$25M in value. Thus, USACE has the discretion to require use of PLAs on projects where the total costs are expected to be less than \$25 million, if use of a PLA will promote efficiency and economy, but there isn't a requirement that USACE consider or use PLAs below this threshold.

9. Does USACE have to make separate determinations for each of a series of similar or related projects?

Yes. The FAR directs agencies to determine whether use of a PLA will contribute to efficiency and economy in Federal procurement on a project-by-project basis.

10. Do PLAs discriminate against non-union contractors or employees who are not members of one of the unions?

No. PLAs in connection with public-sector construction contracts are structured to allow all contractors – union and non-union – to participate. Union hiring halls through which applicants must ordinarily pass to obtain work on a particular project must be operated in a manner that does not discriminate on the basis of union membership.

11. Will a contractor be able to use its existing work force on the project?

Yes. PLAs may contain provisions permitting contractors to bring their existing workers to a particular construction project with them.

12. Won't requiring use of a PLA reduce the number of bids or competition for a project?

No. Requiring the use of a PLA does not necessarily reduce the number of bids or competition for a contract. See Associated Builders and Contractors, Inc. v. Southern Nevada Water Authority, 159 Nev. 151, 159 n. 1, 979 P.2d 224 (S.Ct. Nev. 1999). In addition, in some instances, using PLAs could increase the pool of potential bidders by encouraging offerors who might otherwise believe their bid or proposal would not be competitive in terms of price (e.g. union shop contractors might be encouraged to bid).

13. Are PLAs legal in Right-to-Work states?

Yes. PLAs are legal in states with Right-to-Work laws prohibiting agreements requiring employees to become full union members so long as the union security provisions are written to be consistent with the particular requirements imposed by the statutes in question. Certain Federal construction projects, however, will take place on property where USACE or another agency has exclusive federal jurisdiction and State Right-to-Work legislation would not be applicable in those circumstances anyway. Lord v. Local Union No. 2088, International Brotherhood of Electrical Workers, 646 F.2d 1057 (5th Cir. 1981), rehearing denied 654 F.2d 723 (1981), cert. denied 458 U.S. 1106 (1982).

14. How would USACE evaluate whether an offeror has met the requirement to be party to a PLA? Is it possible for an offeror to gain a competitive advantage by proposing a "better" PLA than another offeror, or are all offered PLAs treated the same during source selection?

The Contractor Officer, in consultation with Office of Counsel, should determine that the offeror has provided evidence that it has agreed to be bound by a PLA. When a solicitation provides that preference will be given in selecting the successful offeror to bidders that propose expanded apprenticeship programs encouraging training and employment of minority or disadvantaged populations, or other lawful socio-economic objectives, proposal of a PLA with such provisions may indeed give an offeror a legitimate competitive advantage. Otherwise, all offered PLAs meeting the requirements of the solicitation should be treated equally.

15. What role should USACE play in managing a PLA during contract performance? What additional actions will need to be taken as part of administration of a contract involving a PLA that would not otherwise be taken?

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Careful contract administration is very important to be sure that the PLA is properly and lawfully implemented and to be sure that the PLA succeeds in providing the economies and efficiencies in procurement anticipated when the determination to require use of a PLA was made. For cost-reimbursement contracts, Contracting Officers should approve the terms of the PLA for purposes of establishing that costs included under the PLA will be allowable under the USACE contract. USACE typically acts as its own construction manager, so it will also be involved in ensuring compliance with the PLA.

16. What basic steps should be taken to ensure use of a PLA will advance USACE's interest in achieving economy and efficiency?

Acquisition Planners should review the project at issue and particularly the schedule and anticipated need for the end product of the construction in order to determine the sensitivity of the project to any delays in project completion and the value in preventing disruptions of work and resolving disputes that may arise on site. For example, retrofitting of occupied structures or construction of new buildings or replacement structures may be very time sensitive, especially if weather in the area could further restrict construction.

