**FAA Project Labor Agreement Guide**

****

**Table of Contents**

[**I.** **BACKGROUND** 2](#_Toc156395729)

[**II.** **GUIDANCE** 3](#_Toc156395730)

[**A.** **Requirement to use PLAs** 3](#_Toc156395731)

[**B.** **Market Research** 6](#_Toc156395732)

[**C.** **Exercising exceptions** 7](#_Toc156395733)

[**D.** **Reporting on use of PLAs and exceptions.** 10](#_Toc156395734)

[**ATTACHMENT 1: TEMPLATE FOR REPORTING ON EXCEPTION TO PLA REQUIREMENTS** 12](#_Toc156395735)

[**ATTACHMENT 2: TEMPLATE FOR REPORTING ON USE OF PLAs** 13](#_Toc156395736)

This document provides guidance on Project Labor Agreements (PLAs) to the FAA acquisition workforce responsible for executing large-scale construction contracts, which are defined as contracts where the Total Estimated Potential Value (TEPV) is $35 million or more.[[1]](#footnote-2) The document provides additional detail to implement the requirements of AMS Guidance T3.6.2A.20, in accordance with Executive Order (E.O.) 14063, *Use of Project Labor Agreements for Federal Construction Projects*, issued February 4, 2022. In particular, the document describes procedures and documentation requirements for: (1) conducting market research, (2) excepting projects from PLA requirements and (3) reporting on the use of PLAs and exceptions.

# **BACKGROUND**

PLAs are pre-hire collective bargaining agreements with one or more labor organizations that establish the terms and conditions of employment for a specific construction project and are described in 29 U.S.C. § 158(f). *See* E.O. 14063 § 2(2); AMS Guidance T.3.6.2A.20. In accordance with section 4 of E.O. 14063 and AMS Guidance T3.6.A.20.c(4), PLAs must:

1. Bind all contractors and subcontractors engaged in construction on the construction project to comply with the PLA;
2. Allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;
3. Contain guarantees against strikes, lockouts, and other job disruptions;
4. Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the PLA;
5. Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health;
6. Include any additional requirements deemed necessary to meet the needs of the FAA.

E.O. 14063 states that large-scale construction projects pose special challenges to the efficient and timely procurement for the Federal Government—challenges that increased use of PLAs can help address. Section 1(a) of the E.O. explains that construction employers typically do not have a permanent workforce, which makes it difficult to predict labor costs when bidding on contracts and to ensure a steady supply of labor on contracts being performed. Challenges also arise because construction projects typically involve multiple employers at a single location, and a labor dispute involving one employer can delay the entire project. Moreover, a lack of coordination among various employers, or uncertainty about the terms and conditions of employment of various groups of workers, can create friction and disputes in the absence of an agreed-upon resolution mechanism.

Section 1(b) of the E.O. explains that expanded use of PLAs can address these concerns by providing structure and labor-management stability to large-scale construction projects. In particular, PLAs standardize the work rules, compensation costs, and dispute settlement processes across multiple employers and unions to help avoid and resolve labor disputes and the attendant disruption they can cause.

Expanding federal use of PLAs can also help agencies cope more effectively with the nationwide skilled labor shortage in the construction industry. By providing access to union hiring halls that will allow federal contractors to fill empty craft positions with skilled workers recruited from surrounding regions, PLAs help ensure a reliable stream of skilled labor. Use of PLAs will help reduce the risk of noncompliance with labor laws in the construction industry under federal construction projects.

PLAs have been used on federal construction projects since the 1930s and have been expressly recognized in the AMS since 2010 with the implementation of E.O. 13502, *Use of Project Labor Agreements*. E.O. 13502 encouraged agencies to consider requiring the use of PLAs in connection with large-scale construction projects, which were defined as construction projects where the total cost to the Federal Government is $25 million or more. E.O. 14063 increases this threshold to $35 million and requires “every contractor or subcontractor engaged in construction on the project to agree, for that project, to negotiate or become a party to a project labor agreement with one or more appropriate labor organizations.” E.O. 14063 § 3.

