

# Congress of the United States

Washington, DC 20515

September 23, 2011

The Honorable Ray Mabus  
Secretary of the Navy  
1000 Navy Pentagon  
Washington, DC 20350-1000

Dear Secretary Mabus:

We are writing you today regarding the Explosives Handling Wharf II project at Naval Submarine Base Bangor in the State of Washington. **Specifically, we are requesting the use of a project labor agreement during the construction of this new facility.**

As you know, in February 2009, President Obama issued Executive Order (EO) 13502 that **encourages executive agencies to consider the use of project labor agreements (PLA)** in connection with large-scale construction projects over \$25 million. As ordered under EO 13502, government agencies can require contractors to use PLAs for large-scale federal construction projects when use of such an agreement can advance the Federal Government's interest in achieving savings and efficiency in federal procurement.

In February 2011, Naval Facilities Engineering Command established a policy memo referencing EO 13502 and revisions to Federal Acquisition Regulation (FAR) 7.1 **that encourages agency planners to consider PLAs for construction projects of \$25 million or more as defined in FAR 22.5.** As part of this process, the Contracting Officer is required to prepare a decision memorandum for all construction projects \$25 million and above, addressing whether or not the particular project satisfies the criteria.

A PLA is a benefit to both employers and employees. It provides a single collective bargaining unit which allows for easier management of a project. A PLA sets the terms and conditions of employment for all workers on site, including work conditions and rules. In addition, a PLA prohibits strikes and work stoppages. In the absence of a PLA, contractors do not compete on the basis of whom best can train, equip and manage a construction crew and project. Instead, they compete on the basis of who can find the cheapest workers which does not ensure a quality project finished on time.

PLAs create a business model that is explicitly structured to protect and support the local community, workers, and wage standards to ensure that taxpayers receive the best quality product for their money on a public project. When our government invests taxpayer dollars, we should expect the best product or services possible and that it be completed on time and with the least disruption to the community as possible. We believe project labor agreements give us the best chance of achieving those expectations.

We would appreciate knowing if any analysis has been completed regarding the use of a PLA on the Explosives Handling Wharf II project at Naval Submarine Base Bangor as well as the next steps involved in its potential implementation.

Thank you for your consideration on this important project.



PATTY MURRAY  
United States Senator

Sincerely,



MARIA CANTWELL  
United States Senator



NORM DICKS  
Member of Congress



JAY INSLEE  
Member of Congress

## Bruce Behrens - Project Labor Agreement Announcement

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**From:** <peter.rogoff@dot.gov>  
**Date:** 2/18/2011 2:29 PM  
**Subject:** Project Labor Agreement Announcement  
**Attachments:** Project Labor Agreements Feb. 2011.pdf

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Dear Colleague:

I write to announce the availability of guidance on the use of project labor agreements (PLA) in projects receiving Federal Transit Administration (FTA) financial assistance, and to encourage you to use PLAs in FTA funded projects.

As you know, large-scale construction projects are challenging to complete on time and within budget. One of the tools that can be used to control costs is the project labor agreement. A PLA spells out the specific terms and conditions that govern the employment of labor on a project for the duration of the project. A properly drafted project labor agreement can create structure and ensure labor stability throughout the duration of a project by coordinating wages, work rules, and other terms of employment by providing mechanisms for resolving grievances and by prohibiting work stoppages for the duration of a project.

On February 6, 2009, President Obama signed Executive Order 13502, encouraging Federal agencies and their grant recipients to consider the use of project labor agreements on large-scale construction projects. The Order describes the special challenges posed to large-scale construction projects performed by employers who typically do not have a permanent workforce. In these circumstances, the Order explains, the use of a project labor agreement may ensure a steady supply of labor, prevent labor disputes and uncertainty about the terms and conditions of employment, and promote the efficient and timely completion of construction projects. Also of note: the Order revokes the previous prohibition on the use of PLAs in projects receiving FTA financial assistance.