To determine the efficiencies and economies that a PLA might bring to a particular project, the planners should assess the complexity of the project involved, and particularly the number of workers, labor organizations, and employers expected to participate and the value in those circumstances of coordinating wages, hours, work rules, position classifications, dispute resolution, and other terms of employment at the project. If the budget is very tight, the certainty of labor costs provided by a PLA may be particularly important. Similarly, if studies indicate there may be a concern about possible shortage of labor with the needed skills and capabilities in the area where the project is being conducted, there could be a significant advantage to obtaining access to union hiring halls. Acquisition Planners may also take into consideration that apprenticeship programs available under a PLA may contribute to economy and efficiency of the project in a manner that assures the largest pool of labor involved and is cost-effective in the long run, as well as the impact of such programs on immediate project costs. In particular, apprenticeship and hiring hall programs may make an expanded pool of qualified workers available more expeditiously and allow the project to get under way faster. Projects at sites involving remediation of significant environmental hazards or involving particularly dangerous work give rise to particularly acute safety and health concerns and the advantage of PLAs in facilitating coordination of work on site may be important in those circumstances. Such considerations may also constitute socio-economic factors appropriate for consideration by USACE. It may also be helpful to issue a Sources Sought Synopsis in order to better determine the likely impact of use of a PLA on a particular project.

17. FAR 22.503(c)(6) talks about other factors. What types of other factors should be considered during acquisition planning to determine whether or not to use a PLA? Why would USACE want to promote PLAs?

There are several factors that USACE should consider during acquisition planning in order to determine whether use of a PLA will advance USACE's interest in achieving economy and efficiency. The Department of Energy and the Tennessee Valley Authority have found that projects covered by PLAs tend to come in on time or early, and on budget or under budget, and that any delays in completion of such projects or any increases in costs that do arise are not be due to labor issues.

PLAs may significantly contribute to the economy and efficiency of a project by providing a mechanism for coordinating wages, hours, work rules, and other terms of employment across a project. Agencies should consider the complexity of the particular projects involved, particularly with respect to the number of workers and labor organizations and contractors expected to participate, and the value in those circumstances of coordinating wages, hours, work rules, and other terms of employment at the project in contributing to efficiency and economy. Improving coordination of work may also be especially important in projects involving particularly acute safety and health concerns.

Further, lack of coordination among various employers, or uncertainties about the terms and conditions of employment of various groups of workers, may create friction and labor disputes. On larger, more complex projects that will be of longer duration, such problems tend to be more pronounced. The use of PLAs may prevent such problems from developing by providing structure and stability to large-scale construction projects, thereby

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promoting the efficient and expeditious completion of Federal construction contracts. PLAs also generally include broad provisions for grievance and arbitration of any disputes that may arise on site so as to promote the efficient and expeditious completion of Federal construction projects.

Moreover, PLAs commonly provide strong prohibitions of work stoppages, slowdowns, or strikes for the duration of a project and may specifically obligate senior union management to use their best efforts to prevent any threats of disruptions of work that might possibly arise. Agencies should therefore consider the sensitivity of the particular projects to delays and the value in the circumstances of preventing disruptions of work and of providing processes for resolving any disputes that do arise on site.

PLAs also commonly include provisions giving employers access to hiring halls maintained by the participating unions. DOE experience has been that projects covered by PLAs have access to a well trained supply of labor available expeditiously, even in remote areas where skilled labor would have otherwise been extremely difficult to find in a timely fashion. Thus, if there is concern about possible shortage of labor with the needed skills and capabilities in the area where the project is being conducted, access to union hiring halls could be important means of obtaining the necessary work force in the most efficient, expeditious, and economical fashion. Apprenticeship and training programs available through a PLA also help meet labor requirements – and do so in a manner that is cost-effective for the duration of the immediate project, that also assures the largest pool of labor involved, and that is cost-effective in the long run. These factors may also constitute socio-economic factors appropriate for consideration by an agency.



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PROJECT LABOR AGREEMENT DETERMINATION TOOL

Enclosure 2

PURPOSE: The decision to use a Project Labor Agreement (PLA) is made on a project by project basis where its use will promote economy and efficiency in federal procurement. This tool will assist contracting officers to understand the circumstances in which a project labor agreement may benefit a specific project.

This tool is structured in two parts:

1) **Market Research**

Understanding the nature of the project under consideration, the geographic region, the labor market and recent project history are all key components to making informed decisions. This section of the tool will help contracting officers gather pertinent information to know if a PLA is appropriate for use on a given project.

2) **Review Checklist**

This section will help the contracting officer determine whether a PLA is appropriate for the project. Note: The “Review Checklist” memorandum within this tool and accompanying project-by-project market research report shall be included in every applicable contract file.

BACKGROUND: A project labor agreement is defined as 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. § 158(f). Federal Acquisition Regulation (FAR) 22.503 Policy provides that:

(a) Project Labor Agreements are a tool that agencies may use to promote economy and efficiency in Federal procurement. Pursuant to Executive Order 13502, agencies are encouraged to consider requiring the use of project labor agreements in connection with large-scale construction projects.

