



Federal Acquisition Institute

Use of Project Labor Agreements (PLAs) on Federal Construction Projects

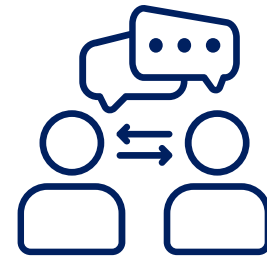
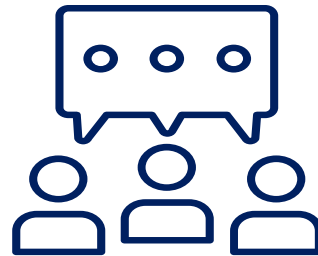
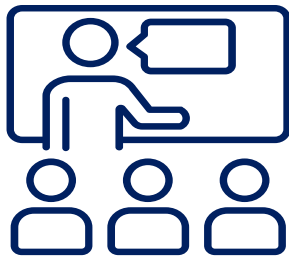
January 11, 2024



Targeted Audience for this Webinar

Federal contracting workforce responsible for executing
large-scale construction contracts

Webinar Format



Welcome - 5 min

**Leadership
Remarks - 10 min**

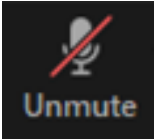
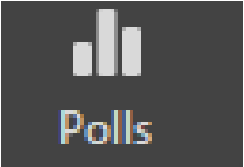
Training - 35 min

**Panel
Discussion - 20
min**

**Q & A - 15
min**

**Closeout - 5
min**

Zoom Features

Icon	Tip
	<p>Microphones will remain muted for all participants.</p>
	<p>There will be anonymous polls that pop up on your screen. Please select one response and submit.</p>

Continuous Learning Points

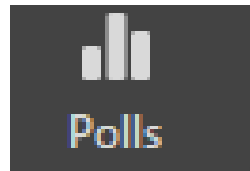
Use of Project Labor Agreements (PLAs) on Federal Construction Projects



1-2 weeks

*You will automatically receive 1.5 CLPs in
FAI CSOD with attendance of the entire
session today.*

Leadership Remarks



Participant Poll #1

Please select the response that best describes your experience with PLAs



Presentation Topics

Overview and Recent Regulatory Changes

Inclusive Market Research

Exceptions

Reporting Requirements

Resources

Definitions

FAR 22.502

Term	Definition
Project Labor Agreement (PLA)	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)
Construction	Construction, reconstruction, rehabilitation, modernization, alteration, conversion, extension, repair, or improvement of buildings, structures, highways, or other real property
Labor Organization	A labor organization as defined in 29 U.S.C. 152(5) of which building and construction employees are members
Large-scale Construction Project	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

Recent Regulatory Changes

February 4
2022



**Executive Order
(EO) 14063**

Requires PLAs on large-scale construction contracts unless an exception applies

Pre-publication
December 18
2023



**FAR Case
2022-003**

Implements the EO

Published in the Federal Register December 22, 2023

Effective date
January 22, 2024

December 18
2023



**OMB Memo
M-24-06**

Guidance for agency action

Recent Regulatory Changes (cont.)

Large-scale Construction

WAS

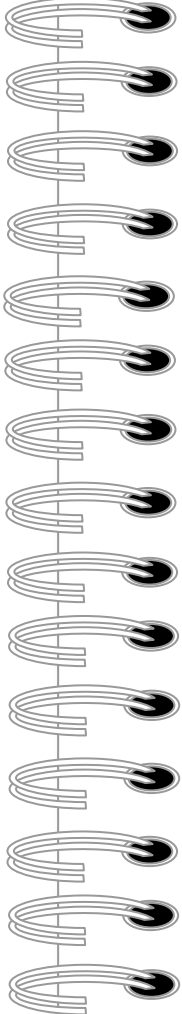
- Total cost to the Federal Government
- **\$25** million or more
- PLAs **encouraged**