E.O. 14063 and AMS Guidance Section T3.6.2A.20.d do not require use of PLAs on a project when one of three exceptions applies, namely:

1. Requiring a PLA would not advance the Federal Government’s interests in achieving economy and efficiency in federal procurement,
2. Requiring a PLA would inhibit competition or small business opportunities; or
3. Requiring a PLA would otherwise be inconsistent with statutes, regulations, executive orders, or Presidential Memoranda.

# **GUIDANCE**

## **Requirement to use PLAs**

1. *PLAs are required for all construction contracts with a TEPV of $35 million or more.*

The FAA must take full advantage of PLAs on large-scale construction contracts over $35 million, consistent with E.O. 14063 and AMS Guidance T3.6.2A.20. Specifically, the CO and requiring service organization must: (1) conduct and document market research for all large-scale construction projects and require PLAs unless an exception applies, (2) ensure that any exception is approved by the FAA Acquisition Executive (FAE), and (3) report PLA activity and exceptions with supporting explanation of exceptions to OMB.

Requiring service organizations are encouraged, but not required, to consider use of PLAs for other than large-scale construction projects (i.e., those projects estimated at less than $35 million). Factors for determining the suitability of a PLA for these projects are set forth at AMS Guidance T.3.6.2A.20.c.(2)(B).

For indefinite-delivery indefinite-quantity (IDIQ) contracts, Contracting Officers (COs) may establish whether a PLA is required at the contract level (i.e., for the basic IDIQ contract) or on an order-by-order basis. If the IDIQ contract is intended to support one large-scale construction project, the FAA must require a PLA for the entire contract (i.e., all orders of any size), unless an exception applies.

1. *Contracting Officer responsibility to insert PLA AMS clauses*.

*For new SIRs and Contracts (except IDIQ contracts as described below*) where the TEPV is equal to or exceeds $35 million, COs must:

1. incorporate required AMS clauses:
   * for procurement contracts, AMS clauses 3.6.2-42, Notice of Requirement for Project Labor Agreement, and 3.6.2-43, Project Labor Agreement, or
   * for real property contracts, AMS Real Property clauses 6.5.23, Notice of Requirement for Project Labor Agreement, and 6.5.24, Project Labor Agreement; and
2. indicate the time at which the proposed PLA is required (see below paragraph (3), *Timing of Requirement*).

*For IDIQ contracts* *when the FAA will require a PLA on an order-by-order basis and it is anticipated one or more orders may not use a PLA*, COs must insert in the IDIQ contract AMS Clause 3.6.2-43 Alternate I Project Labor Agreement. When a specific order requires a PLA, the CO must indicate the PLA requirement in the applicable order in accordance with that clause. (For IDIQ contracts when the FAA will require a PLA for the entire base IDIQ, COs must incorporate AMS clauses 3.6.2-42 and 3.6.2-43 (or AMS Real Property clauses 6.5.23 and 6.5.24), as described above).

At the time a SIR is issued, it may not be certain whether the resulting contract will equal or exceed $35 million. If the CO anticipates that offeror price proposals *may* meet or exceed that threshold – for example, if the IGCE is within 15% of $35 million – the CO should include the following in the SIR:

1. AMS clauses 3.6.2-42 and 3.6.2-43 (or AMS Real Property clauses 6.5.23 and 6.5.24); and
2. A statement that the PLA AMS Clauses will apply if the offered price is $35 million or greater.

Thus, only offeror proposals priced at $35 million or greater will be subject to the applicable AMS Clauses.

When a PLA is not required at contract award, then no PLA will be required for the duration of the contract. No PLA is required under such a contract, even if the actual cost of the construction contract exceeds $35 million during the course of performance.

1. *Timing of requirement for contractor submission of PLA*.

Requiring service organizations and COs have the flexibility to determine the best timing for requiring submission of the PLA. COs may require that Offerors/Contractors submit the PLA at the following times:

1. *At the time of offer*. Proposed PLAs may be required at the time of offer.
2. *At the time the apparent successful offeror is determined*. Proposed PLAs may be required from an apparent successful offeror at the time the apparent successful offeror is determined.
3. *After award*. Proposed PLAs may be required within a specified number of days after award.