(b) An agency may, if appropriate, require that every contractor and subcontractor engaged in construction on the project agree, for that project, to negotiate or become a party to a project labor agreement with one or more labor organizations if the agency decides that the use of project labor agreements will--

(1) Advance the Federal Governments interest in achieving economy and efficiency in Federal 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

(2) Be consistent with law. See also FAR 52.222-33 Notice of Requirement for Project Labor Agreement and FAR 52.222-34 Project Labor Agreement.

MARKET RESEARCH: In addressing projects within the scope of Executive Order 13502, federal contracting officers may undertake a labor market survey as part of their PLA evaluation process, following the criteria offered in the FAR 22.503(c):

- (1) The project will require multiple construction contractors and/or subcontractors employing workers in multiple crafts or trades.
- (2) There is a shortage of skilled labor in the region in which the construction project will be sited.
- (3) Completion of the project will require an extended period of time.
- (4) Project labor agreements have been used on comparable projects undertaken by Federal, State, municipal, or private entities in the geographic area of the project.
- (5) A project labor agreement will promote the agency's long term program interests, such as facilitating the training of a skilled workforce to meet the agency's future construction needs.
- (6) Any other factors that the agency decides are appropriate.

For this assessment, agencies may consider consulting a contract management firm with experience evaluating project labor agreements. There are several firms nationwide that have national and regional experience evaluating whether the use of a PLA can provide value to a project.

For contracting officers who choose to conduct their own research, the following information may be helpful in making an informed decision:

Sources of Information: Contracting officers who undertake this assessment may consider the following sources for detailed information about data to consider when making a determination. This information can be gathered through a "sources sought" notification, email or phone contact, or through a survey.

- 1) Project owners and users
Owners of local construction projects in the vicinity of the project under consideration may have had to decide whether to use a PLA. As such, local and/or state government agencies can provide relevant information on the factors they have considered when deciding to use PLAs on public projects. In addition, private sector firms or owners have increasingly used PLAs to manage complex projects and can be a similar resource.
- 2) Government data sources
Federal and state Departments of Labor (or similar workforce agency) provide data about wages, economic trends and labor availability in the region to employers, developers and other stakeholders. Local Career One Stop Centers may have additional data on the labor force availability.
- 3) Construction community, in accordance with FAR 22.504(c)
 - a. Local Building and Construction Trades Councils
The Building and Construction Trades Department, AFL-CIO, (BCTD) provides essential coordination and support to the work of its affiliated national and international unions
<http://www.bctd.org/Official-Directory/Local-Councils.aspx>

b. Associated Builders and Contractors

A national trade association with numerous local offices representing merit shop contractors, subcontractors, material suppliers and related firms in the United States
<http://www.abc.org/chapterlocator.aspx>

c. Associated General Contractors

A national trade association with a nationwide network of local chapters, AGC represents more than 33,000 leading firms in the industry - including general contractors, specialty contractors and service providers and suppliers.
http://www.agc.org/cs/about_agc/find_a_chapter

4) Construction consulting and management firms and academic experts

Construction consulting and management firms with experience using PLAs are often called on to provide expert analysis regarding the benefits of using PLAs and whether its use can provide value on a particular project. Along with academic experts, these firms have conducted analyses to determine whether to use PLAs and have extensive experience regarding what factors should be considered and how a PLA can be crafted to maximize economy and efficiency.

Scan of Recent Construction Projects in Target Labor Market: A sources sought notice (or a similar relevant agency tool) may be issued as part of market research to obtain data on the recent history of construction projects in the local labor market of the project under consideration. The information gathered in this exercise should include the following information on projects completed in the last 2-5 years:

Project Name / Location	Detailed Project Description	Initial Cost Est. / Actual final cost	Was the project completed on-time?	Number of craft trades present on the project	PLA (Y/N)	Were there any challenges experienced during project? (delays, investigations, health and safety issues, labor shortages, management/ organizational issues, etc)
1)						
2)						
3)						

Current Project Details: For the project under consideration, the federal acquisition team can fill in the following table to detail the factors needed to consider when deciding whether a PLA may or may not improve the economy or efficiency of the project:

Project Description	
Category of Construction (residential, building, highway, heavy)	
Estimated cost, duration, deadline and complexity	
Which trades are expected to be employed on the projects? o Are you likely to need some union skilled trades for at least part of this project?	
What market share does union labor have in the geographic area for	

