Subpart 22.5 - Use of Project Labor Agreements for Federal Construction Projects

Parent topic: Part 22 - Application of Labor Laws to Government Acquisitions

22.501 Scope of subpart.

This subpart prescribes policies and procedures to implement Executive Order 14063, Use of *Project Labor Agreements* for Federal *Construction* Projects, dated February 4, 2022 (3 CFR, 2023 Comp., pp 335–338).

22.502 Definitions.

As used in this subpart-

Construction means *construction*, reconstruction, rehabilitation, modernization, alteration, conversion, extension, repair, or improvement of buildings, structures, highways, or other real property.

Labor organization means a *labor organization* as defined in 29 U.S.C. 152(5) of which building and *construction* employees are members.

Large-scale construction project means a Federal *construction* project within the *United States* for which the total estimated cost of the *construction* contract to the Federal Government is $35 million or more.

Project labor agreement 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).

22.503 Policy.

(a) Executive Order (E.O.) 14063, Use of *Project Labor Agreements* for Federal *Construction* Projects, requires agencies to use *project labor agreements* in *large-scale construction projects* to promote economy and efficiency in the administration and completion of Federal *construction* projects.

(b) When awarding a contract in connection with a *large-scale construction project* (see 22.502), agencies *shall* require use of *project labor agreements* for contractors and subcontractors engaged in *construction* on the project, unless an exception at 22.504(d) applies.

(c) An agency *may* require the use of a *project labor agreement* on projects where the total cost to the Federal Government is less than that for a *large-scale construction project*, if appropriate.

(1) An agency *may*, if appropriate, require that every contractor and subcontractor engaged in *construction* on the project agree, for that project, to negotiate or become a party to a *project labor agreement* with one or more *labor organizations* if the agency decides that the use of *project labor agreements* 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.

(2) Agencies *may* consider the following factors in deciding whether the use of a *project labor agreement* is appropriate for a *construction* project where the total cost to the Federal Government is less than that for a *large-scale construction project*:

(i) The project will require multiple *construction* contractors and/or subcontractors employing workers in multiple crafts or trades.

(ii) There is a shortage of skilled labor in the region in which the *construction* project will be sited.

(iii) Completion of the project will require an extended period of time.

(iv) *Project labor agreements* have been used on comparable projects undertaken by Federal, State, municipal, or private entities in the geographic area of the project.

(v) A *project labor agreement* will promote the agency's long term program interests, such as facilitating the training of a skilled workforce to meet the agency's future *construction* needs.

(vi) Any other factors that the agency decides are appropriate.

(d) For indefinite-delivery indefinite-quantity (IDIQ) contracts the use of a *project labor agreement may* be required on an order-by-order basis rather than for the entire contract. For an order at or above $35 million an agency *shall* require the use of a *project labor agreement* unless an exception applies. See 22.504(d)(3) and 22.505(b)(3).

22.504 General requirements for project labor agreements.

(a) *General*. *Project labor agreements* established under this subpart *shall* fully conform to all statutes, regulations, and Executive orders.

(b) *Requirements*. A *project labor agreement shall*-

(1) Bind all contractors and subcontractors engaged in *construction* on the *construction* project to comply with the *project labor agreement*;

(2) Allow all contractors and 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) Include any additional requirements as the agency deems necessary to satisfy its needs.

(c) *Labor organizations.* An agency *may* not require contractors or subcontractors to enter into a *project labor agreement* with any particular *labor organization*.

(d) *Exceptions to project labor agreement requirements—*

(1) *Exception.* The *senior procurement executive may* grant an exception from the requirements at 22.503(b), providing a specific written explanation of why at least one of the following conditions exists with respect to the particular contract:

(i) Requiring a *project labor agreement* on the project would not advance the Federal Government's interests in achieving economy and efficiency in Federal *procurement*. The exception *shall* be based on one or more of the following factors:

(A) The project is of short duration and lacks operational complexity.

(B) The project will involve only one craft or trade.

(C) The project will involve specialized *construction* work that is available from only a limited number of contractors or subcontractors.

(D) The agency's need for the project is of such an unusual and compelling urgency that a *project labor agreement* would be impracticable.

(ii) *Market research* indicates that requiring a *project labor agreement* on the project would substantially reduce the number of potential *offerors* to such a degree that adequate competition at a fair and reasonable price could not be achieved. (See 10.002(b)(1) and 36.104). A likely reduction in the number of potential *offerors* is not, by itself, sufficient to except a contract from coverage under this authority unless it is coupled with the finding that the reduction would not allow for adequate competition at a fair and reasonable price.

(iii) Requiring a *project labor agreement* on the project would otherwise be inconsistent with Federal statutes, regulations, Executive orders, or Presidential memoranda.

(2) *Considerations.* When determining whether the exception in paragraph (d)(1)(ii) of this section applies, *contracting officers shall* consider current market conditions and the extent to which price fluctuations *may* be attributable to factors other than the requirement for a *project labor agreement* (*e.g.,* costs of labor or materials, supply chain costs). Agencies *may* rely on price analysis conducted on recent competitive proposals for *construction* projects of a similar size and scope.

(3) *Timing of the exception —*

(i) *Contracts other than IDIQ contracts.* The exception *must* be granted for a particular contract by the *solicitation* date.

(ii) *IDIQ contracts.* An exception *shall* be granted prior to the *solicitation* date if the basis for the

exception cited would apply to all orders. Otherwise, exceptions *shall* be granted for each order by the time of the notice of the intent to place an order (*e.g.,* 16.505(b)(1)).

22.505 Solicitation provision and contract clause.

When a *project labor agreement* is used for a *construction* project, the *contracting officer shall—*

(a)

(1) Insert the provision at 52.222-33, Notice of Requirement for *Project Labor Agreement*, in *solicitations* containing the clause 52.222–34, *Project Labor Agreement*.

(2) Use the provision with its *Alternate* I if the agency will require the submission of a *project labor agreement* from only the apparent successful *offeror*, prior to contract award.

(3) Use the provision with its *Alternate* II if an agency allows submission of a *project labor agreement* after contract award except when *Alternate* III is used.

(4) Use the provision with its *Alternate* III when *Alternate* II of 52.222-34 is used.

(b)

(1) Insert the clause at 52.222-34, *Project Labor Agreement*, in *solicitations* and contracts associated with the *construction* project.

(2) Use the clause with its *Alternate* I if an agency allows submission of the *project labor agreement* after contract award except when *Alternate* II is used.

(3) Use the clause with its *Alternate* II in IDIQ contracts when the agency will have *project labor agreements* negotiated on an order-by-order basis and anticipates one or more orders *may* not use a *project labor agreement*.