

**Department of
Veterans Affairs**

Memorandum

Date: March 29, 2023

From: Contracting Officer, Office of Facilities Acquisitions, National Region (003C4B)

Subj: Office of Construction and Facilities Management, Executive Order 14063 - Use of Project Labor Agreements for Federal Construction Projects for Ft. Logan National Cemetery, Phase 1A Expansion (Construction FY23 Re-procurement)

To: Head of a Contracting Activity, Office of Facilities Acquisitions (003C4)

- 1. Purpose:** The proposed memorandum is to document the decision in accordance with (IAW) Federal Acquisition Regulation (FAR) 22.5 – Use of Project Labor Agreements for Federal Construction Projects, VA Acquisition Manual (VAAM) M822.5 Project Labor Agreements and M822.503(b) to solicit for offers without Project Labor Agreements (PLA) requirement concerning Ft. Logan National Cemetery, Phase 1A Expansion (Construction FY23 Re-procurement), Project Number 888CM2043, under Solicitation 36C10F23R0013.
- 2. Background:** PLA requirement is a tool that agencies may use to promote economy and efficiency in Federal procurement. Executive Order (EO) 14063, Use of Project Labor Agreements for Federal Construction Projects, was signed by the President on February 04, 2022. Pursuant to EO 14063, Federal Government is required to use PLA in connection with large-scale construction projects valued at \$35 million or more. EO 14063 supersedes EO 13052, which is currently implemented in FAR Subpart 22.5. The new EO 14063 requires the FAR Council to propose regulations implementing the EO within 120 days of the order. Additionally, within 90 days of the EO, the Secretary of Defense, the Secretary of Labor, and the Director of OMB shall coordinate in designing a training strategy for agency Contracting Officers (CO) to effectively implement this order. Further, Executive Order 13502 of February 6, 2009 (Use of Project Labor Agreements for Federal Construction Projects), is revoked as of the effective date of the final regulations issued by the FAR Council under section 8(a) of the EO14063. The FAR Council has not proposed regulations implementing the provisions of this order, nor have the FAR and VA regulations been updated per Section 8 - Regulations and Implementation of the EO.
- 3. Policy:** To date published regulation including FAR Subpart 22.5 – Use of Project Labor Agreements for Federal Construction Projects and VAAM M822.503 – Policy, remain unchanged pending FAR Council issuance of propose regulations implementation; therefore, the existing regulations instructs the Contracting Officer to prepare a file memorandum

reflecting rationale for the PLA decision (either for or against) and have it approved by the HCA or the HCA's designee (currently in excess of \$25 million).

- 4. Market Analysis:** Extensive market research was conducted for this project, through issuance of Sources Sought Notice 36C10F23R0013, which was posted on the System for Award Management (SAM) website, on October 31, 2022, with closing date on November 15, 2022, to determine the availability and technical capabilities of qualified sources. As part of the information requested in the contractor Capability Statement package is a PLA questionnaire. The notice resulted in four (4) Contractor Capability Statement responses from potentially qualified and capable Service-Disabled Veteran Owned Small Businesses (SDVOSBs), which indicated that requiring PLAs will restrict competition amongst prime contractors and subcontractors that will not give the Government the best value; and proposed prices would increase due to the fact that Colorado is an open market state and there are few companies in the state that are Union and/or willing to sign a PLA (see PLA Capability Statement response attachments).

In addition, during Fiscal Year (FY) 2022 VA publicized on SAM website, a solicitation for this project including provisions and clauses providing the opportunity to offerors to provide a proposal with or without project labor agreements concerning Ft. Logan National Cemetery Phase 1 Expansion, Project Number 888-043, under Solicitation 36C10F22R0029. One proposal was received from GC&V Construction LLC as result of the solicitation, which did not include PLAs and was significantly overbudget, resulting in VA cancelling solicitation 36C10F22R0029, in accordance with FAR 15.206(e).

- 5. Decision:** PLA use on this project would not advance the Federal Government's interests in achieving economy and efficiency in procurement for the Ft. Logan National Cemetery Phase 1A Expansion (Construction FY23 Re-procurement) project, because the project is of short duration and lacks operation complexity as it is horizontal construction and land improvements when compared to vertical construction and major hospital improvements. Requiring PLAs on the project would substantially reduce the number of potential offerors so as to frustrate full and open competition after exclusion of sources and place a burden on socio-economic contractors under the Veterans First Contracting Program (38 U.S. Code § 8127 (d) - Use of Restricted Competition). Based on the labor market analysis and information above, it is in the best interest of the Government to allow SDVOSBs the opportunity to propose without a PLA. Therefore, it is the Contracting Officer's decision to proceed without the Use of Project Labor Agreements for Federal Construction Projects concerning Ft. Logan National Cemetery, Phase 1A Expansion (Construction FY23 Re-procurement), Project Number 888CM2043, under Solicitation 36C10F23R0013.

Attachment(s): Project Labor Agreement (PLA) Questionnaire Responses (see continuation pages).

Point of Contact: Questions or comments may be addressed to David Bullerwell, Director Office of Facilities Acquisition, National Region at David.Bullerwell@va.gov.

PREPARED:

Rachel Beason
Contract Specialist
Office of Facilities Acquisition
Office of Construction and Facilities Management
U.S. Department of Veterans Affairs

CONCUR:

David Bullerwell
Contracting Officer
Director, National Region Acquisitions
Office of Facilities Acquisition
Office of Construction and Facilities Management
U.S. Department of Veterans Affairs

APPROVED:

Zebulon Fox, DBA
Associate Executive Director
Office of Facilities Acquisition
Office of Construction and Facilities Management
U.S. Department of Veterans Affairs