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Final Rule Regarding Project Labor Agreement Requirements for Large-Scale Federal Construction Projects

Beginning on January 22, 2024, in compliance with President Biden’s February 4, 2022 [Executive Order](#), 14603, federal construction projects with a total estimated cost of \$35 million are required to utilize a project labor agreement (“PLA”) unless the contracting agency grants an exception. The Federal Register estimates that this rule will impact approximately 119 IDIQ contracts each year; these contracts have an average award value of about \$114 million.

The White House claims the PLAs will improve projects by:

- Eliminating project delays from labor unrest, such as strikes;
- Creating dispute resolution procedures and cooperation for labor-management disputes, such as those over safety;
- Including provisions “to support workers from underserved communities and small businesses”;
- Helping to create a steady pipeline of workers for federal projects; and
- Promoting competition on government contracts so that all builders, even those who are non-union, can bid on jobs that require a PLA.

The final rule published in the Federal Register is similar to the proposed rule with a few notable differences:

1. The removal of proposed language which contemplated a contractor signing multiple PLAs for one federal construction contract since there is only one PLA per contract;
2. Increases the estimated time required to develop, negotiate, and implement a PLA between a prime contractor and a union from 40-100 hours for each party to 80-200 hours;
3. Clarification that subcontractors must become parties to the PLA; and
4. The PLA will be negotiated by the prime contractor without government participation.

The contracting officer is permitted to request a PLA exception by submitting a written explanation of factors making the PLA unfeasible; this is subject to approval by the senior procurement executive. An exception must be based on one of the following factors:

1. Requiring a project labor agreement on the project would not advance the Federal Government’s interests in achieving economy and efficiency in Federal procurement;
2. 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; or
3. Requiring a project labor agreement on the project would otherwise be inconsistent with Federal statutes, regulations, Executive orders, or Presidential memoranda.

When making such a determination, consideration must be made of current market conditions and the extent to which price fluctuations may result from factors other than the PLA requirement.

Where no exception applies, the final rule provides the contracting officer with three versions of contract language to implement the PLA requirement. The first requires that a contractor seeking to be awarded the contract for the project submit a PLA along with other required documentation needed to compete for the contract. In the second scenario, a prime contractor must negotiate a PLA when it becomes apparent via a pre-award notification that its proposal was successful. The third option requires a contractor to negotiate a PLA upon being awarded the contract. The Federal Register notes a lack of historical data on the contract language utilized, so it must be assumed that each will be used equally. This implies that a third of solicitations will require all offerors to submit a PLA.

Furthermore, the Office of Management and Budget (“OMB”) released guidance on the rule’s implementation. Specifically, agencies must document their conducted inclusive market research for all qualifying projects and require a PLA if no exception applies. The agency also must ensure that the Senior Procurement Executive (SPE) approve all exceptions and report PLA activity or exceptions with supporting reasoning to OMB.

This area of law is changing rapidly, and different groups have planned to challenge the rule in court. Additionally, provisions of the rule will need to be examined in conjunction with other relevant law for employers bidding in the federal procurement space. Employers are encouraged to consult with qualified counsel in collective bargaining and labor negotiations when considering entering into a PLA or any other collective bargaining agreement.

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