What market share does union labor have in the geographic area for this project or type of construction?	
Does the local market contain the sufficient number of available skilled workers for this project? <ul style="list-style-type: none"> ○ Are the other projects in the vicinity going to limit the pool of skill labor available for your project? 	
Has a project like this been done before in the local market?	
What investments have been made to support registered apprenticeship programs?	
Will the completion of the project require an extended period of time or have sensitive deadlines?	
Have PLAs been used on comparable projects undertaken by the public or private sector in this geographic region? Have PLAs been used on this type of project in other regions?	
Which CBAs are likely to expire during the course of the project under consideration that might cause delays? (local building trades and contractors can provide information)	
How do open shop and union wage rates influence prevailing wage rates in the local market and compare to Davis Bacon rates? <ul style="list-style-type: none"> ○ What impact does unionization in the local market have on wages? 	
Could a PLA contribute to cost savings in any of the following ways? <ul style="list-style-type: none"> ○ Harmonization of shifts and holidays between the trades to cut labor costs? ○ Minimizing disruptions that may arise due expiration of CBA? ○ Availability of trained, registered apprentices, efficient for highly skilled workforce? ○ Allowing for changes in apprentice to journeyman ratio. ○ Serving as a management tool that ensures highly skilled workers from multiple trades are coordinated in the most efficient way? Other? 	
Could a PLA minimize risk and contribute to greater efficiency in any of the following ways? <ul style="list-style-type: none"> ○ Mechanisms to avoid delays ○ Complying with Davis Bacon and other labor standards, safety rules and EEO and OFCCP laws. ○ Ensuring a steady supply of skilled labor in markets with low supply or high competition for workers. 	
Are there ways in which a PLA might increase costs on this particular project?	

Review Checklist Decision Memorandum

The following factors have been considered in determining whether to use a PLA. The decision to use or not use a PLA was based on an overall assessment of project economies and efficiencies to be realized from either course of action and was not merely a function of the number of boxes checked.

- The project will require multiple construction contractors and/or subcontractors employing workers in multiple crafts or trades.
- There is a shortage of skilled labor in the region in which the construction project will be sited.
- Completion of the project will require an extended period of time.
- PLAs have been used on comparable projects undertaken by Federal, State, municipal, or private entities in the geographic area of the project.
- A PLA will promote the agency's long term program interests, facilitating the training of a skilled workforce to meet the agency's future construction needs.
- There are collective bargaining agreements (CBAs) for key trades that will expire during the course of the project.
- The unique and compelling schedule requirements of a particular project (e.g., the project is tied to court-imposed deadlines or has a mission-critical schedule).
- A PLA will provide an opportunity for registered apprentices to participate in the project.
- Additional Factors (Provide any additional project or situation specific details, information or factors (e.g., results of the labor market survey, other projects in the vicinity, etc.) that apply to this determination.

A PLA would not contribute to the economy or efficiency for the project under consideration.

Based on consideration of the above factors and the market research completed in the previous pages, provide a short summary explaining why you recommend/ do not recommend the use of a PLA for this specific project.

Signed by:

Contracting Officer: _____ Date _____

Requirements Official: _____ Date _____

Presidential Documents

Executive Order 13502 of February 6, 2009

Use of Project Labor Agreements for Federal Construction Projects

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.*, and in order to promote the efficient administration and completion of Federal construction projects, it is hereby ordered that:

Section 1. Policy. (a) Large-scale construction projects pose special challenges to efficient and timely procurement by the Federal 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. A labor dispute involving one employer can delay the entire project. A 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. These problems threaten the efficient and timely completion of construction projects undertaken by Federal contractors. On larger projects, which are generally more complex and of longer duration, these problems tend to be more pronounced.

(b) 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 Federal construction contracts. Accordingly, it is the policy of the Federal 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 Federal procurement.

Sec. 2. Definitions.

(a) The term "labor organization" as used in this order means a labor organization as defined in 29 U.S.C. 152(5).

(b) The term "construction" as used in this order 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 order means a construction project where the total cost to the Federal Government is \$25 million or more.

(d) The term "executive agency" as used in this order has the same meaning as in 5 U.S.C. 105, but excludes the Government Accountability Office.

(e) The term "project labor agreement" as used in this order 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. 158(f).

Sec. 3. (a) 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 Federal Government's interest in achieving economy and efficiency in Federal 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.

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

Sec. 4. Any project labor agreement reached pursuant to this order 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.