In order to help its grantees to use project labor agreements on FTA-funded projects, FTA has published new guidance on its website at [http://www.fta.dot.gov/laws/leg\\_reg\\_7211.html](http://www.fta.dot.gov/laws/leg_reg_7211.html). I encourage you to read this guidance and to make use of project labor agreements whenever possible.

If you have questions or need further assistance, please contact your FTA regional office and ask to speak with the Regional Counsel.

Sincerely yours,

Peter Rogoff



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](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.



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

THE DIRECTOR

July 10, 2009

M-09-22

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Peter R. Orszag  
Director

SUBJECT: Implementation of the President's Executive Order on Project Labor Agreements (PLAs)

On February 6, 2009, the President issued Executive Order 13502 (the Order). In the Order, the President announced that it is the Federal Government's policy "to encourage executive agencies to consider requiring the use of project labor agreements" in connection with large-scale construction projects [i.e., projects where the cost to the Federal Government exceeds \$25 million] in order to promote economy and efficiency in Federal procurement." By its terms, the Order applies "to all solicitations for contracts issued on or after the effective date of the action taken" by the Federal Acquisition Regulatory Council (FAR Council) to implement the Order.

This week, the FAR Council transmitted for publication in the Federal Register two notices that (1) repeal, effective immediately, a rule prohibiting agencies from requiring PLAs (this rule had implemented a prior executive order on PLAs that the President revoked), and (2) propose for public comment a new rule to implement the President's Order.

The Administration is committed to implementing the President's Order without delay, and the FAR Council will move expeditiously to review and consider the public's comments that it receives on the proposal and to prepare a final rule.

With the revocation of the prior executive order that had restricted the use of PLAs and with the FAR Council's rescission of its prior implementing rule restricting the use of PLAs, agencies are no longer prohibited from requiring the use of a PLA when permitted by law and when the agency determines that it is appropriate to do so. Accordingly, in light of the benefits that PLAs may offer to Federal agencies in construction projects, agencies are encouraged, during this interim period prior to the FAR Council's issuance of its final rule, to consider the value of PLAs on a project-by-project basis, and to require the use of PLAs in appropriate circumstances and to the extent permitted by law.

As noted above, the Administration seeks to implement the new FAR rule and the President's Order in a timely and effective manner. Therefore, please direct your agency to take all necessary actions so that, when the FAR Council issues its final rule, your agency will be prepared to promptly implement both the rule and the Order.

Finally, in order to gather information on how agencies use PLAs under the Order, agencies are asked to submit quarterly (on February 1, May 1, August 1, and November 1) a report indentifying all contracts awarded in connection with "large-scale construction projects," as defined in the Order, including the contract number, dollar value of the total contract award, and the product and service code describing the project. For each such contract, agencies should indicate whether a PLA was required in the solicitation, provide a brief explanation of the considerations in deciding whether a PLA was appropriate for the project, and specify at what organizational level the decision was made. Agencies should submit this information to [PLA-Activity-Report@omb.eop.gov](mailto:PLA-Activity-Report@omb.eop.gov).

## Presidential Documents

### Executive Order 13502 of February 6, 2009

### Use of Project Labor Agreements for Federal Construction Projects

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.*, and in order to promote the efficient administration and completion of Federal construction projects, it is hereby ordered that:

**Section 1. Policy.** (a) Large-scale construction projects pose special challenges to efficient and timely procurement by the Federal Government. Construction employers typically do not have a permanent workforce, which makes it difficult for them to predict labor costs when bidding on contracts and to ensure a steady supply of labor on contracts being performed. Challenges also arise due to the fact that construction projects typically involve multiple employers at a single location. A labor dispute 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 frictions and disputes in the absence of an agreed-upon resolution mechanism. These problems threaten the efficient and timely completion of construction projects undertaken by Federal contractors. On larger projects, which are generally more complex and of longer duration, these problems tend to be more pronounced.

