

ADMINISTRATION TEAM MINUTES

Date: September 18, 2009
Time: 9:00 am
Place: Tacoma AGC Building

Attending:

	Mark Borton	X	Mike Grigware	X	Anthony Sarhan
X	Jerry Brais		Darrel McCallum		Glenn Schneider
	Forrest Dill	X	Craig McDaniel	X	Mark Scoccolo
X	Paul Gonseth	X	Tina Nelson	X	Dave Standahl
	Mike Hall	X	Roger Palfenier		Andy Thompson
X	Tim Hayner		Mark Rohde	X	Greg Waugh

Guests: None

Opened Meeting at 9:00AM:

Specification Book Update:

Mike Grigware informed the team that the August 3, 2009 Amendment/GSP Update Package was out and that it would be the last update package to the 2008 Specification Book.

Mike G informed the team that the new standard specification book for 2010 has an effective date of January 4th, 2010 but that copies will be received before that date.

Co-Chairman of AGC Team:

Greg Waugh discussed his position as co-chair on on the AGC Team. Team was in agreement that Greg should continue through 2009/2010 year as co-chair as him and Craig are doing a fine job.

DBE Coding:

Mark Scoccolo asked about new DBE coding. Craig acknowledged that there is new DBE coding in the works as well as a proposed change to the way DBE information is submitted. Craig will send out an email on new coding structure and keep the team informed of any changes.

Retainage:

Craig McDaniel informed the team about retainage requirements per CFR. Three options allowed for retainage per the new CFR. One of the options WSDOT is considering is having a Retainage Bond in lieu of withholding retainage. Most of AGC Team agreed that a bond would be a good method for dealing with retainage. Craig will keep team informed through future meetings of how the retainage issue is proceeding.

Tina Nelson stated that local agencies would probably be not like to see withholding of retainage go away.

Apprenticeship Utilization Specification requirements:

Mark Scoccolo stated there were problems in meeting the goals of the new Apprenticeship Utilization specification especially with subcontractors who often don't have enough workers on the job to warrant an apprentice or the amount of time they work on a job is not long enough to help in meeting the goal. Several trades don't have an approved apprenticeship program such as landscapers, and fencing crafts which makes it hard for them to even contribute to the goal. The wording of, "from an approved apprenticeship program" is a problem especially for nonunion trades.

Tim Hayner asked "with Construction spending going down, why are more requirements such as apprenticeship goals going up?" Craig stated that this year and next year will be two of the biggest spending years by WSDOT, but after that we maybe decreasing in spending. Craig expressed appreciation for the comments and stated that apprenticeship concerns should be forwarded to their representative members of the apprenticeship team.

PLA:

PLA was brought fourth as a discussion item by Craig McDaniel. The Department is considering requiring PLA's for projects that are complicated and of a value \$20 million and above in cost. Craig stated that the AWW tunnel and the SR 520 pontoon project will are being considered for a PLA. The group asked why have one? Craig stated that there is a Presidential Executive Order to encourage federal agencies in the usage of PLA's to help in quelling labor unrest and to improve material flow on projects. Anthony Sarhan stated that FHWA neither prohibits nor mandates PLAs on projects, but owner mandated PLA's must be approved by FHWA for incorporation into federally funded projects. AGC group didn't feel that owner mandated PLAs are necessary. Members have experience with them and found them not to be as effective as intended in preventing labor unrest, and to be more exclusionary than inclusionary when it comes to labor issues.

Earned Value in Progress Schedules:

Craig McDaniel brought up the issue of earned value in progress schedules. Craig told the group there is a legislative mandate for the WSOT to begin implement earned value and has successfully petitioned to pilot the process on a limited number of high cost long duration projects. The over all benefit is accurate tracking of cash flow.

Environmental Certification:

Craig McDaniel brought up the issue of Environmental Certification. In short, what weight do the contractors put on signing this document and what does it mean to them? Paul G. stated that he has seen these requirements on site specific permits required from the Department of Ecology. The AGC group asked for an example of such a document and Craig stated he would circulate one for review.