Sec. 5. This order 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 order, including leasehold arrangements and projects receiving Federal financial assistance. This order also does not require contractors or subcontractors to enter into a project labor agreement with any particular labor organization.

Sec. 6. Within 120 days of the date of this order, the Federal Acquisition Regulatory Council (FAR Council), to the extent permitted by law, shall take whatever action is required to amend the Federal Acquisition Regulation to implement the provisions of this order.

Sec. 7. The Director of OMB, in consultation with the Secretary of Labor and with other officials as appropriate, shall provide the President within 180 days of this order, recommendations about whether broader use of project labor agreements, with respect to both construction projects undertaken under Federal contracts and construction projects receiving Federal financial assistance, would help to promote the economical, efficient, and timely completion of such projects.

Sec. 8. *Revocation of Prior Orders, Rules, and Regulations.* Executive Order 13202 of February 17, 2001, and Executive Order 13208 of April 6, 2001, are revoked. The heads of executive agencies shall, to the extent permitted by law, revoke expeditiously any orders, rules, or regulations implementing Executive Orders 13202 and 13208.

Sec. 9. *Severability.* If any provision of this order, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of the provisions of such to any person or circumstance shall not be affected thereby.

Sec. 10. *General.* (a) Nothing in this order shall be construed to impair or otherwise affect:

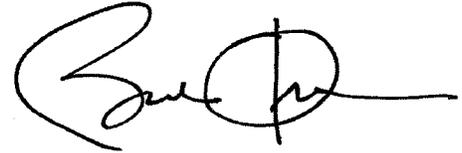
(i) authority granted by law to an executive department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order 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 United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 11. *Effective Date.* This order shall be effective immediately and shall apply to all solicitations for contracts issued on or after the effective date of the action taken by the FAR Council under section 6 of this order.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large, stylized 'B' followed by a circle and a horizontal line.

THE WHITE HOUSE,
February 6, 2009.



THE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 10, 2009

M-09-22

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Peter R. Orszag
Director

A handwritten signature in black ink, appearing to read "P. Orszag", written over the printed name and title.

SUBJECT: Implementation of the President's Executive Order on Project Labor Agreements (PLAs)

On February 6, 2009, the President issued Executive Order 13502 (the Order). In the Order, the President announced that it is the Federal Government's policy "to encourage executive agencies to consider requiring the use of project labor agreements in connection with large-scale construction projects [i.e., projects where the cost to the Federal Government exceeds \$25 million] in order to promote economy and efficiency in Federal procurement." By its terms, the Order applies "to all solicitations for contracts issued on or after the effective date of the action taken" by the Federal Acquisition Regulatory Council (FAR Council) to implement the Order.

This week, the FAR Council transmitted for publication in the Federal Register two notices that (1) repeal, effective immediately, a rule prohibiting agencies from requiring PLAs (this rule had implemented a prior executive order on PLAs that the President revoked), and (2) propose for public comment a new rule to implement the President's Order.

The Administration is committed to implementing the President's Order without delay, and the FAR Council will move expeditiously to review and consider the public's comments that it receives on the proposal and to prepare a final rule.

With the revocation of the prior executive order that had restricted the use of PLAs and with the FAR Council's rescission of its prior implementing rule restricting the use of PLAs, agencies are no longer prohibited from requiring the use of a PLA when permitted by law and when the agency determines that it is appropriate to do so. Accordingly, in light of the benefits that PLAs may offer to Federal agencies in construction projects, agencies are encouraged, during this interim period prior to the FAR Council's issuance of its final rule, to consider the value of PLAs on a project-by-project basis, and to require the use of PLAs in appropriate circumstances and to the extent permitted by law.

As noted above, the Administration seeks to implement the new FAR rule and the President's Order in a timely and effective manner. Therefore, please direct your agency to take all necessary actions so that, when the FAR Council issues its final rule, your agency will be prepared to promptly implement both the rule and the Order.

Finally, in order to gather information on how agencies use PLAs under the Order, agencies are asked to submit quarterly (on February 1, May 1, August 1, and November 1) a report indentifying all contracts awarded in connection with "large-scale construction projects," as defined in the Order, including the contract number, dollar value of the total contract award, and the product and service code describing the project. For each such contract, agencies should indicate whether a PLA was required in the solicitation, provide a brief explanation of the considerations in deciding whether a PLA was appropriate for the project, and specify at what organizational level the decision was made. Agencies should submit this information to PLA-Activity-Report@omb.eop.gov.