

Project Labor Agreement Regulations are Published

By Judd H. Lees

While Congress and President Obama have been unable to deliver the long-promised Employee Free Choice Act to labor unions, the President has attempted to deliver on other campaign promises to labor. Within a month of his election, he signed an executive order setting aside his predecessor's proscription on project labor agreements and, instead, encouraging the use of such agreements on large-scale construction projects. The rules to flesh out this executive order were recently promulgated by the Defense Department and other agencies, provide some guidance regarding factors that agencies may consider to determine whether a project labor agreement is appropriate, although, the use of a PLA is strongly encouraged. The regulations also allow an awarding agency to specify in the bid solicitation, the terms and conditions of the PLA and require the successful bidder to become party to the PLA. The regulations can be found at edocket.access.gpo.gov/2010/2010-8117.

The use of PLAs has long been opposed by non-union industry groups since they typically require non-union contractors to hire employees out of union hiring halls and pay trust fund contributions on behalf of their non-union employees, even though they will not reap the benefits of those contributions. The end result is an increase in the cost of these projects subject to PLAs. The administration's action in conjunction with Congressional requirements that projects receiving American Recovery and Reinvestment Act (ARRA) funds be subject to the federal Davis-Bacon Act, will drive up the cost of public construction just at a time when federal and state coffers are in the red.

For construction contractors, the new regulations as well the ARRA strings on construction projects will require a level of knowledge and sophistication to steer through the

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complexities of PLAs as well as federal and state public works statutes. Absent such knowledge, contractors are sure to run afoul of contract specifications or, worse, the law.