



PBS Procurement Instructional Bulletin 10-04

APR 30 2010

MEMORANDUM FOR: PUBLIC BUILDINGS SERVICE
REGIONAL COMMISSIONERS
REGIONAL PROCUREMENT OFFICERS

FROM: JOY A. WALKER *Joy A. Walker*
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 cancel PIB 09-02, Guidance on the Use of Project Labor Agreements in Construction Project greater than \$25,000,000, and 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 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 will be effective May 13, 2010.

3. Effective Date

This bulletin is effective for all applicable solicitations issued on or after May 13, 2010.

4. Cancellation Date

This PIB will remain in effect until cancelled.

5. Applicability

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

6. Summary

This PIB 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.

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 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 PLA proposal), 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: *(if weights are included in the solicitation)*

Evaluation Factor #___: Project Labor Agreement 10% of total points awarded

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: The relative percentages of other evaluation factors will need to be adjusted.

NOTE: If the solicitation does not specify the relative weight of the technical evaluation factors, add PLA into the order of importance and update source selection plan.

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 I 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 an executed PLA meeting the minimum requirements, and containing the mandatory terms, of this section. The Contractor shall not be entitled to issuance of Notice to Proceed until it has furnished such evidence 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. **Additional Minimum Requirement.** The PLA must establish wage rates applicable for the duration of the PLA, regardless of whether corresponding collective bargaining agreements expire.

3. **Mandatory PLA Terms.** 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 any other collective bargaining agreement that may conflict or differ from the terms of this PLA. In the event of a conflict between the terms of this PLA and any collective bargaining agreement, this PLA shall govern. If any collective bargaining agreement contains provisions that are not covered by this PLA, such collective bargaining agreement provisions shall bind the parties to the collective bargaining agreement with respect to employees covered thereby."

(c) "Deductions for Labor Organization dues, if any, for 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."

4. *Optional Terms.* 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.

8.6 The Standard contract templates found on <http://insite.pbs.gsa.gov/pbsacgpolicy> will be updated to include the language in 8.4 and 8.5 and the FAR solicitation provision and contract clause in full text.



PBS, Procurement Instructional Bulletin 09-02

August 11, 2009

MEMORANDUM FOR: PUBLIC BUILDINGS SERVICE
REGIONAL COMMISSIONERS
REGIONAL PROCUREMENT OFFICERS

FROM: TAMELA L. RIGGS 
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 provide information needed to apply Executive Order 13502 Use of Project Labor Agreements for Federal Construction Projects.

2. Background

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 require that federal agencies use PLAs as they have discretion to decide whether to require them.

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.

3. Effective Date

This bulletin is effective immediately.

4. Cancellation Date

This PIB will remain in effect until cancelled.

5. Applicability

This bulletin is applicable to projects as identified by the Office of Design and Construction. The following is the current list of projects:

Project Name	Location & Region	Solicitation Issuance Date	Approximate Award Amt
A.J. Celebrezze FB	Cleveland, OH (5)	07/30/09	\$115,178,000
Peter Rodino FB	Newark, NJ (2)	08/30/09	\$142,038,000
Byron Rogers Courthouse	Denver, CO (8)	10/04/09	\$167,552,000
Nogales West U.S. LPOE	Nogales, AZ (9)	10/01/09	\$164,480,000
50 United Nations Plaza	San Francisco, CA (9)	10/23/09	\$101,453,000
Prince Kuhio Kanaianaole FB & Cth	Honolulu, HI (9)	10/30/09	\$ 80,000,000
Edith Green- Wyndell Wyatt FB	Portland, OR (10)	07/19/09	\$125,098,000
1800 F Street (GSA HQ)	Washington, DC (11)	01/30/10	\$159,293,000
Lafayette Building	Washington, DC (11)	02/30/10	\$106,275,500
DHS Headquarters Campus	Washington, DC (11)	10/30/09	\$ 93,453,000

GSA will include PLA requirements in the contracts for these ten projects, unless it is determined that the use of such agreements does not meet the policy objectives articulated in the Executive Order.

If a region wants to utilize a PLA on a new project, that is not listed, please contact the Office of Design and Construction for direction.

6. References

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

7. Instructions

PLA implementation can take many forms, including pre-negotiated PLAs to be incorporated into solicitations that become binding on the contractor (and its subcontractors) upon award, or imposition of a requirement for a contractor to negotiate a PLA after award. At this time, GSA's chosen implementation approach is the latter: where required, the Contractor will have an obligation to negotiate and enter into a PLA meeting specified minimum requirements as a condition to notice to proceed.

When using a PLA insert the following language as prescribed.

- a. **Notice of Requirement for Project Labor Agreement (PLA)** [*Note: Insert the following language in the solicitation instructions or Template "Additional Solicitation Provisions"*]

Notice of Requirement for Project Labor Agreement (PLA)

(a) *Definitions.* "Labor organization" and "project labor agreement," as used in this provision, are defined in the paragraph of the Contract/Agreement titled Project Labor Agreement.

(b) Consistent with applicable law, the apparent successful Offeror may be required to execute a PLA with one or more appropriate labor organizations for the term of the resulting Contract.

