



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

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MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND, (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND, (ATTN: ACQUISITION EXECUTIVE)
ASSISTANT SECRETARY OF THE ARMY
(ACQUISITION, LOGISTICS AND TECHNOLOGY)
ASSISTANT SECRETARY OF THE NAVY
(RESEARCH, DEVELOPMENT AND ACQUISITION)
ASSISTANT SECRETARY OF THE AIR FORCE
(ACQUISITION)
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Use of Project Labor Agreements on DoD Construction Projects

This memorandum provides updated guidance on the use of Project Labor Agreements (PLAs) pursuant to Executive Order (EO) 13502, Use of Project Labor Agreements for Federal Construction Projects. The EO and associated Federal Acquisition Regulation (FAR) implementation encourages executive agencies to consider requiring the use of PLAs in connection with large-scale construction projects exceeding \$25 million to promote economy and efficiency. FAR Part 22 prescribes the policies and procedures for using PLAs to promote labor-management stability, and ensure compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other labor matters.

To help increase awareness of PLAs in the Department's acquisition community, I am issuing the attached PLA Determination Guide that highlights market research tools, resources and implementation procedures. This updated guidance will be incorporated in the Defense Federal Acquisition Regulation Supplement Procedures, Guidance and Information in the first quarter of FY 2017. In addition, my office is working with Defense Acquisition University to incorporate instruction on PLAs into CON 244 – Construction Contracting, the primary course for construction contracting personnel, to increase understanding of the applicability and utility of using PLAs. The updated course is projected to be available in the second quarter of FY 2017.

My point of contact for this memorandum is Mr. Larry McLaury, 703-697-6710 or larry.j.mclaury2.civ@mail.mil.

Claire M. Grady
Director, Defense Procurement
and Acquisition Policy

Attachment:
As stated

PLA Determination Guide for DoD

The decision to use a Project Labor Agreement (PLA) is made on a project-specific basis where its use will promote economy and efficiency in federal procurement. This guide will assist contracting officers in understanding the circumstances in which a project labor agreement can benefit a specific project.

This guide is structured in four 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 guide will help contracting officers gather pertinent information to know if a PLA is appropriate for use in this circumstance. All market research should be evaluated on a project by project basis.
- 2) **Review Checklist:** This section will help the contracting officer determine whether a PLA is appropriate for the project.
- 3) **Determination to Include a PLA in a Solicitation:** This section provides guidance on how to implement a PLA when market research and the review checklist indicate a PLA is appropriate for the contract action.
- 4) **Training:** See DAU Course CON 244 – Construction Contracting

Background Information:

A project labor agreement (PLA) 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 states:

(a) Project Labor Agreement (PLA) is 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.

1) 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):

- a) The project will require multiple construction contractors and/or subcontractors employing workers in multiple crafts or trades.
- b) There is a shortage of skilled labor in the region in which the construction project will be sited.
- c) Completion of the project will require an extended period of time.
- d) Project labor agreements have been used on comparable projects undertaken by Federal, State, municipal, or private entities in the geographic area of the project.
- e) 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.
- f) Any other factors that the agency decides are appropriate.

For this assessment, agencies may consider using the services of a contract management firm with experience evaluating project labor agreements. There are several firms nationwide that have national and regional experience evaluating the 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 may be gathered through a "sources sought" notice, via email or phone contact. In certain cases, a new market survey may not be necessary if sufficient and current information exists from which to make a determination about the viability of a PLA for a given project.

a) Project owners and users:

Owners of local construction projects, in the vicinity of the project under consideration have had to decide whether to use a PLA on specific projects. 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.

b) Government data sources:

Federal and each State's 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.

c) Construction community:

1) Local Building and Construction Trades Councils

The North America's Building Trades Unions provide essential coordination and support to the work of its affiliated national and international unions

<http://www.bctd.org/Official-Directory.aspx>

2) 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>

3) Associated General Contractors

A national trade association with a nationwide network of local chapters, Associated General Contractors 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

d) Construction consulting and management firms and academic experts

Construction consulting and management firm 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

To obtain data on the recent history of construction projects in the local labor market of the project under consideration, contracting officers may issue a sources sought notice (or a similar relevant agency tool) as part of their market research. 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? <ul style="list-style-type: none"> 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 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"> o 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 (<i>e.g.</i> , extending beyond one construction season or beyond the expiration date of one or more collective bargaining agreements covering trades likely to be involved in the project) 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 prevailing wage rates in the local market compare to Davis Bacon rates? <ul style="list-style-type: none"> o What impact does unionization in the local market have on wages? 	