ARRA:

ARRA was discussed. The team seemed to feel the documentation requirements weren't a problem. The group did mention that the stimulus money for 'shovel ready projects' is requiring some projects to go to AD before without enough design being done (mostly local agencies), which is causing changes in construction. Anthony S. stated that FHWA will be reviewing all ARRA projects.. Anthony noted that more attention needed to be paid to the on site signing and posting of ARRA wage related posters .

Weighing Specification Changes:

Mike Grigware brought up the old business issue of the Weighing Specification change. Mark Scoccolo wanted to know why the latest proposal took out the alternative means of scale verification from the specification book as that was something the group had worked through in earlier reviews. Mike G stated that the Salesman's Reports still allowed those alternatives, and since we are not getting rid of the scale man's report at this time, and the specification references the report, Mike thought the alternative methods of verification were still covered in the scaleman's report and agreed to go back and verify that fact. Mark suggested that we take the scale verification process from the back-side of the Scaleman's Daily Report form and include the requirements in the Standard Specifications (where it really belongs). A simple way to verify the scale, like a having a known static weight available at the scale site is a benefit to all parties. Anthony Sarhan has been reviewing the specification and has no real concerns with it. Anthony has more concerns with the removal of the Ticket Taker position specification.

Fuel Opt-Out Clause:

Mike Grigware introduced the Opt-Out Clause for the Fuel Adjustment specification that he received from Kansas DOT which allows bidders to opt-out of the fuel escalation specifications at bid proposal time. Greg W. stated Oregon DOTs method of allowing opt-out after bid was awarded was a better method, because then the Prime has more time to work with subcontractors in determining what their needs are or risks are. The team couldn't see where the Oregon specification allowed any unfair bidding practices, if allowed after award. Mike G will see if he can get a copy from Oregon.

It was brought forward that the fuel cost adjustment specification needs work on the factor used in asphalt plant operation. The factor used for plant operations is based upon diesel costs, which isn't appropriate for that plants run on natural gas or propane. Apparently there is a federal specification that makes an allowance for asphalt plant operations that don't use diesel. Mike G will find and circulate for comment the spec.

Anthony Sarhan noted FHWA's position on escalation clauses for commodities as follows, "If a State doesn't have escalation clauses (specifications) in a project, and commodity prices raise while a project is under construction FHWA is legally prohibited from participating in retroactive price adjustments. This is consistent with the state's position that cost adjustments after bid submittal are not appropriate.

Meeting adjourned at 12:10 P.M.

ACTION Items captured from Meeting:

1. Craig to send an email on DBE coding being presented.
2. Craig to circulate a FAR Draft PLA rules
3. Craig to circulate example of DOE permit (Environmental Certification)
4. Mike G to circulate a copy of Oregon Opt-Out Clause for fuel.
5. Mike G to work with Anthony to see how the federal specification is written for asphalt plant fuel factors where they can be diesel or natural gas and makes allowances for either one.
6. Mike G to see if there is any Department concern with showing the APWA logo on front of Book.



