Acquisition Policy
DOT DASH
2009-013

Date: August 3, 2009

To: Chief of the Contracting Office (COCO)
Acquisition Personnel

From: Office of the Senior Procurement Executive

Subject: Revocation of Executive Order 13202 (FAC) 2005-35

Summary: Federal Acquisition Circular (FAC) 2005-35 amends the Federal Acquisition Regulation (FAR) as specified below:

Executive Order 13202 previously prohibited executive departments and agencies from requiring Federal contractors and subcontractors to enter into project labor agreements. Executive Order 13502 amends FAR 36.202(d) to delete reference to the revoked departments and agencies from requiring or prohibiting Federal Government contractors and subcontractors' entrance into project labor agreements. This rule requires no action on the part of contracting officers.

Specifically, Executive Order 13502 requires that in awarding contracts with large-scale construction projects, or obligating funds agencies may, on a project-by-project basis, require the use of a project labor agreement where use will:

1. Advance the Federal Government's interest in achieving economy and efficiency in Federal procurement, produce labor-management stability, and ensure compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters consistent with the law.

2. If an agency determine that the use of a project labor agreement will satisfy the criteria the agency may require that every contractor or subcontractor on the project agree to negotiate or become a party to a project labor agreement with one or more labor organizations.

This DASH and its attachment are available at http://www.dot.gov/ost/m60, under Quick Picks, Policy DASHES, and Acquisition.

Questions concerning this policy DASH should be directed to Lenita Ahmadi at (202) 366-4974 or lenita.ahmadi@dot.gov.

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Office of the Senior Procurement Executive

Attachment

Presidential Documents

Executive Order 13502 of February 6, 2009

Use of Project Labor Agreements for Federal Construction Projects

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.*, and in order to promote the efficient administration and completion of Federal construction projects, it is hereby ordered that:

Section 1. *Policy.* (a) Large-scale construction projects pose special challenges to efficient and timely procurement by the Federal Government. Construction employers typically do not have a permanent workforce, which makes it difficult for them to predict labor costs when bidding on contracts and to ensure a steady supply of labor on contracts being performed. Challenges also arise due to the fact that construction projects typically involve multiple employers at a single location. A labor dispute 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 frictions and disputes in the absence of an agreed-upon resolution mechanism. These problems threaten the efficient and timely completion of construction projects undertaken by Federal contractors. On larger projects, which are generally more complex and of longer duration, these problems tend to be more pronounced.

(b) The use of a project labor agreement 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 construction contracts. Accordingly, it is the policy of the Federal Government to encourage executive agencies to consider requiring the use of project labor agreements in connection with large-scale construction projects in order to promote economy and efficiency in Federal procurement.

Sec. 2. *Definitions.*

(a) The term "labor organization" as used in this order means a labor organization as defined in 29 U.S.C. 152(5).

(b) The term "construction" as used in this order means construction, rehabilitation, alteration, conversion, extension, repair, or improvement of buildings, highways, or other real property.

(c) The term "large-scale construction project" as used in this order means a construction project where the total cost to the Federal Government is $25 million or more.

(d) The term "executive agency" as used in this order has the same meaning as in 5 U.S.C. 105, but excludes the Government Accountability Office.

(e) The term "project labor agreement" as used in this order means 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).

Sec. 3. (a) In awarding any contract in connection with a large-scale construction project, or obligating funds pursuant to such a contract, executive agencies may, on a project-by-project basis, require the use of a project labor agreement by a contractor where use of such an agreement will (i)

advance the Federal Government's interest in achieving economy and efficiency in Federal procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters, and (ii) be consistent with law.

(b) If an executive agency determines under subsection (a) that the use of a project labor agreement will satisfy the criteria in clauses (i) and (ii) of that subsection, the agency may, if appropriate, require that every contractor or subcontractor on the project agree, for that project, to negotiate or become a party to a project labor agreement with one or more appropriate labor organizations.

Sec. 4. Any project labor agreement reached pursuant to this order shall:

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

(b) allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;

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

(d) set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the project labor agreement;

(e) provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health;and

(f) fully conform to all statutes, regulations, and Executive Orders.

Sec. 5. This order does not require an executive agency to use a project labor agreement on any construction project, nor does it preclude the use of a project labor agreement in circumstances not covered by this order, including leasehold arrangements and projects receiving Federal financial assistance. This order also does not require contractors or subcontractors to enter into a project labor agreement with any particular labor organization.

Sec. 6. Within 120 days of the date of this order, the Federal Acquisition Regulatory Council (FAR Council), to the extent permitted by law, shall take whatever action is required to amend the Federal Acquisition Regulation to implement the provisions of this order.

Sec. 7. The Director of OMB, in consultation with the Secretary of Labor and with other officials as appropriate, shall provide the President within 180 days of this order, recommendations about whether broader use of project labor agreements, with respect to both construction projects undertaken under Federal contracts and construction projects receiving Federal financial assistance, would help to promote the economical, efficient, and timely completion of such projects.

Sec. 8. *Revocation of Prior Orders, Rules, and Regulations.* Executive Order 13202 of February 17, 2001, and Executive Order 13208 of April 6, 2001, are revoked. The heads of executive agencies shall, to the extent permitted by law, revoke expeditiously any orders, rules, or regulations implementing Executive Orders 13202 and 13208.

Sec. 9. *Severability.* If any provision of this order, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of the provisions of such to any person or circumstance shall not be affected thereby.

Sec. 10. *General.* (a) Nothing in this order shall be construed to impair or otherwise affect:

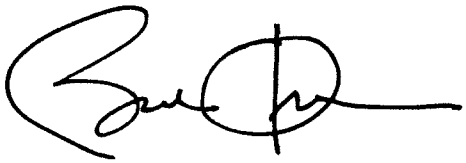
(i) authority granted by law to an executive department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 11. *Effective Date.* This order shall be effective immediately and shall apply to all solicitations for contracts issued on or after the effective date of the action taken by the FAR Council under section 6 of this order.



THE WHITE HOUSE,
February 6, 2009.

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