

March 24, 1999

AGAR ADVISORY

**UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT
PROCUREMENT POLICY DIVISION
AGAR ADVISORY NO. 27**

PROJECT LABOR AGREEMENTS

INTRODUCTION: This Agriculture Acquisition Regulation (AGAR) Advisory provides information on the consideration, use, and reporting of Project Labor Agreements.

SUMMARY: On June 5, 1997 President William J. Clinton signed a memorandum to the heads of Executive Departments and Agencies authorizing the use of Project Labor Agreements (PLA). A copy of that memorandum is included as a part of this advisory. The House of Representatives Committee on Education and the Workforce has added a reporting requirement for the use of PLAs.

SPECIFIC ISSUES:

- ▶ ***PRESIDENTIAL MEMORANDUM DATED JUNE 5, 1997:*** President Clinton signed the attached memorandum to authorize Federal Departments and Agencies to use PLAs on a project-by-project basis on large and significant projects where the use will advance the Government's procurement interest in cost, efficiency, and quality and in promoting labor-management stability.

- ▶ **EFFECTIVE DATE:** The requirements of this advisory apply to all large and significant requirements identified and entered into the agency's advance acquisition planning system after the date of this advisory.

- ▶ **DEFINITIONS:**

“Large and significant project” means a construction project having an estimated Federal price at the time of contract award in excess of \$5,000,000.

“Project Labor Agreements” (PLA) are terms established between a contractor(s), subcontractor(s), and the union(s) representing workers. Under a PLA, the contractors and subcontractors on a project and the union(s) agree on terms and conditions of employment for the project, establishing a framework for labor-management cooperation to advance the Government's procurement interest in cost, efficiency, and quality.

- ▶ **PLANNING AND DETERMINATION REQUIRED:** As a part of the acquisition planning process, the Contracting Officer will determine whether the use of a PLA will advance the Government's procurement interest in cost, efficiency, and quality and in promoting labor-management stability. The Contracting Officer should consider:

(1) whether past experience with construction projects in the location where the project will be performed reveals a history of labor disputes, work stoppages, safety and health standards violations, or other similar problems which delayed, disrupted, or otherwise adversely impacted the cost or quality of the work;

(2) whether there are appropriate labor organizations representing the crafts that the prime contractor and major subcontractor will require to perform the work involved in the construction project;

(3) whether collective bargaining agreements of crafts that will be involved in performing the work will be expiring during the life of the construction project;

(4) the availability of qualified crafts in the labor market, considering other construction projects that will be ongoing at the same time;

(5) the impact on the Government if the construction project is delayed, in terms of cost, disruption of customers, and the ripple effects on other contractors;

(6) the probable impact on competition if a PLA is required;

(7) State or local laws that contractors and subcontractors must comply with that could impact the use of a PLA; and

(8) any other factors that may be relevant.

The Contracting Officer is encouraged to seek the advice and assistance of legal counsel and the requiring activity in making the determination to use a PLA.

The Contracting Officer must document the rationale supporting the decision.

- ▶ ***CLAUSE AVAILABLE FOR USE:*** If the Contracting Officer determines that a PLA will be required, a contract clause that reads substantially as follows must be included in the solicitation:

REQUIREMENT FOR A PROJECT LABOR AGREEMENT (PLA)

(a) A Project Labor Agreement (PLA) is the set of terms established between the Contractor, subcontractor, and the union(s) representing workers. The PLA sets forth terms and conditions of employment for this project, establishing a framework for labor-management cooperation and stability to ensure timely completion of the project.

(b) The Contractor shall recognize the need for the timely completion of the project without interruption or delay. The Contractor shall, after contract award, enter into a PLA for the construction of (insert project name). The PLA shall bind the Contractors and subcontractors of whatever tier engaged in onsite construction work. The PLA shall ---

- (1) contain guarantees against strikes, lockouts, and similar work disruptions;
- (2) set forth effective, prompt and mutually binding procedures for resolving labor disputes arising during the project;
- (3) provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health;

(4) fully conform to all applicable statutes, regulations, and Executive Orders, and;

(5) expire on completion of construction of the project.

(c) Nothing herein shall preclude the contractors and subcontractors from competing for contracts and subcontracts on this project without discrimination based on union or non-union status.

(End of Clause)

▶ **REPORTING REQUIRED BY CONGRESS:** If a determination is made not to use a PLA on a large and significant project, then the Contracting Officer must provide the following information to the Office of Procurement and Property Management within five days after making the determination:

(1) A brief description of the project; and

(2) The analysis used to determine how the PLA will not advance the Government's interest in cost, efficiency, and quality.

