



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

OFFICE OF FEDERAL
PROCUREMENT POLICY

April 13, 2010

MEMORANDUM FOR CHIEF ACQUISITION OFFICERS
SENIOR PROCUREMENT EXECUTIVES

FROM:

Daniel I. Gordon
Administrator

SUBJECT:

Implementation of New Regulatory Coverage on Project Labor
Agreements

Last summer, the Director of the Office of Management and Budget (OMB) requested that agencies prepare to promptly implement the final rule that amends the Federal Acquisition Regulation (FAR) to address Executive Order (E.O.) 13502, Use of Project Labor Agreements for Federal Construction Projects. See OMB Memorandum M-09-22, *Implementation of the President's Executive Order on Project Labor Agreements (PLAs)*, available at http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-22.pdf. E.O. 13502 encourages agencies to consider requiring the use of project labor agreements in connection with "large-scale construction projects," which are defined as those construction projects where the cost to the Federal Government is \$25 million or more, in order to promote economy and efficiency in Federal procurement.

Today, a final FAR rule implementing E.O. 13502 has been published in the Federal Register (75 Fed. Reg. 19168). In accordance with the Director's request, I ask that you take all necessary actions to support the effective and timely implementation of this rule and E.O. 13502, including the specific steps described below.

First, please make sure the rule is disseminated to any acquisition office within your agency that is responsible for construction contracting, especially large-scale construction projects, so that they may begin to take advantage of its guidance. You should point out the following provisions of the rule, in particular:

- FAR 22.503(c) identifies a number of factors that agencies may consider to help them decide, on a case-by-case basis, whether the use of a project labor agreement is likely to promote economy and efficiency in the performance of a specific construction project. This discretion will help to ensure that agencies have the opportunity to bring their relevant experiences to bear on circumstances particular to a project.
- FAR 22.504(c) states that an agency may, as appropriate to advance economy and efficiency in the procurement, "specify the terms and conditions of the project labor agreement in the solicitation and require the successful offeror to become a party to a project labor agreement containing these terms and conditions as a condition of receiving a contract award. An

agency may seek the views of, confer with, and exchange information with prospective bidders and union representatives as part of the agency's effort to identify appropriate terms and conditions of a project labor agreement for a particular construction project and facilitate agreement on those terms and conditions." The preamble explains that "[e]xperiences of entities that have successfully used project labor agreements suggest that, in some cases, an agency may be able to more effectively achieve economy and efficiency in procurement by specifying some or all of the terms and conditions of the project labor agreement in the solicitation. Their experiences also suggest that, if the agency specifies some or all of the terms and conditions of the project labor agreement in the solicitation, contractors not familiar with project labor agreements may be better able to compete."

- FAR 22.505 provides standard and alternative clauses that support various approaches for timing the submission of an executed project labor agreement on a particular project – namely, with the initial offer, after offers are submitted but before award, or after award. This flexibility allows agencies to select the alternative that makes the most sense for a particular project and best fits with their mission.

Second, encourage your acquisition offices to reach out to the Project Labor Agreement Technical Assistance Team. This team, established last summer under the auspices of the Vice President's Middle Class Task Force, includes representatives from agencies with project labor agreement expertise, including the Department of Energy and the Tennessee Valley Authority, as well as representatives from contracting, legal, and program offices. The team provides a venue for sharing experiences and identifying best demonstrated practices. To participate on the team, or to take advantage of its resources, contact Jason Kuruvilla at the Department of Labor (email: Kuruvilla.Jason@dol.gov; tel: 202-693-6048).

Third, remember that, pursuant to Memorandum M-09-22, your agency is responsible for submitting quarterly reports to OMB identifying all contracts awarded in connection with large-scale construction projects. The guidance requires reporting on the following information for each project: the contract number, dollar value of the total contract award, and the product or service code describing the project, whether a project labor agreement was required in the solicitation, a brief explanation of the considerations in deciding whether a project labor agreement was appropriate for the project, and the organizational level at which the decision was made. The information should cover a fiscal quarter (e.g., July 1- September 30) and be reported to PLA-Activity-Report@omb.eop.gov within 30 days after the completion of the fiscal quarter.

General questions regarding this memorandum may be referred to Mathew Blum (email: mblum@omb.eop.gov; tel: 202-395-4953). Thank you for your attention to this matter.