SIRs must specify the time, or if applicable the specific date, at which the submission of a proposed PLA is required. When used, COs must indicate within AMS Clause 3.6.2-42, Notice of Required Project Labor Agreement, the time at which the proposed PLA is required.

Requiring service organizations and COs are encouraged to use the results of their market research to help determine the best timing. If market research indicates that the prospective offerors have significant experience with PLAs, then it may be feasible for the solicitation to require that offerors submit their PLA with their proposals. By contrast, if few of the prospective offerors have experience with PLAs (e.g., they are non-unionized contractors or small businesses that lack experience with PLAs), then permitting submission of the PLA after award may help to facilitate greater interest in the competition and avoid unintended barriers to entry. Requiring submission of the PLA at the time of offer may reduce cost risk because the costs of the PLA may be more accurately factored into an offeror's proposal. If submission is permitted post-award, then the contracting officer should establish a reasonable deadline in the solicitation consistent with the FAA’s interest in ensuring timely performance on the project.

Where the CO elects to require submission of the PLA only by the apparent successful offeror prior to award, the SIR must specify the procedure and may provide the apparent successful offeror the opportunity to revise its price proposal. After the identification by the acquisition team of the apparent successful offeror, the CO may notify the apparent successful offeror and request that the offeror submit the required PLA within a reasonable amount of time. If the apparent successful offeror does not already have an applicable, negotiated PLA, the apparent successful offeror must negotiate the required PLA before award. After its PLA negotiations, the offeror may submit the required PLA and, as applicable, a revised price proposal, along with an explanation of why the PLA affects the proposed price. The FAA should reserve the right to award to an offeror other than the apparent successful offeror based on the revised proposal.

## **Market Research**

Requiring service organizations and COs conducting market research for construction contracts must utilize the procedures at AMS Guidance T3.2.1.2 to provide the most accurate reflection of the current market conditions present in the area for the prospective construction project. To meet the requirements of E.O. 14063, market research should also consider the availability of unionized and non-unionized contractors and gauge national, regional, and local interest.

1. *Project-specific determination*.

Acquisition personnel must conduct a contemporaneous market analysis on a project-specific basis. Acquisition personnel may use various techniques to examine market conditions described in AMS Guidance T3.2.1.2A.1(e), such as conferring with interested parties using sources sought notices and advance notices for construction contracts. Acquisition personnel may also rely on the results of recent market research (e.g., less than 18 months) into similar or identical requirements, but reliance on such market research must be accompanied by a fact-based explanation of why that market research accurately reflects current market conditions for the prospective construction contract. In addition, the fact that a PLA was not previously required for a project in a given area does not, by itself, constitute market research adequate to support the exercise of an exception to the requirement for a PLA on a subsequent project.

1. *Availability of unionized and nonunionized contractors.*

E.O. 14063 provides that a PLA shall “allow all contractors and subcontractors on the construction project to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements.” E.O. 14063 § 4(b). Thus, market research should seek to identify bothunion and non-unionized contractors that may be interested in participating in the competition.

The Department of Labor’s (DOL) Good Jobs Initiative website provides information on use of PLAs, found [here](https://www.dol.gov/general/good-jobs). Among other resources, the website includes a link to a list of potential contractors that have used PLAs. The website also provides links to information to help COs and potentially interested sources that are not unionized better understand why participation in a competition with a PLA should not put them at a competitive disadvantage. OMB Memo M-24-06 provides examples of why a non-unionized source’s participation in a competition with a PLA should not put them at a competitive disadvantage. Examples cited in OMB Memo M-25-06 include the following:

* While many PLAs require contractors to use the union’s hiring hall for referrals, they do not prevent the use of a contractor’s workforce. The union hiring halls are legally required to refer workers to the project without regard to whether the workers are union members. Non-union employers also may negotiate “core employee” provisions that permit retaining some employees without those employees registering at a union’s hiring hall. Ultimately, the contractor retains the right to decide whom to hire.
* The E.O. does not require non-union employees to pay union dues or join a union. Non-union contractors are free to negotiate provisions in PLAs to accommodate existing fringe benefits or union dues. For example, a PLA may allow non-union contractors to opt out of contributing to health and welfare funds designated under the PLA, if the benefits provided by the non-­union contractor are equal in value to those provided under the PLA.

