

**Supporting Statement for Information Collection
9000-00XX, Use of Project Labor Agreements for Federal
Construction Projects**

A. JUSTIFICATION

1. Administrative requirements. This is a request for emergency approval of a new information collection requirement. The FAR Council is issuing an interim rule amending the Federal Acquisition Regulation Supplement (FAR) to implement Executive Order (E.O.) 13502, dated February 6, 2009, entitled "Use of Project Labor Agreements for Federal Construction Projects". This E.O. was issued to mitigate the adverse impacts of labor-management instability on large construction contracts thereby allowing efficient and timely completion of such projects. Therefore, the E.O. directs the FAR Council to amend the FAR within 120 days to implements the provisions of the Order. On July 14, 2009, the Councils published for public comment a proposed rule to provide a new FAR Subpart 22.5, Use of Project Labor Agreements for Federal Construction Projects, to implement the provisions of E.O. 13502 (73 FR 33953).

This final rule gives agencies the discretion to determine if using project labor agreements in connection with large scale construction contracts (over \$25M) will promote economy and efficiency by minimizing labor-management unrest.

The decision to use or not use a project labor agreement is completely discretionary on the part of the agency under the final rule, agencies may choose from among three options. Submission may be required: (1) when offers are due, (2) prior to award (by the apparent successful offeror), or (3) after award.

Providing these three options allows agencies with project labor agreement experience to continue with the model they have found most helpful, and other agencies to craft an approach unique to each project, and, as experience is gained, follow best demonstrated practices. If an agency decides that permitting execution of the PLA after award is the best approach, the contractor will be required to submit an executed copy of the agreement to the contracting officer. This language is a change from the proposed rule, which only required the contractor to "bargain in good

faith." In the Councils' view, this language unnecessarily puts part of the government's acquisition strategy at risk and therefore fails to adequately protect the Government's procurement interests.

2. Use of information. This information is required to determine if the otherwise apparently successful offeror has submitted a sufficient project labor agreement that conforms with all statutes, regulations and Executive Orders. Failure to collect this information would result in a lack of sufficient information needed by the contracting officer to make an award decision.

3. Use of information technology. Improved information technology will be used to the maximum extent practicable. Where offerors or contractors have automated systems that contain the information needed to report this requirement, they may submit the information in formats that are compatible with the automated systems.

4. Describe efforts to identify duplication. This information collection does not duplicate any other requirement.

5. If the collection of information impacts small businesses (item 5) describes any methods used to minimize the burden. The rule will apply to large-scale construction projects where the cost to the Government is \$25 million or more and where agencies have determined that use of a project labor agreement will promote economy and efficiency in the resulting procurement by minimizing labor-management unrest. Most prime contractors for such projects are large business concerns, and only the prime contractor is responsible for the collection of information. Additionally, the rule gives agencies the flexibility to consider additional criteria to minimize the rules impact of non-unionized contractors and subcontractors, both small and large businesses.

6. Describe the Consequences to Federal activities if the collection is not conducted or is conducted less frequently. Collection frequency is minimal, but required as directed by Federal agencies in their solicitation documents. If the collection is not conducted as required, work on the agency's construction project could be delayed.

7. Special circumstances for collection. Collection is

consistent with the guidelines in 5 CFR 1320.5(d). The information will not be collected in a manner that requires an explanation of special circumstances.

8. Efforts to consult with persons outside the agency. A request for comments was solicited in the *Federal Register* at 73 FR 33953, July 14, 2009. Comments received will be addressed in the final rule.

9. Explanation of any decision to provide any payment or gift to respondents, other than remuneration of contractors or guarantees. No payment or gift will be provided to respondents, other than remuneration of contractors under their contracts.

10. Describe assurance of confidentiality provided to respondents. The information collected will be disclosed only to the extent consistent with prudent business practice, current regulations, and statutory requirements. No assurance of confidentiality is provided to respondents.

11. Additional justification for questions of a sensitive nature. No sensitive questions are involved.

12. Estimated total annual public hour burden. In FY 2008 300 large-scale construction contracts, totaling \$31,685,574,596 were awarded. Of these, 17 were made to small businesses, totaling \$591,269,508 (average of \$34,780,558 per contract). The small business size standard for general building and heavy construction contractors is \$33.5 million. Most prime contractors for such projects are large businesses, but the majority of the subcontractors under these large-scale contracts will be small businesses. Since the publication of the proposed rule, the GSA, DoD, and NASA have updated averages, to include FY 2009 information: The two year average is a total of 246 contracts per year, with 14 of the prime contractors being small businesses. However, the GSA, DoD, and NASA continue to maintain the estimate made in the proposed rule of about 30 project labor agreements per year (that would now be 12.2 percent of all large-scale construction contracts).

The rule and the burden does not require the contractor to keep records regarding the development, negotiation, or submission of the PLA.

We have estimated not more than 70 respondents, 1 response per respondent, 1 hour per response, and an estimated cost of \$29 per hour (the equivalent of a GS-09, step 5 salary plus 36.45 percent burden): Computations are provided below.

Respondents	70
Responses/respondent	x <u>1</u>
Responses	70
Hours per response	x <u>1</u>
Total hours	70
Cost per hour	x <u>\$ 29</u>
Total annual cost to public	\$ 2,030

This estimate has increased because an option has been included that allows an agency to require each offeror to submit a copy of the project labor agreement with the offer

13. Estimated total annual public cost burden. We estimate that the contracting officer will be able to determine whether the project labor agreement is compliant without requesting additional evidence from the offeror. Therefore, we estimate 70 respondents, 1 response per respondent and .5 hours per response, and an estimated cost of \$36 per hour (the equivalent of a GS-11 step 5 salary plus 36.45 percent burden):

Respondents	70
Responses/respondent	x <u>1</u>
Responses	70
Hours per response	x <u>.5</u>
Total hours	35
Cost per hour	x <u>\$ 36</u>
Total annual cost to the Gov't	\$ 1,260

14. Estimated cost to the Government. The FAR Council does not estimate any annual cost burden apart from the hour burden in Item 13.

15. Explain reasons for program changes or adjustment reported in Item 13 or 14. Data was estimated using the Federal Procurement Data System (FPDS) for FY08 and FY10.

16. Outline plans for published results of information collection. This is a new information collection requirement.

17. Approval not to display expiration date. Results of this information collection will not be tabulated or published.

18. Explanation of exception to certification statement. The FAR Council does not seek approval to not display the expiration dates for OMB approval of the information collection.

B. Collections of Information Employing Statistical Methods

Statistical methods will not be employed.