



GSA Public Buildings Service

MEMORANDUM FOR JOSEPH A. NEURAUTOR (MV)  
SENIOR PROCUREMENT EXECUTIVE  
OFFICE OF ACQUISITION POLICY

*Approved  
July 6, 2011*

FROM: ROBERT A. PECK (P)  
COMMISSIONER  
PUBLIC BUILDINGS SERVICE (PBS)

SUBJECT: Deviation to the Federal Acquisition Regulation (FAR) provision  
FAR 52.222-33, Notice of Requirement for Project Labor  
Agreement, with its Alternate I and clause 52.222-34, Project  
Labor Agreement

PURPOSE: The intent of this request is to seek the approval of the Head of the Contracting Activity (HCA), for a class deviation to the FAR related to PBS's implementation of Executive Order 13402, Use of Project Labor Agreements for Federal Construction Projects.

This request is submitted in accordance with GSA's Acquisition Manual (GSAM), subpart 501.403.

The executive summary and related documentation are attached.

## **RECOMMENDATIONS/DESIRED OUTCOME:**

PBS requests approval of the following:

1. A Deviation to the Federal Acquisition Regulation (FAR) provision FAR 52.222-33, Notice of Requirement for Project Labor Agreement, with its Alternate I and clause 52.222-34, Project Labor Agreement.

## **EXECUTIVE SUMMARY**

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 does not mandate that federal agencies require the use of PLAs; it "encourages federal executive agencies to consider requiring the use of PLAs on major construction projects."

On July 10, 2009 the Office of Management and Budget issued a Memorandum to Agency Heads encouraging agencies "to consider the value of PLAs on a project-by-project basis, and to require the use of PLAs in appropriate circumstances" in advance of a Federal Acquisition Regulation (FAR) final rule. In August 2009, prior to the issuance of the final FAR rule implementing EO 13502, PBS initiated a Pilot program to consider the use of PLA's on ten American Recovery and Reinvestment Act projects and issued PLA policy guidance. The final FAR rule, FAR Case 2009-005, was published in the Federal Register April 13, 2010 and became effective May 13, 2010. PBS has revised its policy to incorporate FAR Case 2009-005.

PBS has recently encountered contractors who have attempted to rely on the language that they negotiate with "one or more labor organizations" to suggest that negotiating with a single labor organization was sufficient to meet the PLA requirements, even though the project would require performance by multiple trades. To address efficiency and economy during a construction project, a PLA must govern the entire project; to do so, it must be executed by all of the labor organizations having jurisdiction over the trades involved in the construction work.

PBS recently met with representatives from the Department of Labor, the Associated General Contractors, the International Brotherhood of Carpenters, and the Building and Construction Trades Department /AFL-CIO, to discuss issues regarding the implementation of GSA's PLA policy. Based on these meetings and our experience on the pilot projects, we are updating our policy and requesting a deviation to the Federal Acquisition Regulation (FAR) to clarify that, where the construction project will involve multiple trades, a PLA must be negotiated with the labor organizations having jurisdiction over the trades involved in a specific construction project and that the PLA must be executed by all such labor organizations.

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

(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 ~~one or more~~ 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 for 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.

**FAR 52.222-34 Project Labor Agreement (May 2010) (Deviation)**

(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 ~~one or more~~ 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)

Prepared by: Christine S. Kelly DATE: 18 May 11  
Christine S. Kelly  
Procurement Analyst, Acquisition Management and Policy Division  
Office of Acquisition Management, Office of Organizational Resources

CONCUR: Jennifer L. Smith DATE: 18 May 11  
Jennifer L. Smith  
Director, Acquisition Management and Policy Division  
Office of Acquisition Management, Office of Organizational Resources

CONCUR: Bobby J Davis (Acty doc) DATE: 18 May 11  
Bobby J Davis  
Acting Deputy Assistant Commissioner, Office of Acquisition Management  
Office of Organizational Resources

CONCUR: Erika M. Dinnie DATE: 6/1/11  
Erika M. Dinnie  
Acting Assistant Commissioner, Office of Organizational Resources

CONCUR: William J. Guerin DATE: 5/19/11  
William J. Guerin  
Assistant Commissioner, Office of Project Delivery

CONCUR: Barry D. Segal DATE: 5/27/11  
Barry D. Segal  
Associate General Counsel for Real Property

**GENERAL SERVICES ADMINISTRATION  
DETERMINATION AND FINDINGS  
REQUEST FOR FAR CLASS DEVIATION**

**FINDINGS**

I hereby find that:

**1. COMMERCIAL PRACTICE/MARKET RESEARCH**

A project labor agreement is a collective bargaining agreement between a contractor 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. Project labor agreements bind the general contractor, all subcontractors and all unions on the project. GSA is not a party to project labor agreements.

**2. FEDERAL ACQUISITION REGULATION (FAR) GUIDANCE**

FAR Part 22, Application of Labor Laws to Government Acquisitions, Subpart 22.5 prescribes policy and procedure for the implementation of Executive Order 13402, Use of Project Labor Agreements for Federal Construction Projects. Subpart 22.5 encourages agencies to consider requiring the use of project labor agreements on large scale construction projects, which are defined as projects with a total cost to the Federal Government is \$25 million or more. FAR Subpart 22.503 provides that an agency may require negotiation of a project labor agreement with one or more labor organizations for the term of the construction project, and Subpart 22.505 prescribes the use of FAR 52.222-33, Notice of Requirement for Project Labor Agreement with its Alternate I, when an agency decides to require the submission of a project labor agreement from only the apparent successful offeror, prior to contract award in its solicitations. Any PLA negotiated pursuant to this provision must:

- (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.

Paragraph (b) of FAR Provision 52.222-33 Alt I, Notice of Requirement for Project Labor Agreement, requires the apparent successful offeror to "negotiate a project labor agreement with one or more labor organizations for the term of the resulting

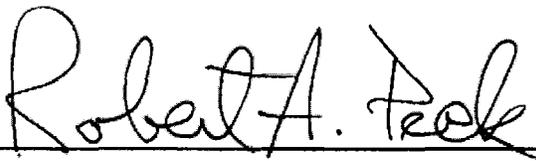
#### 4. SUMMARY OF NEED AND JUSTIFICATIONS

The requested class deviation to FAR 52.222-33 and 52.222-34 is required to avoid any ambiguity about which labor organizations must be signatories to the PLA and to ensure that PLA proposals are comparable. If approved, this class deviation will be used in all solicitations and contracts that contain PLA requirements.

#### DETERMINATION

I hereby determine that:

On the basis of the above findings, GSA should authorize a class deviation from FAR 52.222-33 Alt 1 and 52.222-34 as shown.

  
\_\_\_\_\_ Date: 1 June 2011

ROBERT A. PECK, HCA, PBS