Future Meetings: October 16, 2009

ENVIRONMENTAL COMPLIANCE NOTES

SHEET REFERENCE	SITE CODE	NOTE NUMBERS	NOTES	NOTES	NOTES	
EC6	W1	1 to 7	<p>CONTRACTOR REQUIREMENTS:</p> <p>APPLIES TO ALL WORK</p> <p>1. Construction materials, vehicles and equipment shall not be allowed to be stockpiled or stored within any existing sensitive area and waters of the state; including wetlands, wetland buffers, streams and creeks, and stream and creek buffers any time during the life of this contract.</p> <p>2. Discharge of petroleum products, hydraulic fluid, fresh cement, sediment-laden water, chemicals, or any other toxic or deleterious materials leaching or entering into waters of the state, including wetlands, streams, creeks, and jurisdictional ditches, is prohibited. Any discharge of this kind shall be reported to the Engineer immediately.</p> <p>3. Provide a 10 day advance notification to WSDOT per Water Quality Certification provisions prior to the onset of any work on site.</p> <p>4. Provide a 10 day advance notification to WSDOT per Water Quality Certification within project completion.</p> <p>*Applies to Work in and near Waters of the State</p> <p>General Conditions:</p> <p>1. The Contractor shall comply with the water quality criteria specified in Chapter 173-201A WAC, and RCW/90.48 Water Pollution Control. Failure to comply with the State's Water Quality Standards may result in the issuance of civil penalties or other actions, whether administrative or judicial.</p> <p>2. For work in or near the water the Contractor shall meet all state water quality standards.</p> <p>3. Prior to the start of work, the Contractor shall review the conditions of the WSDOE & WSDOT Implementing Agreement with the Engineer. A copy of the Implementing Agreement shall be located at the job site at all times during construction. The Contractor shall provide the Engineer a signed statement documenting that he has read, understands and shall abide by the conditions of the Implementing Agreement.</p> <p>4. Provide a 10 day advance notification to WSDOT per Water Quality Certification provisions prior to the onset of in-water work, including wetlands.</p> <p>5. Equipment used for this project shall not enter or operate below the ordinary high water line as staked by the Engineer.</p> <p>6. Equipment used for this project shall be free of external petroleum-based products while used around the waters of the state, including wetlands. Accumulation of soils or debris shall be removed from the drive mechanisms (wheels, tires, tracks, etc.) and the undercarriage of equipment prior to its use around waters of the state, including wetlands.</p> <p>7. Equipment crossings of the stream are not authorized by this HPA.</p> <p>8. No work shall occur waterward of the ordinary high water line (OWHL, as staked by the Engineer), except over-water bridge superstructure construction.</p> <p>9. Excavation for and placement of the foundation and superstructure shall be outside the ordinary high water line, as staked by the Engineer.</p> <p>10. Copies of the Water Quality Certification Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.</p>			
EC6	W2	1 to 7				
EC4, 5, 6	W3	1 to 7				
EC5	W4	1 to 7				
EC4, 5	W5	1 to 7				
EC4	W6	1 to 7				
EC4	W7	1 to 7				
EC2	W8	1 to 7				
EC3	W9	1 to 7				
EC5	W10	1 to 7				
EC2, 3, 4, 5, 6	S1	1 to 7				
EC2	S2	1 to 7				

GENERAL NOTES:
Information on the ECN sheets are derived from the regulatory approval. The contractor shall abide by the approvals to be in compliance with the legal regulations. The contractor shall contact the Engineer and the Engineer will contact the resource agency regarding approval issues unless otherwise directed by the Engineer. See ECN sheets regarding compliance for all work.

Approval Reference
Regulatory Agencies and Permit
 WASH. STATE DEPT. OF ECOLOGY
 Water Quality Certification - #5980
 NWS-2007-1926-SOD
 WASH. STATE DEPT. OF FISH AND WILDLIFE
 Hydraulic Project Approval - #111412-1

DESIGNED BY	CHECKED BY	REGION NO.	STATE	FED. AID PROJ. NO.		 <p>Washington State Department of Transportation</p>	<p>SR 520 W LAKE SAMMAMISH PKWY TO SR 202 HOV AND SR 202 INTERCHANGE</p>	ECN 1 SHEET 99 OF 862 SHEETS
PROJ. ENGR. H. HUYNH	REGION ADM. L. ENG.	10	WASH					
DATE	DATE	REVISION	BY	CONTRACT NO.				

required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." This proposed rule does not have Tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from Tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it

approves a State rule implementing a Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 30, 2009.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. E9-16642 Filed 7-13-09; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 17, 22, 36, and 52

[FAR Case 2009-005; Docket 2009-0024; Sequence 1]

RIN 9000-AL31

Federal Acquisition Regulation; FAR Case 2009-005, Use of Project Labor Agreements for Federal Construction Projects

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13502, Use of Project Labor Agreements for Federal Construction Projects. The new E.O. encourages Federal departments and agencies to consider requiring the use of project labor agreements for Federal construction projects where the total cost to the Government is more than \$25 million in order to promote economy and efficiency in Federal procurement.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before August 13, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2009-005 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2009-005" under the heading "Comment or Submission". Select the link "Send a Comment or Submission" that corresponds with FAR Case 2009-005. Follow the instructions provided to complete the "Public Comment and Submission Form". Please include your name, company name (if any), and "FAR Case 2009-005" on your attached document.