NOW

- Total estimated cost of the construction contract to the Federal Government
- **\$35** million or more
- PLAs **required**, unless an exception approved by the Senior Procurement Executive (SPE) applies
- Contracting Officers (COs) shall ensure required inclusive market is conducted
- Reporting to OMB required on both PLA activity and exceptions with supporting explanations

Policy

FAR 22.503(b) and (c)
FAR 36.104(c)(1) and (2)

- 
- COs awarding a contract in connection with a large-scale construction project, **shall** require use of PLAs for all contractors and subcontractors engaged in construction on the project, unless an exception at 22.504(d) applies.
 - COs **shall** require the use of a PLA for Federal construction projects with a total estimated construction cost at or above \$35 million, unless an exception applies.
 - COs **may** require the use of a PLA on projects where the total cost to the Federal Government is less than that for a large-scale construction project, if appropriate.

Large-scale Construction Projects - Special Challenges

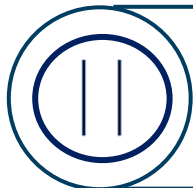
EO 14063 and OMB Memo



Difficulties predicting labor costs



Multiple employers at a single location



Labor disputes may cause project delays



Absence of an agreed-upon resolution mechanism

PLA Benefits

EO 14063 and OMB Memo

Strengthen the Federal construction contract labor market



Labor Stability



Cost Control



Workforce Quality



Safety Standards

General Requirements for PLAs

FAR 22.504



Bind contractors and subcontractors to comply with the PLA



Set forth mutually binding procedures for resolving labor disputes



Allow all contractors and subcontractors to compete



Provide mechanisms for labor-management cooperation



Contain guarantees against strike and lockout job disruptions



Fully conform to all statutes, regulations, EOs, and Presidential Memoranda

IDIQ Contracts

FAR 22.503(d) and OMB Memo

For indefinite-delivery indefinite-quantity (IDIQ) contracts:

- COs may establish whether a PLA is required on an order-by-order basis.
- If the IDIQ contract is intended to support one construction project, the CO must require a PLA for the entire contract (i.e., all orders of any size) if the value of the contract is \$35 million or greater, unless an exception applies.

Policy

FAR 36.104(c)(1) and (2)

COs conducting market research for large scale construction projects **shall** ensure that market research includes:

- **A current and proactive examination** of the market conditions in the project area
- **National, regional, and local entity interest** in participating on a project that requires a PLA
- The availability of -
 - **Unions, and**
 - **Unionized and non-unionized contractors**

Inclusive Market Research

FAR 36.104(c)(2) and OMB Memo



Current and Proactive Examination of the Market Conditions in the Project Area

- Market research must be:
 - Documented on a project-specific basis.
 - Inclusive.
- COs may rely on market research conducted within 18 months of contract award, but only if the research was inclusive and met the requirements of FAR 36.104(c)(2).
- COs may use sources sought notices and advance notices for construction contracts.
 - Notices are primarily published at [SAM.GOV](https://sam.gov).

Inclusive Market Research

FAR 36.104(c)(2) and OMB Memo



National, regional, and local entity interest in participating on a project that requires a PLA

- COs shall ensure market research evaluates the extent to which sources in the federal marketplace, including new entrants, might compete.
- While unions have the ability to recruit skilled workers nationally to address local skilled labor shortages, the intent is not to replace local workers for the sole purpose of employing union members.
- PLAs can offer opportunities to grow and train the local workforce, specifically targeting underrepresented individuals and help agencies and prime contractors meet small business subcontracting goals and other objectives

Inclusive Market Research

FAR 36.104(c)(2) and OMB Memo



Availability of unionized and nonunionized contractors

- PLAs allow **all** contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements.
- COs shall ensure market research is conducted in a manner that seeks to identify **both** union and non-unionized contractors that may be interested in participating in the competition.
- DOL's Good Jobs Initiative website provides information on use of PLAs.

