

Office of Construction and Facilities Management

Date: March 31, 2022

From: Deontrinese Dalton, Contracting Officer (003C4D)

Subject: Project Labor Agreement (PLA) – 36C10F22Q0020, Project Number 549-820B
Construction Project, Long-Term Spinal Cord Injury Building, Dallas TX

To: Head of Contracting Activity

1. **Purpose.** The proposed memorandum is to document the deviation from VAAM 822.5 Project Labor Agreements and solicit for offers with or without project labor agreements
2. **Background.** Project labor agreements (PLA's) are a tool that agencies may use to promote economy and efficiency in Federal procurement. Pursuant to Executive Order 14063, agencies are required to use of PLAs in connection with large-scale construction projects valued at \$35 million or greater. Agency guidance in VAAM 822.5 – Use of Project Labor Agreements for Federal Construction Projects, instructs the Contracting Officer to determine “either for or against” requiring a PLAs in the solicitation for large scale construction projects. However, VAAM 822.5 guidance to determine “either for or against” is not in the Executive Order 14063, or Federal Acquisition Regulation (FAR). Agency guidance can be deviated from, by the Contracting Activity, when determining the best acquisition strategy and promoting competition for the specific project.
3. **Project Description.** The subject memorandum is being issued to accomplish the following construction project:

Scope of the Construction Project. The scope of this Design Bid Build Work includes but is not limited to Building 83 LTSCI and Building 74.

Building 83 Long Term Spinal Cord Injury (LTSCI) and the existing acute Spinal Cord Facility (Building 74) base bid work includes:

- Construction of a new 30 bed Long-Term Spinal Cord Injury (LTSCI) facility adjacent to and attached with an existing acute Spinal Cord Facility (Building 74) by construction of a new multi-story lobby with at-grade entries on level 1 and level B1.
- The new LTSCI utilizes the guiding principles from LEED v4.
- The LTSCI is divided into 5 pods.
- The LTSCI includes a new Outpatient Clinic and a Urodynamic suite at level B1.
- Level B1 includes above grade growth space for 30 future residents.
- Level 1 includes provision for 30 above grade resident bedrooms each resident pod accommodates 6 residents with related living and clinical areas.
- Level 2 includes provision for administrative support areas, offices, interior therapy spaces, and a roof garden area for use by the residents.
- Level 3 includes a mechanical penthouse.
- Provisions are included for mission critical VA required underground storage tanks.
- Above grade enclosed connector corridor to the LTSCI parking garage at Level 2.
- Underground connections and extensions to the existing underground utility tunnel system.

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- The new LTSCI is designed in accordance with the Physical Security Design Manual for Mission Critical facilities; and includes demolition/ renovation work in Building 74 near where the new LTSCI will connect to the existing building.
 - This construction project will also have an option for the contractor to provide a 7400sq.ft trailer including all utilities and detailed accommodations. The trailer is intended to be used for administrative swing space.
4. **Project Status.** Solicitation 36C10F22R0045, is tentatively expected to be issued on or around August 3, 2022. The anticipated contract award date is February 23, 2023.
5. **Applicable Federal Acquisition Regulation (FAR) References.** 52.222-33 – Notice of Requirement for Project Labor Agreement, paragraph (a) and 52.222-34 – Project Labor Agreement, paragraph (b.)
6. **Executive Order 14063- Exceptions.** Sec. 5. Exceptions Authorized by Agencies - provides factors that may be used to determine exceptions from the requirements of section 3 of the EO 14063 as listed:
- (a) Requiring a project labor agreement on the project would not advance the Federal Government's interest in achieving economy and efficiency in Federal procurement. Such a finding shall be based on the following factors:
 - (i) The project is of short duration and lacks operational complexity;
 - (ii) The project will involve only one craft or trade;
 - (iii) The project will involve specialized construction work that is available from only a limited number of contractors or subcontractors;
 - (iv) The agency's need for the project is of such an unusual and compelling urgency that a project labor agreement would be impracticable; or
 - (v) The project implicates other similar factors deemed appropriate in regulations or guidance issued pursuant to section 8 of this order.
 - (b) Based on an inclusive market analysis, requiring a project labor agreement on the project would substantially reduce the number of potential bidders so as to frustrate full and open competition.
 - (c) Requiring a project labor agreement on the project would otherwise be inconsistent with statutes, regulations, Executive Orders, or Presidential Memoranda.
7. **Market Analysis.** Market research was performed for this effort, with the issuance of a Sources Sought Notice (www.SAM.GOV 3/7/2022), to include a questionnaire seeking industry response. It resulted in three (3) contractor responses: One from a SB that offered no response to the PLA questions, but submitted their capabilities as a Management Services company and prior performance history. Two responses were received from large business construction contractors both indicating that requiring PLAs would increase cost to the project, extremely limit competition, and that requiring the use of PLAs would impact their ability to source and use small business, including VOSB and SDVOSB firms disadvantaging socio-economic contracting goals because the majority of firms are not unionized and would be disenfranchised by anti-competitive and costly provisions within typical PLAs. Industry response to the PLA include a contractor's response that if the solicitation requires a PLA, they would have to reassess whether or not they would submit a proposal, with belief that a PLA would not benefit the VA or it's potential to advance the Federal Government's interest in achieving economic and efficiency in Federal procurement. ~~Other comments and responses to the PLA inquiry can be viewed in the enclosed attachments to this memorandum.~~ CFM projects uses an array of