1. *National, regional, and local interest.*

The requirement to gauge national, regional, and local interest ensures that the FAA can fully evaluate the extent to which sources in the marketplace, including new entrants, might compete. While unions have the ability to recruit skilled workers nationally to address local skilled labor shortages, the intent of the PLA requirement is not to replace local workers for the sole purpose of employing non-local union members. The acquisition team may consider unique local needs when negotiating PLAs on a project-by-project basis. PLAs can offer opportunities to grow and train the local workforce, specifically targeting underrepresented individuals. For example, the FAA and contractor may negotiate Community Workforce Agreements and incorporate them as part of a PLA to promote diversity and inclusion and local resident business opportunities, as well as to help the FAA and prime contractors meet small business subcontracting goals and other objectives.

## **Exercising exceptions**

AMS Guidance T3.6.2A.20.d. provides that the FAE may grant an exception to the requirement for the agency to use a PLA for a large-scale construction project. AMS Guidance T.3.6.2A.20.d.(2)(A) states that an exception must be granted for a particular contract by the date the SIR is issued.[[2]](#footnote-3)

To seek an exception, the CO, in coordination with the requiring service organization, must prepare and submit to the FAE a documented written explanation of why requiring a PLA: (1) is not economical and efficient; (2) inhibits competition or small business opportunities; or (3) is inconsistent with federal statutes, regulations, executive orders, or Presidential memoranda. *See* AMS Guidance T.3.6.2A.20.d.(1). Below, this Guide outlines the documentation required to support each of the three exceptions. If the FAE grants the exception, the CO must include documentation of the FAE’s approval in the contract file. *See* AMS Guidance T.3.6.2A.20.d.(3).

1. *Considerations for economy and efficiency-based exception.*

This exception is based on a determination that requiring a PLA on the project would not advance the FAA’s interests in economy and efficiency. To support the exception, the requiring service organization and CO must document one or more of the following four factors:

* 1. The project is of short duration and lacks operational complexity.
  2. The project will involve only one craft or trade.
  3. The project will involve specialized construction work that is available from only a limited number of contractors or subcontractors.
  4. The agency's need for the project is of such an unusual and compelling urgency that a PLA would be impracticable.

The following table explains the documentation required to support each factor.

|  |  |
| --- | --- |
| **If the basis for the determination is . . .** | **The documentation should . . .** |
| The project is of short duration and lacks operational complexity. | Describe the nature of the work and state the expected performance period.[[3]](#footnote-4) |
| The project will involve only one craft or trade. | State that only one craft or trade is involved in the performance of the contract. |
| Specialized construction work is available from only a limited number of contractors or subcontractors. | Detail the market research that was conducted to support the conclusion that the specialized work is only available from a limited number of contractors or subcontractors. |
| The agency's need for the project is of such an unusual and compelling urgency that a PLA would be impracticable. | Describe the procurement acquisition lead time for similar construction projects and the time available for this project. Substantiate with facts the urgency that has caused the need for an accelerated schedule and the impact to the project if the schedule is not accelerated. In general, most large-scale construction projects involve long lead times and extensive advanced planning. However, the FAA’s ability to respond to natural disasters and pandemics, the agility required to meet national security needs, and the FAA’s unique need for more timely acquisitions may require expedited timelines that make mandatory use of a project labor agreement impracticable (e.g., insufficient time for the FAA to conduct the market research necessary to identify the interest in participating on a project that requires a PLA and insufficient time for construction contractors and their subcontractors to negotiate PLAs). |

1. *Considerations for competition-based exception.*
2. *PLA requirement inhibits full and open competition*. To except a contract from the PLA requirement because a PLA requirement would inhibit competition, supporting documentation must show 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. *See* AMS Guidance T.3.6.2A.20.d.(1)(B)(i). This requires two findings, supported by documented facts and market research: first, that the PLA requirement will likely reduce the number of potential offerors; second, that the reduction would not allow for adequate competition at a fair and reasonable price.