Timing for PLA requirement

FAR 22.505 and OMB Memo



COs can **use inclusive market research results** to help determine the best timing for requiring submission of the PLA.

The CO may require submission of the PLA by:

- All offerors,
- The apparent successful offeror prior to award, or
- The awardee after contract award

COs include the provision and clause, with appropriate alternate depending on the timing of the PLA requirement.

FAR Provision

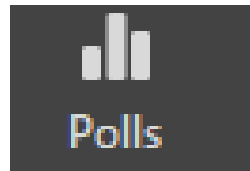
FAR 22.505

Provision	Use
FAR 52.222-33, Notice of Requirement for Project Labor Agreement	<p>In solicitations containing the clause FAR 52.222-34, Project Labor Agreement</p> <p>When the CO will require offerors to submit a copy of the project labor agreement with its offer</p>
FAR 52.222-33, Alternate I	<p>When the CO will require the submission of a project labor agreement from only the apparent successful offeror, prior to contract award</p>
FAR 52.222-33, Alternate II	<p>When the CO allows submission of a project labor agreement after contract award, except when Alternate III is used</p>
FAR 52.222-33, Alternate III	<p>When Alternate II of 52.222-34 is used</p>

FAR Clause

FAR 22.505

Clause	Use
FAR 52.222-34, Project Labor Agreement	<p>In solicitations and contracts associated with the construction project</p> <p>When the CO will require the project labor agreement prior to the award of the contract</p>
FAR 52.222-34, Alternate I	<p>When the CO will allow submission of the project labor agreement after contract award, except when Alternate II is used</p>
FAR 52.222-34, Alternate II	<p>In IDIQ contracts when the CO 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</p>



Participant Poll #2

Please select the response that best describes inclusive market research

Exceptions

FAR 22.504(d) and OMB Memo

The SPE may grant an exception ***before the solicitation is issued*** by approving a written explanation of why requiring a PLA would cause one of three conditions to exist:

It would not advance the Federal Government's interests in achieving economy and efficiency in Federal procurement

1

FAR 22.504(d)(4)(i)

Market research indicates that requiring a PLA 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

2

FAR 22.504(d)(4)(ii)

It would otherwise be inconsistent with statutes, regulations, Executive Orders, or Presidential Memoranda

3

FAR 22.504(d)(4)(iii)

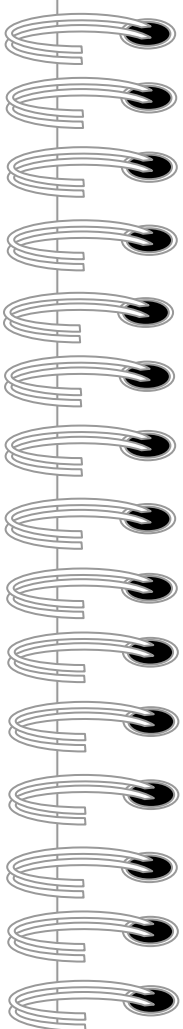
Exceptions where PLA would not promote economy and efficiency

FAR 22.504(d)(i) and OMB Memo

If the basis for determination is ...	Then the written explanation signed by the SPE should...
Project has a short duration & lacks operational complexity	Describe the nature of the work and state the expected performance period
Project involves only one craft or trade	State that only one craft or trade is involved in the performance of the contract
Specialized construction available from limited contractors or subcontractors	Address the inclusive market research that was conducted to reach the conclusion
Unusual and compelling urgency	Describe the procurement acquisition lead time for similar construction projects, the time available for this project and the urgency that has caused the need for an accelerated schedule

Exceptions where PLA would inhibit competition

FAR 22.504(d)(ii) and OMB Memo

- 
- 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.
 - COs shall consider current market conditions and the extent to which price fluctuations may be attributable to factors other than the requirement for a PLA.
 - COs may rely on price analysis conducted on recent competitive proposals for construction projects of a similar size and scope.