<p>Could a PLA contribute to cost savings in any of the following ways?</p> <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? 	
<p>Could a PLA minimize risk and contribute to greater efficiency in any of the following ways?</p> <ul style="list-style-type: none"> ○ Mechanisms to avoid delays ○ Complying with labor standards, safety rules and EEO laws. ○ Ensuring a steady supply of skilled labor in markets with low supply or high competition for workers 	
<p>Are there ways in which a PLA might increase costs on this particular project?</p>	

2) Review Checklist

The following factors have been considered in order to determine whether the use of a project labor agreement for this project will contribute to the economy and efficiency of the project under consideration. NOTE: Decisions should not be made based solely on the number of boxes checked, but rather on the impact to the economy or efficiency of using a PLA on the particular project being planned (see FAR 22.503(b)):

- Use of a PLA would contribute toward producing labor-management stability, ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters.
- 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 the instant determination).
- A PLA would 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 _____

3) **Determination to Include PLA in a Solicitation**

If the Contracting Officer determines that a PLA may be feasible for the contract action, the Contracting Officer should consider the following:

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 the Government, the awardee shall be required to execute a PLA with one or more appropriate labor organizations for the term of the resulting contract.”

b) Insert the following supplemental conditions in the technical specifications: “Offerors may submit a price proposal subject to the Project Labor Agreement (PLA) 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.”

“Note: FAR Provision 52.222-33, Alternate II only applies to proposals submitted subject to the PLA requirements of this solicitation.”

c) In accordance with FAR 22.505 and the guidance in section e) below, insert the provision at FAR 52.222-33, Notice of Requirement for Project Labor Agreement, in all solicitations, and the clause at FAR 52.222-34, Project Labor Agreement, in all solicitations and contracts associated with the construction project.

d) Evaluation of Proposed Use of PLA: The proposed use of a PLA must be evaluated during the source selection process. The source selection plan (SSP) shall address how an offeror’s proposed use of a PLA will be evaluated during the source selection. When the determination is made that a PLA will be pursued on the project, tradeoff procedures in accordance with FAR Part 15 shall be used to enable the source selection authority (SSA) to weigh an offeror’s proposed use of a PLA. 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. The Contracting Officer will have discretion in determining how best to consider the proposed use of a PLA during source selection. 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.

e) Options for Employing a PLA

If a PLA is suitable for a particular construction project, the Contracting Officer must determine which of the three submission timeline options, as set forth at FAR 22.505, subparagraphs (a) and (b), is most appropriate.

Contracting Officer/Contract Specialist

- Insert FAR 52.222-33, with Alternate I, or Alternate II as applicable, in all solicitations associated with the construction project.

1) Require PLA Submission with Offer. Offerors submit proposal with a signed PLA.

Benefits:

- Contractors will include labor and overhead costs for PLA in their proposals.
- Submission of PLA with offer best ensures compliance with the PLA requirement.
- Early negotiation and execution of the PLA can best ensure labor issues will not lead to unanticipated problems.

Disadvantages:

- Government may receive multiple PLA versions.
- Lack of understanding and coordination with contractors about the terms and conditions of a PLA may create confusion, requests for information (RFI), and future legal review, which may delay the project.
- Requiring a PLA from each offeror could impose a significant burden on all offerors which could reduce competition as well as being taxing on the other parties to the PLA.

2) Require PLA Submission from Apparent Awardee, prior to award.

(Refer to FAR 52.222-33, Alternate I.)

- Notify offeror(s) that, if selected, they would be required to negotiate a PLA with one or more labor organizations and provide a signed PLA prior to award.
- Only the selected offeror would be required to deliver the signed PLA, and the contents would not be overtly involved in selection, except in regard to the possible impact on proposed price.

Benefits:

- Gives the Contractor more time to negotiate an effective PLA.
- Reduces the effort required for each offeror and the other parties to the PLA having to negotiate a PLA.

Disadvantages:

- Lack of agreement on terms and conditions could delay the project.

3) Require PLA Submission after award and before construction begins.

(Refer to FAR 52.222-33, Alternate II.)

- PLA is a contract deliverable, subject to government approval.
- Ensure the PLA is developed sufficiently early in the process. Consider requiring approval of the PLA before issuing a Notice to Proceed (NTP) on the construction project.

Benefits:

- Supports timely awards.
- Gives the Contractor the most time to negotiate the best PLA possible.
- Reduces effort required of each offeror and the other parties to the PLA having to negotiate a PLA.

Disadvantages:

- Lack of agreement on terms and conditions could delay the project and/or contract award.
- Post-award PLAs may lead to labor distractions or unanticipated labor problems at the beginning of the project.

Note: These benefits and disadvantages described for each option are only a few examples of what to think about when trying to determine when to have the PLA submitted. Keep in mind there are many other factors that must be looked at on a project-by-project basis (e.g., project requirements, local area practices, project located on Indian reservation, union or nonunion dominance, time restrictions).

f) General Requirements for Project Labor Agreements included in FAR 22.504

At a minimum, a PLA in a government contract shall contain the following requirements:

- 1) Bind all contractors and subcontractors engaged in construction on the construction project to comply with the project labor agreement;
- 2) Allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;
- 3) Contain guarantees against strikes, lockouts, and similar job disruptions;
- 4) Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;
- 5) Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and
- 6) Include any additional requirements as the agency deems necessary to satisfy its needs.

4) Training

See DAU Course CON 244 – Construction Contracting, the primary course for construction contracting personnel.