- *Fax:* 202-501-4067.

- *Mail:* General Services

Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2009-005 in all

correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501-3775. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAR case 2009-005.

SUPPLEMENTARY INFORMATION:

A. Background

On February 6, 2009, the President issued E.O. 13502 which encourages 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. The E.O. encourages executive departments and agencies to consider the use of project labor agreements for construction projects where the total cost to the Government is valued at \$25 million or more and permits agencies on a project-by-project basis to require the use of a project labor agreement where certain criteria would be met.

The term "project labor agreement" 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).

The E.O. describes how project labor agreements may help agencies manage workforce challenges that arise in connection with large-scale construction projects. For example, large-scale construction projects typically involve multiple employers at a single location.

The E.O. explains that a "lack of coordination among various employers, or uncertainties 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 and mechanism". The use of project labor agreements 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." A project labor agreement may help an agency manage these problems by providing an agreed-upon resolution mechanism that promotes the efficient and expeditious completion of Federal construction projects.

In accordance with E.O. 13502, this proposed rule amends the FAR to—

- Provide a new FAR Subpart 22.5, Use of Project Labor Agreements for Federal Construction Projects.
- Add a new provision at 52.222-XX, Notice of Requirement for Project Labor Agreement, to be included in solicitations where the agency has exercised its discretion to require a project labor agreement as prescribed at FAR 22.505(a).
- Add a new clause 52.222-YY, Project Labor Agreement, to be included in contracts in accordance with FAR 22.505(b).

The Councils invite comment on the process, in which the solicitation incorporates the provision providing for submission of the project labor agreement prior to the contract award (*i.e.*, should agencies require this from each offeror as part of its bid or only from an apparent successful offeror).

The Councils are also considering factors for the contracting officer to consider, on a project-by-project basis, in determining whether use of a project labor agreement will be in the best interest of the Government. The Councils welcome public comment on the factors that should be considered, such as the difficulty of coordinating multiple contracts in the absence of a project labor agreement, the importance of timely project completion, etc.

The Director of the Office of Management and Budget (OMB) is working with the Secretary of Labor and other officials, to provide recommendations to the President on whether to broaden the application of project labor agreements on both construction projects awarded under Federal contracts and construction projects receiving Federal financial assistance, to promote the economical, efficient, and timely completion of such projects.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rationale for this determination is based on the discretionary nature of the regulation being promulgated and the fact that the application of the rule is only in connection with large scale construction projects over \$25 million (those that would likely impact large businesses). Therefore, an Initial

Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 2, 17, 22, 36, and 52, in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.*; (FAR case 2009-005), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) addresses the collection of information by the Federal government from individuals, small businesses and state and local governments and seeks to minimize the burdens such information collection requirements might impose. A collection of information includes providing answers to identical questions posed to, or identical reporting or record-keeping requirements imposed on ten or more persons, other than agencies, instrumentalities, or employees of the United States. In accordance with the requirements of the Paperwork Reduction Act, agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number or the number appears in the Code of Federal Regulations (see FAR 1.106).

The Paperwork Reduction Act (Pub. L. 104-13) applies because the proposed rule contains information collection requirements. Accordingly, the Regulatory Secretariat will submit a request for approval of a new information collection requirement concerning FAR Case 2009-005 to the OMB under 44 U.S.C. Chapter 35, *et seq.*

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Councils solicit comments concerning: whether these information collection requirements are necessary for the Government to properly perform its functions, including whether the information has practical utility; the accuracy of the estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collecting information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

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, in accordance with requirements prescribed by this rule, will advance the

Government's interest in achieving economy and efficiency in the resulting procurement. Most prime contractors for such projects are large business concerns. We estimate the annual total burden hours as follows:

Based on Fiscal Year 2008 data regarding the types of contracts to which this information collection applies, it is estimated that there are approximately 300 large-scale construction contracts (including Architectural and Engineering contracts) exceeding \$25 million that could be subject to an agency determination for use of project labor agreements. Based on advice of labor advisors, approximately 10 percent of these types of projects may be deemed appropriate for a project labor agreement. Therefore, it is estimated the information collection requirement would apply to approximately 30 large-scale construction contracts per year. Each contract would require one project labor agreement submission prior to or after award; therefore, the estimated number of annual respondents is 30. Project labor agreements are often negotiated in advance of the solicitation phase for a procurement, as the large-scale projects are defined. The estimated time for reporting of this information is 1 hour to cover copying and submitting the agreement to the Government.

We estimate the total annual public cost burden for these elements to be \$900, based on the following:

Respondents	30
Responses/respondent	× 1
Responses	30
Hours per response	× 1
Total hours	30
Cost per hour	× \$30
Total annual cost to public	\$900

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than August 13, 2009 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4041, Washington, DC 20405.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the

quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, Regulatory Secretariat (VPR), Room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control Number 9000-00XX, Use of Project Labor Agreements for Federal Construction Projects, in all correspondence.

List of Subjects in 48 CFR Parts 2, 17, 22, 36, and 52

Government procurement.

Dated: July 9, 2009.

Al Matera,
Director, Office of Acquisition Policy.

Therefore, the Councils propose amending 48 CFR parts 2, 17, 22, 36, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 17, 22, 36, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

2. Amend section 2.101(b)(2) in the third sentence in the definition "Construction" by removing the words "personal property" and adding "personal property (except that for use in Subpart 22.5, see the definition at 22.502)."

PART 17—SPECIAL CONTRACTING METHODS

3. In section 17.603 revise paragraph (c) to read as follows:

17.603 Limitations.

* * * * *

(c) For use of project labor agreements, see Subpart 22.5.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

4. In section 22.101-1 revise paragraph (b)(2) to read as follows:

* * * * *

(b)(1) * * * *

(2) For use of project labor agreements, see Subpart 22.5.

5. Add Subpart 22.5 to Part 22 to read as follows:

Subpart 22.5 Use of Project Labor Agreements for Federal Construction Projects.

Sec.

22.501 Scope of subpart.

22.502 Definitions.

22.503 Policy.

22.504 General requirements for project labor agreements.

22.505 Solicitation provision and contract clause.1

22.501 Scope of subpart.

This subpart prescribes policies and procedures to implement Executive Order 13502, February 6, 2009.

22.502 Definitions.

As used in this subpart—

Construction means construction, rehabilitation, alteration, conversion, extension, repair, or improvement of buildings, highways, or other real property.

Labor organization means a labor organization as defined in 29 U.S.C. 152(5).

Large-scale construction project means a construction project, including all contracts associated with the project, where the total cost to the Federal Government is \$25 million or more.

Project labor agreement 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).

22.503 Policy.

Project labor agreements are a tool that agencies may use to promote economy and efficiency in Federal procurement. Pursuant to Executive Order 13502, agencies are encouraged to consider requiring the use of project labor agreements in connection with large-scale construction projects.

22.504 General requirements for project labor agreements.

(a)(1) **Agencies may** require the use of project labor agreements where use of such agreements 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.

(2) If an agency determines that use of a project labor agreement will meet the standards set forth in paragraphs (a)(1)(i) and (ii) of this section, the agency has complete discretion—

(i) To require that every contractor and 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; or

(ii) To decide not to require the use of a project labor agreement.

(b) Project labor agreements established under this subpart shall—

(1) Bind all contractors and subcontractors on the construction project to comply with the project labor agreement;

(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 similar job disruptions;

(4) Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;

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

(6) Fully conform to all statutes, regulations, and Executive orders.

22.505 Solicitation provision and contract clause.

(a)(1) For acquisition of large-scale construction projects, if the agency makes a determination pursuant to this subpart that a project labor agreement will be required, the contracting officer shall insert the provision at 52.222-XX, Notice of Requirement for Project Labor Agreement, in all solicitations associated with the project.