Exceptions where PLA would inhibit competition

FAR 22.504(d)(ii) and OMB Memo (cont.)

If...	Then
<p>Adequate price competition can be achieved. In general,</p> <ul style="list-style-type: none">• Two or more qualified offers is sufficient for negotiated contracts. (FAR 15.403-1)• Three or more qualified bids is sufficient for sealed bids. (FAR 14.408-1(b)).	<p>This exception would not be appropriate, even if the number of offerors who indicate they will not compete because of the PLA is significantly higher than the number of sources who have expressed an intent to compete.</p>
<p>An SPE determines the project can be set aside for two or more small business concerns but for the PLA requirement.</p>	<p>The SPE may grant an exception.</p>

Reporting Requirements for Large-Scale Construction Projects

EO 14063 and OMB Memo

Reporting **exceptions**

- **Within three business days** of the issuance of the solicitation
- Use template in Attachment 1 OMB Memo M-24-06

Reporting **contracts and orders with PLA requirements**

- **Within three business days** of award
- Use template in Attachment 2 OMB Memo M-24-06

Agencies **shall** report information to MBX.OMB.OFPPv2@OMB.eop.gov

- OFPP will work with GSA to make agency submissions available to the public on the [Acquisition Gateway](#)



Reporting Requirements - OMB Memo Attachment 1, Reporting Exceptions

- Contracting Agency
- Senior Procurement Executive (SPE)
- Date Exception Granted by SPE
- Solicitation Number
- Solicitation Date
- Magnitude of Construction
- Project Description
- Project Location
- Basis for Exception*
 - Cite the FAR and provide explanation

* See OMB Memo for instructions on completing this field.

Reporting Requirements - OMB Memo Attachment 1, Reporting Exceptions (cont.)

If the basis for the exception is...	The explanation should...
FAR 22.504(d)(4)(i)	Identify the specific factor(s) used and provide a summary of the documentation.
FAR 22.504(d)(4)(ii)	Summarize the inclusive market research actions required by FAR 36.104(c)(2) and results in sufficient detail to understand the basis for exercising the exception.
FAR 22.504(d)(4)(iii)	Cite the statute, regulation, executive order, or Presidential Memorandum that creates an inconsistency with the use of a PLA.

Reporting Requirements - OMB Memo Attachment 2, Reporting Awards

- Contracting Agency
- Procurement Instrument Identifier (PIID)
- Contract Signed Date
- Base and All Option Value
- Project Location
- Project Description

Agency Specific

A graphic of a spiral-bound notebook with a white page and a grey cover. The spiral binding is on the left side. The text is written on the page in a dark blue font.

Agencies may provide supplemental procedures, guidance, etc.

Please check with your agency for specific information, guidance and samples:

For example, agency procedures may provide additional instructions for exceptions and reporting



Participant Poll #3

An exception to the requirement for the agency to use a PLA for a large-scale construction project can only be approved by the:

Panel Discussion and Q&A



Resources

Executive Order:

- [Executive Order 14063](#), Use of Project Labor Agreements for Federal Construction Projects

Final Rule and Guidance:

- [Final FAR Rule](#)
- OMB Memorandum [M-24-06](#)
- [Fact Sheet](#)

Public website for PLA Data:

- [Acquisition Gateway](#)

DOL's Good Jobs Initiative website:

- Information on use of PLAs, found [here](#).

Reporting PLA use and exceptions: MBX.OMB.OFPPv2@OMB.eop.gov

Questions:

- MBX.OMB.OFPPv2@OMB.eop.gov
- Agency [Labor Advisors](#) listed on DOL's website

Thank you

A hand-drawn illustration of a pen writing the words "Thank you". The pen is positioned at the end of the word "you", with its tip touching the final stroke. The pen is rendered in a simple, sketchy style with a grey body and a black tip. The words "Thank you" are written in a cursive, handwritten font. The entire scene is set against a plain white background.