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PBS Procurement Instructional Bulletin 10-04-Revision 1

MEMORANDUM FOR: PUBLIC BUILDINGS SERVICE
REGIONAL COMMISSIONERS
REGIONAL PROCUREMENT OFFICERS

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SUBJECT: Guidance on the Use of Project Labor Agreements in
Construction Project greater than \$25,000,000

1. Purpose

The purpose of this procurement instructional bulletin (PIB) is to provide updated information with regard to GSA's implementation of the final rule for FAR Case 2009-005, Use of Project Labor Agreements for Federal Construction Projects which was published April 13, 2010.

2. Background

A Project Labor Agreement (PLA) is a collective bargaining agreement between a contractor, its subcontractors, and labor unions in which the parties define terms of employment for all laborers, union and non-union, to be employed on a specific construction project.

On February 6, 2009, President Obama signed Executive Order (EO) 13502, Use of Project Labor Agreements for Federal Construction Projects, to "promote the efficient administration and completion of Federal construction projects." EO 13502 authorizes federal agencies to require contractors to enter into project labor agreements on construction projects of at least \$25M. EO 13502 does not mandate that federal agencies require PLAs; rather it states a policy "to encourage federal executive agencies to consider requiring the use" of PLAs on major construction projects.

The final FAR rule, FAR Case 2009-005, was published in the Federal Register April 13, 2010 and became effective May 13, 2010.

3. Effective Date

This bulletin is effective as of date of issuance.

4. Cancellation Date

This PIB will remain in effect until cancelled.

5. Applicability

This PIB applies to solicitations for construction projects, including general construction, design build (DB) and construction manager as constructor (CMc), with a value of \$25 million or more that are issued after the effective date of this PIB. The PIB does not apply to lease construction.

6. Summary

PIB 10-04 incorporates FAR Case 2009-005 into GSA's procedures for considering the use of PLAs. Offerors are given the option of submitting a PLA proposal, a non-PLA proposal, or both in response to a solicitation.

The assignment of 10% of the technical score for proposals subject to PLA requirements reflects the reduced project risks attributable to wage stability, efficient resolution of disputes, avoidance of work stoppages, and the potential for project-specific coordination of work rules, increased labor availability; and other benefits offered by PLAs for large-scale construction projects.

This revision to PIB 10-04 clarifies instructional notes and PBS additional terms.

7. References

Executive Order 13502, Use of Project Labor Agreements for Federal Construction Projects

Federal Acquisition Regulation, Subpart 22.5, Use of Project Labor Agreements for Federal Construction Projects

8. Instructions

Insert the following provisions and clause into solicitations that are subject to this PIB:

8.1 Insert the following language into the synopsis:

Offerors will be invited to submit a proposal subject to PLA requirements (a PLA proposal), a proposal not subject to PLA requirements, or both. If a PLA proposal is accepted by GSA, 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.

8.2 Insert in the How to Offer section or elsewhere in the solicitation as appropriate:

Offerors may submit a price proposal subject to the PLA requirements set forth in *[insert section]* of this solicitation, 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.

8.3 Insert as a Technical Evaluation Factor in the solicitation:

Evaluation Factor #___: Project Labor Agreement 10% of total points awarded (*if weights are included in the solicitation*)

A proposal submitted subject to the PLA requirements set forth in *[insert section(s)]* of this solicitation will receive full credit under this evaluation factor. A proposal submitted not subject to such PLA requirements will receive no credit under this evaluation factor.

NOTE: *Adjust the relative percentages of other evaluation factors as necessary to ensure total evaluation is equal to 100%.*

NOTE: *If the solicitation does not specify the relative weight of the technical evaluation factors, add PLA into the order of importance and update the source selection plan. The selection board must evaluate and score proposals subject to PLA requirements with the full 10% credit and evaluate and score proposals not subject to PLA requirements as 0%.*

8.4 Insert in the "Additional Solicitation Provisions" section or elsewhere in the solicitation as appropriate the following introduction and provision:

Project Labor Agreement (PLA)

(a) This Project Labor Agreement section only applies to proposals submitted subject to the PLA requirements of this solicitation.

(b) *[Insert FAR FAR 52.222-33, Alternate II here in full text]*

8.5 Insert in the Additional Contract Clauses section or elsewhere in the contract (The Agreement Template, if used), as appropriate, the following introduction, contract clause and supplemental language:

Project Labor Agreement (PLA)

(a) This Project Labor Agreement section is 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.

(b) *[Insert FAR 52.222-34, Alternate I here in full text]*

(c) The requirements of 52.222-34(c) Alt 1 are supplemented as follows:

1. Within ___ days following award, or such other time as agreed to by the Contracting Officer, the Contractor shall furnish the Contracting Officer with a copy of an executed PLA that meets the requirements of this Section. The Contractor shall not be entitled to issuance of Notice to Proceed (NTP) until it has furnished a copy 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. Notwithstanding paragraph (c)(1), GSA reserves the right to issue a NTP without an executed PLA and to seek a reduction in the Contract Price if the Contractor provides evidence (a) of its willingness to execute a PLA meeting the minimum requirements of this Section, and (b) that the Contractor's inability to furnish an executed PLA is the result of a signatory Labor Organization(s) failure to execute a PLA meeting such requirements. Failure to furnish an executed PLA within the time specified in paragraph (c) without such evidence shall be grounds for termination of the Contract for default.

3. The PLA must establish wage rates applicable for the duration of the PLA, regardless of whether corresponding collective bargaining agreements expire; and

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

(a) "During the term of this PLA, there shall be no strikes, pickets, work stoppages, slow downs 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 the terms of any other collective bargaining agreement that may conflict or differ from the terms of this PLA."

(c) "Deductions for Labor Organization dues, if any, by 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 Contractor's or its subcontractors' right to reject proposed employees, provided that such right is exercised in good faith, or to use their own employees."

(e) "There shall be no discrimination against any employee or applicant for employment because of his or her membership or non-membership in a Labor Organization."

(d) The PLA may include additional terms addressing other matters of mutual benefit to the Contractor, its subcontractors, and the signatory Labor Organizations consistent with the efficient and timely performance of the work. Any additional terms are exclusive of the minimum requirements of this Section. Failure to obtain agreement on such additional terms shall not limit the Contractor's obligation to bargain in good faith to obtain a PLA meeting the minimum requirements and containing the mandatory terms specified herein.

8.6 The Standard contract templates are located at on PBSInsite.

<http://insite.pbs.gsa.gov/acqtemplates>

The templates will be updated to include the language in 8.4 and 8.5 and the FAR solicitation provision and contract clause in full text.