COs must consider current market conditions and the extent to which price fluctuations may be attributable to factors other than the requirement for a PLA (e.g., costs of labor or materials, supply chain costs). COs may rely on price analysis conducted on recent competitive proposals for construction projects of a similar size and scope. *See* AMS Guidance T3.2.1.2A.1(e).

In evaluating the anticipated impact of a PLA on the FAA’s ability to conduct a competition, the determination should focus on whether the market research points to a sufficient number of anticipated offerors to achieve fair and reasonable pricing. In general, two or more qualified offers is sufficient to provide adequate price competition, per AMS Guidance T3.2.3A1a.(3)(a)(i). If adequate price competition can be achieved, use of 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.

1. *PLA requirement inhibits small business set-aside* *opportunity*. This exception requires a documented finding, based on market research, that a large-scale construction project can be set aside for two or more small business concerns, including joint ventures, but for the PLA requirement. *See* AMS Guidance T3.6.2A20.d.(1)(B)(ii).

Where the FAA is aware of potential offerors that would have interest but for the PLA requirement, the acquisition team should seek to engage with those sources to understand the nature of the concern (e.g., a misperception that nonunionized contractors must allow workers to organize in order to enter a PLA; a need for information or training on PLAs) and consider what steps might be taken to allay similar concerns on future construction projects with PLAs.

1. *Other Authoritative exceptions.*

To except a contract from the PLA requirement because a PLA requirement would be inconsistent with an applicable federal statute, regulation, executive order, or Presidential memorandum, COs and requiring service organizations must coordinate with agency counsel.

## **Reporting on use of PLAs and exceptions.**

The CO, on behalf of the FAA, must report information on a transactional basis[[4]](#footnote-5) for all exceptions granted and all contracts that use PLAs to OBX.OMB.OFPPv2@OMB.eop.gov.[[5]](#footnote-6)

The CO must complete the template at Attachment 1 for all exceptions granted and the template at Attachment 2 for all contracts awarded with a PLA requirement.[[6]](#footnote-7) When completing the template in Attachment 1 to report on use of an exception, COs must ensure that the “basis for exception” field identifies which one of the three authorized exceptions was used (i.e., the exceptions identified in AMS Guidance T.3.6.2A.20.d.(1)(A), (B), or (C)) and provide a narrative explanation in accordance with the table below:

|  |  |
| --- | --- |
| **If the basis for the exception is . . .** | **The explanation should . . .** |
| *Economy and efficiency-based exceptions*. Requiring a project labor agreement on the project would not advance the Federal Government's interests in achieving economy and efficiency in Federal procurement.  AMS Guidance T.3.6.2A.20.d.(1)(A) | Identify the specific factor or combination of factors used and provide a summary of the documentation required by the table in § II.C(1), above. |
| *Competition-based exceptions.*  (i) *PLA requirement inhibits competition*.Requiring a PLA on the project would inhibit competition.  AMS Guidance T.3.6.2A.20.d.(1)(B)(i)  ***Or***  (ii) *PLA requirement restricts small business set-aside* *opportunity*. A large-scale construction project can be set aside for two or more small business concerns, including joint ventures, but for the PLA requirement.  AMS Guidance T.3.6.2A.20.d.(1)(B)(ii) | Summarize the market research undertaken per AMS Guidance T3.2.1.2 and the results of the research in sufficient detail to understand the basis for exercising the exception—i.e., the facts showing that 1) the PLA requirement will likely reduce the number of potential offerors and 2) the reduction would not allow for adequate competition at a fair and reasonable price. Indicate that research gauged national, regional, and local interest and considered contractors without regard to whether they are otherwise parties to collective bargaining agreements (i.e., both unionized and non-unionized labor).  Summarize the market research undertaken per AMS Guidance T3.2.1.2 and the research results in sufficient detail to understand the basis for exercising the exception — i.e., (1) facts showing that if not for the PLA requirement, two or more set-aside eligible small businesses (including joint ventures) could submit adequate offers, and (2) the engagement between the FAA and the small businesses and the concerns expressed by the small businesses about the PLA requirement. |
| *Other Authoritative exceptions*. Requiring a project labor agreement on the project would otherwise be inconsistent with Federal statutes, regulations, executive orders, or Presidential memoranda.  AMS Guidance T.3.6.2A.20.d.(1)(C) | Cite the statute, regulation, executive order, or Presidential memorandum that creates an inconsistency with use of a PLA. |