(b) The use of a project labor agreement 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 construction contracts. Accordingly, it is the policy of the Federal Government to encourage executive agencies to consider requiring the use of project labor agreements in connection with large-scale construction projects in order to promote economy and efficiency in Federal procurement.

**Sec. 2. Definitions.**

(a) The term “labor organization” as used in this order means a labor organization as defined in 29 U.S.C. 152(5).

(b) The term “construction” as used in this order means construction, rehabilitation, alteration, conversion, extension, repair, or improvement of buildings, highways, or other real property.

(c) The term “large-scale construction project” as used in this order means a construction project where the total cost to the Federal Government is \$25 million or more.

(d) The term “executive agency” as used in this order has the same meaning as in 5 U.S.C. 105, but excludes the Government Accountability Office.

(e) The term “project labor agreement” as used in this order means 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).

**Sec. 3.** (a) In awarding any contract in connection with a large-scale construction project, or obligating funds pursuant to such a contract, executive agencies may, on a project-by-project basis, require the use of a project labor agreement by a contractor where use of such an agreement will (i)

advance the Federal Government's 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 (ii) be consistent with law.

(b) If an executive agency determines under subsection (a) that the use of a project labor agreement will satisfy the criteria in clauses (i) and (ii) of that subsection, the agency may, if appropriate, require that every contractor or subcontractor on the project agree, for that project, to negotiate or become a party to a project labor agreement with one or more appropriate labor organizations.

**Sec. 4.** Any project labor agreement reached pursuant to this order shall:

(a) bind all contractors and subcontractors on the Construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;

(b) allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;

(c) contain guarantees against strikes, lockouts, and similar job disruptions;

(d) set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the project labor agreement;

(e) provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and

(f) fully conform to all statutes, regulations, and Executive Orders.

**Sec. 5.** This order does not require an executive agency to use a project labor agreement on any construction project, nor does it preclude the use of a project labor agreement in circumstances not covered by this order, including leasehold arrangements and projects receiving Federal financial assistance. This order also does not require contractors or subcontractors to enter into a project labor agreement with any particular labor organization.

**Sec. 6.** Within 120 days of the date of this order, the Federal Acquisition Regulatory Council (FAR Council), to the extent permitted by law, shall take whatever action is required to amend the Federal Acquisition Regulation to implement the provisions of this order.

**Sec. 7.** The Director of OMB, in consultation with the Secretary of Labor and with other officials as appropriate, shall provide the President within 180 days of this order, recommendations about whether broader use of project labor agreements, with respect to both construction projects undertaken under Federal contracts and construction projects receiving Federal financial assistance, would help to promote the economical, efficient, and timely completion of such projects.

**Sec. 8. *Revocation of Prior Orders, Rules, and Regulations.*** Executive Order 13202 of February 17, 2001, and Executive Order 13208 of April 6, 2001, are revoked. The heads of executive agencies shall, to the extent permitted by law, revoke expeditiously any orders, rules, or regulations implementing Executive Orders 13202 and 13208.

**Sec. 9. *Severability.*** If any provision of this order, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of the provisions of such to any person or circumstance shall not be affected thereby.

**Sec. 10. *General.*** (a) Nothing in this order shall be construed to impair or otherwise affect:

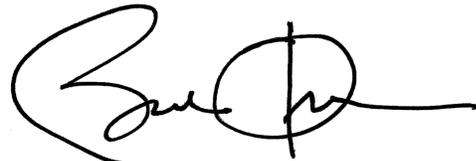
(i) authority granted by law to an executive department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

**Sec. 11. *Effective Date.*** This order shall be effective immediately and shall apply to all solicitations for contracts issued on or after the effective date of the action taken by the FAR Council under section 6 of this order.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style. The signature is positioned to the right of the text.

THE WHITE HOUSE,  
*February 6, 2009.*

[FR Doc. E9-3113

Filed 2-10-09; 1:00 pm]

Billing code 3195-W9-P