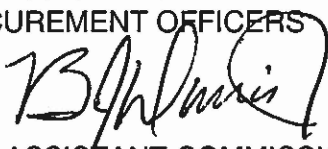




AUG 02 2011

MEMORANDUM FOR: PUBLIC BUILDINGS SERVICE
REGIONAL COMMISSIONERS
REGIONAL PROCUREMENT OFFICERS

FROM: **BOBBY J. DAVIS** 
ACTING DEPUTY ASSISTANT COMMISSIONER
OFFICE OF ACQUISITION MANAGEMENT – PGQ

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 issue new policy with regard to GSA's implementation of the Executive Order (EO) 13502 and FAR 22.5, Use of Project Labor Agreements for Federal Construction Projects. PIB 10-04, Rev 1, dated September 24, 2010 is cancelled. This PIB incorporates the class deviation for FAR provision 52.222-33 Alternate 1, Notice of Requirement for Project Labor Agreement and FAR clause 52.222-34, Project Labor Agreement, received by PBS on July 11, 2011.

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 on or after the effective date of this PIB. The PIB does not apply to lease construction.

6. Summary

Based on lessons learned this PIB adds instructional notes, deletes additional PLA terms and conditions, and requires, as a condition of award, that the apparent successful offeror submit an executed PLA meeting the minimum requirements of the solicitation.

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 apparent successful offeror shall be required, as a pre-condition to award, to execute and deliver to the contracting officer a Project Labor Agreement (PLA) meeting the minimum requirements of the Solicitation.

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 this solicitation, a price proposal not subject to the PLA requirements set forth in 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

A proposal submitted subject to the PLA requirements set forth in 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: 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 to reflect a 10% credit. 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 with 0% credit.

NOTE: If the solicitation specifies the relative weight of the technical evaluation factors, assign 10% for the PLA factor. Adjust the relative percentages of other evaluation factors as necessary to ensure total evaluation is equal to 100%.

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) 52.222-33 Notice of Requirement for Project Labor Agreement (May 2010) Alternate 1 (DEVIATION July 2011)

(a) Definitions. "Labor organization" and "project labor agreement," as used in this provision, are defined in the clause of this solicitation entitled Project Labor Agreement.

(b) The apparent successful offeror shall negotiate a project labor agreement with all labor organizations having jurisdiction over the trades involved in the construction of the project. The project labor agreement must be signed by all such labor organizations and cover the entirety of the construction work to be performed during the term of the resulting construction contract.

(c) Consistent with applicable law, the project labor agreement reached pursuant to this provision shall—

- (1) Bind the offeror and all subcontractors engaged in construction on the construction project to comply with the project labor agreement;
- (2) Allow the offeror and all 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) Fully conform to all statutes, regulations, Executive orders, and agency requirements.

(d) Any project labor agreement reached pursuant to this provision does not change the terms of this contract or provide for any price adjustment by the Government.

(e) The apparent successful offeror shall submit to the Contracting Officer a copy of the project labor agreement prior to contract award.

(c) The requirements of 52.222-33 Alt I are supplemented as follows:

1. The project labor agreement reached pursuant to FAR 52.222-33 Alt I shall supersede the terms of any other collective bargaining agreement that conflict with the terms of such project labor agreement.
2. Within 30 days following receipt of written notification to the apparent successful offeror by the Contracting Officer, the apparent successful offeror shall furnish the Contracting Officer with a copy of an executed project labor agreement that meets the requirements of this Section. If, for any reason, the apparent successful offeror fails to furnish such project labor agreement within the time stated above, the Government may, in its sole discretion, eliminate the proposal from consideration and select the next apparent successful offeror.

- 8.5** Insert in the Additional Contract Clauses section or elsewhere in the contract (The Agreement Template), 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 project labor agreement requirements. If the proposal selected for award was not subject to project labor agreement requirements, this section is not binding on the Contractor.

(b) FAR 52.222-34 Project Labor Agreement (May 2010) (DEVIATION July 2011)

(a) Definitions. As used in this clause—

“Labor organization” means a labor organization as defined in 29 U.S.C. 152(5).

“Project labor agreement” means a pre-hire collective bargaining agreement with the labor organizations having jurisdiction over the trades involved in the construction of the project 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).

(b) The Contractor shall maintain in a current status throughout the life of the contract the project labor agreement entered into prior to the award of this contract in accordance with solicitation provision 52.222-33, Notice of Requirement for Project Labor Agreement.

(c) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts with subcontractors engaged in construction on the construction project. (End of Clause)