If the requirement for a PLA is incorporated in a solicitation, the Contracting Officer must provide the following information to the Office of Procurement and Property Management within five days after award:

(1) A brief description of the project;

(2) The estimated cost;

(3) An explanation of the analysis used to determine how the PLA will advance the Government's interest in cost, efficiency, and quality; and

(4) A copy of the solicitation.

If you have questions regarding this advisory, please contact J. R. Holcombe Jr. by phone (202) 720-8484, fax (202) 720-8972, or e-mail (RICHARD.HOLCOMBE@USDA.GOV).

This AGAR Advisory will appear on the USDA world wide web site at the following URL: <http://www.usda.gov/da/procure/agaradv.htm>.

EXPRATION DATE: This advisory expires January 30, 2001.

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AGAR ADVISORY Subject Matter: Consideration, use and reporting of Project Labor Agreements..

AGAR ADVISORY Date and Number to be assigned after signature.

Author _____ J. R. Holcombe Jr. Date _____

Chief, PPD _____ David J. Shea Date _____

Clearances by
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Return to J. R. Holcombe Jr. Room 1566-S, 720-8484, (richard.holcombe@usda.gov) for numbering, dating, printing, and distribution.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

June 76,

June 5, 1997

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Use of Project Labor Agreements for Federal Construction Projects

The National Performance Review and other executive branch initiative have sought to implement rigorous performance standards, minimize cost and eliminate wasteful and burdensome requirements. This Presidential memorandum continues those efforts, by encouraging departments and agencies in this Administration to consider project labor agreements another tool, one with a long history in governmental contracting, to achieve economy and efficiency in Federal construction projects. Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America and to ensure the economical and efficient administration and completion of Federal Government construction projects, it is hereby directed as follows:

Section 1. Executive departments or agencies during this Administration authorized to award a contract for the construction of a facility to be owned by a Federal department or agency may, on a project-by-project basis, use a project labor agreement on a large and significant project

(a) where a project labor agreement will advance the Government's procurement interest in cost, efficiency, and quality and in promoting labor-management stability as well as compliance with applicable legal requirements governing safety and health, equal employment opportunity, labor and employment standards, and other matters, and

(b) where no laws applicable to the specific construction project preclude the use of the proposed project labor agreement.

Section 2. If an executive department or agency during this Administration determines that use of a project labor agreement will serve the goals set forth in section 1(a) of this memorandum on a large and significant project, and that no law precludes the use of a project labor agreement on the project, the executive department or agency may require that every contractor or subcontractor on the project agree, on that project, to negotiate or become a party to a project labor agreement with one or more appropriate labor organizations. The executive department or agency has discretion whether to include such requirement.

Section 3. Any project labor agreement reached pursuant to this memorandum:

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

(b) shall allow all contractors and subcontractors wishing to compete for contracts and subcontracts on the project to do so, without discrimination against contractors, subcontractors, or employees based on union or nonunion status;

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

(d) shall set forth effective, prompt and mutually binding procedures for resolving labor disputes arising during the project; (e) shall provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and

(f) shall fully conform to all applicable statutes, regulations, and Executive orders.

Section 4. This memorandum does not require an executive department or agency to use a project labor agreement on any project, nor does it preclude use of a project labor agreement in circumstances not covered here, including leasehold arrangements and federally funded projects. This memorandum also does not require contractors to enter into a project labor agreement with any particular labor organization.

Section 5. The heads of executive departments or agencies covered by this memorandum, in consultation with the Federal Acquisition Regulation Council, shall establish, within 120 days of the date of this memorandum, appropriate written procedures and criteria for the determinations set forth in section 1.

Section 6. This memorandum is not intended to create any right or benefit, substantive or procedural, enforceable by a nonfederal party against the United States, its departments, agencies or instrumentalities, its officers or employees, or any other person.

Section 7. (a) "Construction" as used in this memorandum shall have the same meaning it has in section 36.102 of the Federal Acquisition Regulation.

(b) "Executive department or agency" as used in this memorandum means any Federal entity within the meaning of 40 U.S.C. 472(a).

(c) "Labor organization" as used in this memorandum shall have the same meaning it has in 42 U.S.C. 2000e(d).

(d) "Large and significant project" as used in this memorandum shall mean a Federal construction project with a total cost to the Federal Government of more than \$5 million.

Section 8. This memorandum shall be effective immediately, and shall apply to all solicitations issued after notice of establishment of the procedures and criteria required under section 5 of this memorandum.

WILLIAM J. CLINTON

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