(2) If an agency allows submission of the project labor agreement after contract award, the contracting officer shall use the provision with its Alternate I in accordance with agency procedures.

(b)(1) For acquisition of large-scale construction projects, if the agency makes a determination pursuant to this subpart that a project labor agreement will be required, the contracting officer shall insert the clause at 52.222-YY, Project Labor Agreement in all contracts associated with the project.

(2) If an agency allows submission of the project labor agreement after contract award, the contracting officer shall use the clause with its Alternate I in accordance with agency procedures.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

6. In section 36.202 revise paragraph (d) to read as follows:

36.202 Specifications.

* * * * *

(d) For requirements on the use of project labor agreements for Federal construction projects, see part 22, Subpart 22.5 of this chapter.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Add section 52.222-XX to read as follows:

52.222-XX Notice of Requirement for Project Labor Agreement.

As prescribed in 22.505(a)(1), insert the following provision:

NOTICE OF REQUIREMENT FOR PROJECT LABOR AGREEMENT (DATE)

(a) *Definitions.* *Labor organization and project labor agreement*, as used in this provision, are defined in the clause of this solicitation entitled Project Labor Agreement.

(b) Consistent with applicable law, the apparent successful offeror will be required to execute a project labor agreement with one or more appropriate labor organizations for the term of the resulting construction contract.

(c) Any project labor agreement reached pursuant to this provision shall—

(1) Bind the offeror and all subcontractors on the construction project to comply with the project labor agreement;

(2) Allow the offeror and all 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 similar job disruptions;

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

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

(6) Fully conform to all statutes, regulations, and Executive orders.

(d) Any project labor agreement reached pursuant to this provision does not change the terms of this contract or provide for any price adjustment by the Government.

(e) The Government will not participate in the negotiations of any project labor agreement.

(f) The apparent successful offeror shall submit to the Contracting Officer a copy of the project labor agreement—reached pursuant to this provision prior to contract award.

(End of Provision)

Alternate I (DATE) As prescribed in 22.505(a)(2), substitute the following paragraph (b) in lieu of paragraphs (b) through (f) of the basic clause:

(b) Consistent with applicable law, the contractor agrees to bargain in good faith to a project labor agreement with one or more appropriate labor organizations for the term of the resulting construction contract.

8. Add section 52.222-YY to read as follows:

52.222-YY Project Labor Agreement.

As prescribed in 22.505(b)(1), insert the following clause:

PROJECT LABOR AGREEMENT (DATE)

(a) *Definitions.* As used in this clause—
Labor organization means a labor organization as defined in 29 U.S.C. 152(5).

Project labor agreement 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).

(b) The Contractor shall maintain in a current status throughout the life of the contract the project labor agreement entered into prior to the award of this contract in accordance with solicitation provision 52.222-XX, Notice of Requirement for Project Labor Agreement.

(c) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts.

(End of Clause)

Alternate I (Date). As prescribed in 22.505(b)(2), substitute the following paragraphs (b) through (g) for paragraphs (b) and (c) of the basic clause:

(b) Consistent with applicable law, the contractor agrees to bargain in good faith to a project labor agreement with one or more appropriate labor organizations for the term of this construction contract. The contractor shall submit an executed copy of the project labor agreement to the Contracting Officer.

(c) Any project labor agreement reached pursuant to this clause shall—

(1) Bind the Contractor and all subcontractors on the construction project to comply with the project labor agreement;

(2) Allow the Contractor and all 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 similar job disruptions;

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

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

(6) Fully conform to all statutes, regulations, and Executive orders.

(d) Any project labor agreement reached pursuant to this provision does not change the terms of this contract or provide for any price adjustment by the Government.

(e) The Government will not participate in the negotiations of any project labor agreement.

(f) The Contractor shall maintain in a current status throughout the life of the contract the project labor agreement entered into pursuant to this clause.

(g) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (g), in all subcontracts.

