Memorandum

Date: February 3, 2017

From: Acting Deputy Senior Procurement Executive

Subj: VA Procurement Policy Memorandum (PPM) 2017-06 – Federal Acquisition Regulation Case 2009-005 Final Rule – Use of Project Labor Agreements (PLA) for Federal Construction Projects (VAIQ 7760889)

To: See Distribution

1. **Purpose:** The purpose of this PPM is to rescind and replace Information Letter 001AL-10-11, Federal Acquisition Regulation Case 2009-005 Final Rule - Use of Project Labor Agreements (PLA) for Federal Construction Projects, dated July 15, 2010.

2. **Background:** Large-scale construction projects pose special challenges to efficient and timely procurement. Complications can arise because these construction projects typically involve multiple employers at a single location. A labor dispute or shortage involving one employer can delay the entire project. A lack of coordination among various employers, or uncertainty about the terms and conditions of employment of various groups of workers can create friction and disputes. These problems threaten efficient and timely completion of construction projects undertaken by Federal contractors. The use of a PLA may prevent these problems from developing by providing structure and stability to large-scale construction projects, thereby promoting the efficient and expeditious completion of Federal contracts. Accordingly, it is the policy of the Federal government to encourage executive agencies to consider requiring PLAs in connection with large-scale construction projects in order to promote economy and efficiency in Federal procurement.

On February 6, 2009, the President issued Executive Order (E.O.) 13502 regarding the use of PLAs for large-scale Federal construction projects. By definition, any construction project having a total cost to the government of $25 million or more is considered to be “large-scale.” Office of Management and Budget (OMB) memorandum M-09-22, dated July 10, 2009, provided initial implementation guidance and imposed a quarterly reporting requirement for construction contracts awarded in connection with large-scale projects.

The Federal Register published a final rule under FAR Case 2009-005, dated April 13, 2010. The most significant impacts on the acquisition community were to add Subpart 22.5, Use of Project Labor Agreements, to the FAR, to incorporate a new solicitation provision at FAR 52.222-33, and to add a new clause at FAR 52.222-34. The provision also includes two alternate versions, and the clause...
includes one alternate. The final rule encourages agency planners to consider use of a PLA during early acquisition planning. OMB issued a memorandum concurrent with the final FAR rule providing additional implementation instructions and reiterated the existing quarterly reporting requirement.

3. **Applicability:** This PPM applies to Heads of the Contracting Activities (HCA’s) and VA Contracting Officers (COs) and other acquisition professionals.

4. **Effective Date:** This PPM is effective immediately.

5. **Expiration Date:** This PPM expires once incorporated into the Veterans Affairs Acquisition Regulation (VAAR) or the Veterans Affairs Acquisition Manual (VAAM) or otherwise rescinded.

6. **Action Required:** Effective immediately, Heads of the Contracting Activities (HCAs), VA Contracting Officers (COs) and other VA acquisition professionals shall comply with the policy and procedures contained herein.

VA planners shall consider whether a Project Labor Agreements (PLA) requirement will be included for construction contract actions associated with large-scale projects and document the results based on an objective analysis. VA’s contracting officers shall refer to and comply with FAR Subpart 22.5, Use of Project Labor Agreements, when appropriate. If a PLA requirement is included in the solicitation, the contracting officer shall ensure any additional requirements under FAR 22.504(b)(6) or any prescribed terms and conditions under FAR 22.504(c) were coordinated with supporting OGC opinion and are explained in the file memorandum.

In cooperation with the program office or project manager, the CO must ensure the acquisition plan properly identifies each construction contract action associated with a large-scale project if the estimated value is $25 million or greater. The contracting officer will prepare a file memorandum reflecting rationale for the PLA decision (either for or against) and have it approved by the Head of Contracting Activity (HCA) or the HCA’s designee. The appropriate PLA provision and clause shall be included in the solicitation/contract when a PLA will be required.

Factors to Consider and Documentation Required: In addition to the factors at FAR 22.503, the following may be used to assist VA planners in determining whether requiring a PLA is in the best interest of the government and the specific terms and conditions the offeror/contractor must include in the PLA itself:

a. Solicit and document PLA recommendations from the industry professionals in the local community where the project will be located.
b. Request the Architect/Engineer provide information to the project manager, during each design phase, regarding current local market/economic conditions and labor shortages, as well as information on whether PLAs were used successfully in the project area.

c. Issue a Sources Sought announcement seeking PLA input from industry or state/local governmental entities. A pre-solicitation conference may also be used to obtain similar information.

d. Using a market survey, determine if other state or Federal construction projects will be competing for the same labor pool.

e. Determine how a PLA could impact project budget and schedule either positively or negatively.

f. Use any other reliable public information available to assist in the determination whether use of a PLA is in the best interest of the government.

HCAs will review all existing HCA standard operating procedures, guidance, etc., that may be impacted by this PPM and revised as appropriate.

7. Questions or Concerns: Please direct questions regarding this PPM to the Office of Acquisition and Logistics (003A), Procurement Policy and Warrant Management Service (003A2A), via email at VA.Procurement.Policy@va.gov or (202) 632-5288.

/s/
Phil W. Parker

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