- b. **Alternative Offers for PLA (Construction, Design Build Solicitations)** [Note: Insert the following language in the solicitation pricing instructions or Template "Additional Solicitation Provisions"]

Alternative Offers for PLA (Construction, Design Build Solicitations)

(a) Offerors shall submit two price proposals: One proposal that is subject to the PLA requirement set forth in the Agreement and one that is not. Each price proposal shall clearly denote whether the proposal is or is not subject to the PLA requirement.

(b) If the Government accepts an offer that is not subject to the PLA requirement, the requirements regarding PLAs set forth in the Agreement shall not be binding on the successful Offeror.

- c. **Technical Evaluation Factor:** [Note: Insert the following language in the proposal instructions or Template "The Solicitation Sections III & IV, Proposal & Method of Award" and include in the Source Selection Plan]

Technical Evaluation Factor:

Project Labor Agreement Benefits 10%

The value of the benefit to the GSA of the inclusion of the PLA requirements specified in the Contract.

[Note: This is an all or nothing evaluation factor. Offerors without a PLA will receive a score of 0 on this factor. GSA will evaluate each proposal for both its technical merit and total evaluated price and will make tradeoffs in making its final selection.]

- d. **Alternative Pricing of Estimated Cost of the Work (ECW) (CMc Solicitations in lieu of Alternative Offerors)** [Note: Insert the following language in the contract or Template "Additional Terms and Conditions"]

Alternative Pricing of Estimated Cost of the Work (ECW) (CMc Solicitations in lieu of Alternative Offerors)

(a) The Contractor shall be required to submit an ECW based upon inclusion of the PLA requirements specified in the Contract and an ECW that does not.

(b) If the Government accepts an ECW that is not subject to the PLA requirement, the requirements regarding PLAs set forth in the Agreement shall not be binding on the Contractor.

e. Project Labor Agreement (PLA) [*Note: Insert the following in additional Terms and Conditions of the Agreement*]

Project Labor Agreement (PLA)

(a) *Applicability of PLA Requirement.* If this Contract was formed by the acceptance of an offer subject to the PLA requirement, the requirements herein regarding PLAs shall be binding on the Contractor.

(b) *Definitions.*

As used in this clause—

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

“Project Labor Agreement” (PLA) 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).

(c) *Requirement for PLA.* Consistent with applicable law, the Contractor agrees to bargain in good faith with all labor organizations having jurisdiction over work included in the Contract and enter into a PLA that will govern the performance of all construction work by the Contractor and its subcontractors until the Contractor achieves Contract Completion. The Contractor shall furnish evidence of an executed PLA meeting the minimum requirements and containing the mandatory terms specified herein to the Contracting Officer within the time period specified in the Contract or as otherwise directed by the Contracting Officer. The Contractor shall not be entitled to issuance of Notice to Proceed until it has furnished such evidence of an executed PLA.

(d) *Minimum PLA Requirements.* At a minimum, the PLA shall:

(1) Bind the Contractor and all of its subcontractors on the Project to comply with the PLA;

(2) Allow all firms to compete for subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;

(3) Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the PLA;

(4) Establish wage rates applicable for the duration of the PLA, regardless of whether corresponding collective bargaining agreements expire;

(5) Fully conform to all statutes, regulations, and Executive orders; and

(6) Comply with the terms of this Contract.

(e) *Mandatory PLA Terms.* In addition, the PLA shall include terms substantially identical to the following:

(1) "During the term of this PLA, there shall be no strikes, pickets, work stoppages, slow downs or other disruptive activity for any reason by the Unions or their members, and there shall be no lock out by the Contractor or its subcontractors. The Unions 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."

(2) "This PLA supersedes any other collective bargaining agreement that may conflict or differ from the terms of this PLA. In the event of a conflict between the terms of this PLA and any collective bargaining agreement, this PLA shall govern. If any collective bargaining agreement contains provisions that are not covered by this PLA, such collective bargaining agreement provisions shall bind the parties to the collective bargaining agreement and the employees covered thereby."

(4) "The Contractor and its subcontractors agree that all wages shall be subject to deduction for collection of Union dues, regardless of whether an employee is a member of a union. Such deductions from the wages of non-union employees shall not be more than an amount necessary to cover the union's costs of collective bargaining, contract administration, and grievance adjustment. The Contractor and its subcontractors shall be required to pay contributions to union employee benefit funds for non-union employees only if the employee benefits immediately accrue to the direct benefit of such employees and do not require membership in the union."

(5) "The Contractor and all of its subcontractors agree to notify the Unions of all opportunities for employment on the Project. Nothing in this PLA shall be deemed to limit a Contractor's or its subcontractors' right to reject proposed employees or to use their own core employees. The Contractor and its subcontractors shall have the right to determine the competency of all employees, the number of employees required, the duties of such employees within their craft jurisdictions, and select employees to be laid off. The Contractor and its subcontractors shall also have the right to reject any applicant referred by a Union for any reason provided that such right is exercised in good faith."

(6) "There shall be no discrimination against any employee or applicant for employment because of his or her membership or non-membership in the Union or based upon race, creed, color, sex, age or national origin of such employee or applicant."

(7) "The Contractor and its subcontractors recognize the signatory Unions as the sole and exclusive bargaining representatives of all employees within their respective jurisdictions working on the Project within the scope of this PLA."