(End of Provision)

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R9-IA-2009-0016; 96100-1671-9FLS-B6]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List 14 Parrot Species as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list as threatened or endangered under the Endangered Species Act of 1973, as amended (Act), the following 14 parrot species: Blue-throated macaw (*Ara glaucogularis*), blue-headed macaw (*Primolius couloni*), crimson shining parrot (*Prosopeia splendens*), great green macaw (*Ara ambiguus*), grey-cheeked parakeet (*Brotogeris pyrrhoptera*), hyacinth macaw (*Anodorhynchus hyacinthinus*), military macaw (*Ara militaris*), Philippine cockatoo (*Cacatua haematuropygia*), red-crowned parrot (*Amazona viridigenalis*), scarlet macaw (*Ara macao*), thick-billed parrot (*Rhynchopsitta pachyrhyncha*), white cockatoo (*Cacatua alba*), yellow-billed parrot (*Amazona collaria*), and yellow-crested cockatoo (*Cacatua sulphurea*). The thick-billed parrot is listed as an endangered species under the Act throughout its range. As such, we will not be addressing it further as part of this petition. We have also previously determined that the blue-throated macaw warrants listing in response to a 1991 petition and has been a candidate species since. Because we have recently re-evaluated the status of this species as part of our 2008 Annual Notice of Review, we will not address it further as part of this petition. We find that the petition presents substantial scientific

or commercial information indicating that listing the remaining 12 species of parrots may be warranted. Therefore, with the publication of this notice, we are initiating a status review of these 12 species of parrots to determine if listing is warranted. To ensure that the status reviews are comprehensive, we are soliciting scientific and commercial data regarding these 12 species. Additionally, we are seeking any recent information concerning the blue-throated macaw so that it can be taken into consideration in our evaluation of its status when we do our re-evaluation as part of the 2009 Annual Notice of Review.

DATES: We made the finding announced in this document on July 14, 2009. To allow us adequate time to conduct the 12-month status review, we request that we receive information on or before September 14, 2009.

ADDRESSES: You may submit information by one of the following methods:

- Federal rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R9-IA-2009-0016; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Information Solicited section below for more information).

FOR FURTHER INFORMATION CONTACT: Douglas Krofta, Chief, Branch of Listing, Endangered Species, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203; telephone 703-358-2105. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that substantial information is presented to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the following 12 parrot species: Blue-headed macaw (*Primolius couloni*), crimson shining parrot (*Prosopeia splendens*), great green macaw (*Ara ambiguus*), grey-cheeked

parakeet (*Brotogeris pyrrhoptera*), hyacinth macaw (*Anodorhynchus hyacinthinus*), military macaw (*Ara militaris*), Philippine cockatoo (*Cacatua haematuropygia*), red-crowned parrot (*Amazona viridigenalis*), scarlet macaw (*Ara macao*), white cockatoo (*Cacatua alba*), yellow-billed parrot (*Amazona collaria*), and yellow-crested cockatoo (*Cacatua sulphurea*). We request scientific and commercial information from the public, concerned governmental agencies, the scientific community, industry, or any other interested parties on the status of the 12 parrot species that will be addressed as part of this petition, as well as the blue-throated macaw (*Ara glaucogularis*), throughout their range, including but not limited to:

(1) Information on taxonomy, distribution, habitat selection and trends (especially breeding and foraging habitats), diet, and population abundance and trends (especially current recruitment data) of these species.

(2) Information on the effects of habitat loss and changing land uses on the distribution and abundance of these species and their principal prey species over the short and long term.

(3) Information on the effects of other potential threat factors, including live capture and hunting, domestic and international trade, predation by other animals, and diseases of these species or their principal prey over the short and long term.

(4) Information on management programs for parrot conservation, including mitigation measures related to conservation programs, and any other private, tribal, or governmental conservation programs that benefit these species.

(5) Information relevant to whether any populations of these species may qualify as distinct population segments.

(6) Information on captive populations and captive breeding and domestic trade of these species in the United States.

We will base our 12-month finding on a review of the best scientific and commercial information available, including all information received during the public comment period. Please note that comments merely stating support or opposition to the actions under consideration without providing supporting information, although noted, will not be part of the basis of this determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to whether any species is a threatened or endangered species shall be made "solely on the basis of the best scientific