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labor disciplines from various classifications of contractors in its construction projects to include small business (SB, WOSB, 8A, SDVOSB and VOSB) to meet its socio-economic goals. Requiring PLAs on the project would substantially reduce the number of potential bidders so as to frustrate full and open competition after exclusion of sources and place a burden on these socio-economic contractors under the Veterans First Contracting Program (38 U.S. Code § 8127 (d) - Use of Restricted Competition).

Further research of studies performed in the state of Texas indicates in 2021 union members accounted for 3.8% of wage and salary workers in Texas compared with 4.9 % in 2020, the U.S. Bureau of Labor Statistics reported a low point in 2021. Texas is a right-to-work state, meaning unions are allowed but prohibits unions and employers from making agreements that force workers to join the union in order to be employed. Union membership in Texas has been on the decline since its peak in 1993¹. In today's construction marketplace, as has been the case for decades, there is a qualified, thriving and skilled alternative to union-only labor. Quality merit shop contractors and skilled employees can build federal projects on time and on budget without a PLA. However, if projects are subject to a PLA, then agencies can expect less competition, increased costs and potential delays.

However, it is in the best interest of the Government to pursue an acquisition strategy to promote industry's participation in the competition. Based on increased understanding of Executive Order 14063's intent to introduce PLAs into major construction projects, better understanding of Congressional intent of the project authorization and appropriations, engagement with pre-hire collective bargaining agreement with one or more labor organizations, and the responsibility to promote competition and acquisition innovation, it is in the best interest of the Government to allow all offerors the opportunity to propose with or without a PLA based on EO 14063, Sec 5 (b), while the FAR council and U.S. Department of Veterans Affairs define FAR and Agency requirements and needed training. It is in the best interest of Government to deviate from Agency guidance in VAAM 822.5 to determine "either for or against" by allowing vendors the opportunity to propose with or without a PLA for this project.

8. **Conclusions.** The standard Government competitive processes exclusive of PLA pricing options, incentives, or mandates are sufficient to achieve Best Value for the Government while simultaneously maintaining the interests of the applicable collective bargaining units. However, PLAs aka CWAs (Community Work Agreements) have been a powerful tool in ensuring that 1) both large private and public projects are completed on schedule and within budget; 2) problems are addressed without disruptions; and 3) decent jobs are created for skilled building trades workers.
9. **Recommendation.** Based on the above information, it is recommended for the LTSCI VA Dallas, Project Number 549-820B, that the solicitation shall include a provision for offerors at their discretion to submit a proposal with a project labor agreement or without an agreement. All project labor agreements shall fully conform to FAR Subpart 22.5 – Use of Project Labor Agreements for Federal Construction Projects. The Contracting Officer will insert the FAR 52.222-33 – Notice of Requirement for Project Labor Agreement and FAR 52.222-34 – Project Labor Agreement in the solicitation. Additionally, the Contracting Officer shall insert the below provision in the solicitation to provide direction and clarity:

¹ https://www.bls.gov/regions/southwest/news-release/unionmembership_texas.htm United States Department of Labor, Southwest Information Office

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“Project Use of Project Labor Agreements for Federal Construction Projects (PLAs): Offeror(s) may submit proposals with or without a PLAs. The PLAs shall fully conform to the Federal Acquisition Regulation (FAR) Subpart 22.5 - Project Labor Agreement for Federal Construction Projects. No additional points or weight will be assigned to proposals submitted with a PLAs. PLAs proposal will not be given additional weight towards their technical proposals or towards selection of a proposal for award. Offeror(s) who chose to provide a proposal including PLAs shall do so in compliance with FAR 52.222-33 and FAR 25.222-34.”

Additionally, the Contracting Officer will ensure any additional requirements under FAR 22.504(b)(6) or any prescribed terms and conditions under FAR 22.504(c) are coordinated with legal counsel and are explained thoroughly in the file.

10. **Attachment(s):**

- ~~Sources Sought PLA Inquiry (continuation pages)~~
- ~~(2) Industry Comments/Response (-.pdf)~~

11. **Point of Contact:** Questions or comments may be addressed to Deontrinese Dalton, Contracting Officer, Central Region CFM at Deontrinese.Dalton@va.gov.

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APPROVE:

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Zebulon Fox, Head of the Contracting Activity
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