



**DEPARTMENT OF VETERANS AFFAIRS
DEPUTY ASSISTANT SECRETARY FOR ACQUISITION AND LOGISTICS
WASHINGTON DC 20420**

**IL 001AL-10-11
July 15, 2010**

OFFICE OF ACQUISITION AND LOGISTICS INFORMATION LETTER

- TO:** Under Secretaries for Health, Benefits, and Memorial Affairs; Assistant Secretary for Management; Director, Office of Construction and Facilities Management; Veterans Integrated Service Network Directors; Directors, VA Medical Center Activities, Outpatient Clinics, Medical and Regional Office Centers, and Regional Offices; Directors, Denver Acquisition and Logistics Center, VA Austin Information Technology Center, Records Management Center, VBA Benefits Delivery Centers, and VA Health Administration Center; Executive Director and Chief Operating Officer, VA National Acquisition Center; Chief Information Officer; VA Health Revenue Center; VA Health Eligibility Center; and, Office of General Counsel
- ATTN:** Heads of Contracting Activities, VA Contracting Officers, Purchase Card Holders, and All Other VA Employees Involved with Acquiring Equipment, Supplies, and Services (Including Construction)
- SUBJ:** Federal Acquisition Regulation Case 2009-005 Final Rule - Use of Project Labor Agreements for Federal Construction Projects

I. PURPOSE

To provide Department of Veterans Affairs (VA) guidance for implementing Project Labor Agreement (PLA) policy incorporated into the Federal Acquisition Regulation (FAR) effective May 13, 2010. This Information Letter (IL) establishes a process for approaching the PLA determination in construction contract actions associated with large-scale projects.

II. BACKGROUND

- A. Large-scale construction projects pose special challenges to efficient and timely procurement. Complications can arise because these construction projects typically involve multiple employers at a single location. A labor dispute or shortage 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 friction and disputes. These problems threaten efficient and timely completion of construction projects undertaken by Federal contractors. The use of a PLA 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 contracts. Accordingly, it is the policy of the Federal government to encourage executive agencies to consider requiring PLAs in connection with large-scale construction projects in order to promote economy and efficiency in Federal procurement.

- B. On February 6, 2009, the President issued Executive Order (E.O.) 13502 regarding the use of PLAs for large-scale Federal construction projects. By definition, any construction project having a total cost to the government of \$25 million or more is considered to be "large-scale." E.O. 13502 revoked prohibitions from requiring a PLA issued by the previous administration and instead encouraged its full and objective consideration on a case-by-case basis. Office of Management and Budget (OMB) memorandum M-09-22, dated July 10, 2009, provided initial implementation guidance and imposed a quarterly reporting requirement for construction contracts awarded in connection with large-scale projects.
- C. The *Federal Register* published a final rule under FAR Case 2009-005, dated April 13, 2010. The most significant impacts on the acquisition community were to add Subpart 22.5, Use of Project Labor Agreements, to the FAR, to incorporate a new solicitation provision at FAR 52.222-33, and to add a new clause at FAR 52.222-34. The provision also includes two alternate versions, and the clause includes one alternate. The final rule encourages agency planners to consider use of a PLA during early acquisition planning. OMB issued a memorandum concurrent with the final FAR rule providing additional implementation instructions and reiterated the existing quarterly reporting requirement.

III. ACTION

- A. VA planners must consider whether a PLA requirement will be included for construction contract actions associated with large-scale projects and document the results based on an objective analysis. Effective May 13, 2010, Construction and Facilities Management contracting officers (CO) shall refer to and follow FAR Subpart 22.5, Use of Project Labor Agreements. If a PLA requirement is included in the solicitation, the CO must ensure any additional requirements under FAR 22.504(b)(6) or any prescribed terms and conditions under FAR 22.504(c) were coordinated with legal counsel and are explained in the file memorandum.
- B. In cooperation with the program office or project manager, the CO must ensure the acquisition plan properly identifies each construction contract action associated with a large-scale project if the estimated value is \$25 million

or greater. The CO will prepare a file memorandum reflecting rationale for the PLA decision (either for or against) and have it approved by the Head of Contracting Activity (HCA) or the HCA's designee. The portion of the acquisition plan pertaining to FAR 7.105(b)(19)(viii) should provide a summary of the rationale for requiring, or not requiring a PLA. The appropriate PLA provision and clause must be included in the solicitation/contract when a PLA will be required.

- C. Factors to Consider and Documentation: In addition to the factors at FAR 22.503, the following may be used to assist VA planners in determining whether requiring a PLA is in the best interest of the government and the specific terms and conditions the offeror/contractor must include in the PLA itself:
1. Solicit and document PLA recommendations from the industry professionals in the local community where the project will be located.
 2. Request the Architect/Engineer provide information to the project manager, during each design phase, regarding current local market/economic conditions and labor shortages, as well as information on whether PLAs were used successfully in the project area.
 3. Issue a Sources Sought announcement seeking PLA input from industry or state/local governmental entities. A pre-solicitation conference also may be used to obtain similar information.
 4. Using a market survey, determine if other state or Federal construction projects will be competing for the same labor pool.
 5. Determine how a PLA could impact project budget and schedule either positively or negatively.
 6. Use any other reliable public information available to assist in the determination whether use of a PLA is in the best interest of the government.

4.
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IV. POINT OF CONTACT

Please direct questions regarding this IL to the Acquisition Policy Division,
at (202) 461-6812.

/S/

C. Ford Heard III
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Procurement Policy, Systems, and Oversight