# 

# **ATTACHMENT 1:** **TEMPLATE FOR REPORTING ON** **EXCEPTION TO PLA REQUIREMENTS\***

|  |  |
| --- | --- |
| **CONTRACTING AGENCY** | Federal Aviation Administration |
| **SENIOR PROCUREMENT EXECUTIVE (SPE) (FAE)\*\*** |  |
| **DATE EXCEPTION GRANTED BY SPE (FAE)** |  |
| **SOLICITATION NUMBER** |  |
| **SOLICITATION DATE** |  |
| **MAGNITUDE OF CONSTRUCTION\*\*\*** |  |
| **PROJECT DESCRIPTION** |  |
| **PROJECT LOCATION** |  |
| **BASIS FOR EXCEPTION\*\*\*\*** |  |

\* This Template is Attachment 1 from OMB Memo M-24-06.

\*\* For purposes of the FAA, it will be the FAA Acquisition Executive (FAE).

\*\*\* Total Estimated Potential Value (TEPV) only under base contract and all options. For Real Property, only include the estimated construction costs under the contract.

\*\*\*\* See § II(D) above in this PLA Guide for instructions on completing this field.

# **ATTACHMENT 2: TEMPLATE FOR REPORTING ON USE OF PLAs\***

|  |  |
| --- | --- |
| **CONTRACTING AGENCY** | Federal Aviation Administration |
| **PROCUREMENT INSTRUMENT IDENTIFIER (PIID)** |  |
| **CONTRACT SIGNED DATE** |  |
| **BASE AND ALL OPTIONS VALUE\*\*** |  |
| **PROJECT LOCATION** |  |
| **PROJECT DESCRIPTION** |  |

\* This Template is Attachment 2 from OMB Memo M-24-06.

\*\* Total Estimated Potential Value (TEPV) of construction only under base contract and all options. For Real Property, exclude any non-construction costs under the contract.

1. This document incorporates, throughout, guidance from OMB Memo M-24-06, dated December 18, 2023, which provides implementing instructions for E.O. 14063 to the federal contracting workforce. [↑](#footnote-ref-2)
2. This includes IDIQ contracts if the basis for the exception cited would apply to all orders. Otherwise, exceptions must be granted for each order by the time of the notice of the intent to place an order. AMS Guidance T.3.6.2A.20.d.(2)(B). [↑](#footnote-ref-3)
3. For contracts that involve a design phase (e.g., design-build contracts), duration should be measured by the length of the construction portion of contract performance. [↑](#footnote-ref-4)
4. This reporting is required whether the large-scale construction contract award is in the form of a standalone contract or an order under an IDIQ Contract. [↑](#footnote-ref-5)
5. Section 6(a) of E.O. 14063 requires agencies to publish, on a centralized public website, data showing the use of PLAs on large-scale construction projects, as well as descriptions of the exceptions granted, to the extent permitted by law and consistent with national security and executive branch confidentiality interests. Section 6(b) also requires this information to be reported to OMB. [↑](#footnote-ref-6)
6. These two templates are also found on the FAST website in two other locations: (1) Procurement Templates and (2) Real Property Procurement Templates & Samples. [↑](#footnote-ref-7)