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Decision

Matter of: HHI Corporation

File: B-424037

Date: February 18, 2026

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DIGEST

Protest that the solicitation violates the Competition in Contracting Act by including a project labor agreement requirement, or that the agency should have identified an exception to the requirement for a project labor agreement, is denied where the record shows the agency reasonably concluded that no exception to inclusion of the requirement in the solicitation applied.

DECISION

HHI Corporation, a small business of Ogden, Utah, protests the terms of solicitation No. W9128F25RA076, issued by the Department of the Army, Corps of Engineers, for a design-bid-build project for the renovation and construction of facilities at Ellsworth Air Force Base in South Dakota. The protester contends that the project labor agreement (PLA) requirement included in the solicitation improperly limits competition and violates the Competition in Contracting Act (CICA), 31 U.S.C. §§ 3551-3557. In addition, the protester argues that the agency was required to apply an exception to the PLA requirements under Federal Acquisition Regulation (FAR) section 22.504(d)(i)(C) because the contract requires the contractor to perform specialized construction work.

We deny the protest.

BACKGROUND

The agency issued the solicitation on August 21, 2025, on an unrestricted basis, using FAR part 15 negotiated contracting procedures, for an estimated \$55 million project to

renovate existing, and construct additional, facilities for B-21 operations and aircraft maintenance. Contracting Officer's Statement (COS) at 1. Specifically, the project consists of renovating an approximately 48,500 square feet building and constructing an additional 11,500 square feet building to transition the facility from supporting B-1 Squadron operations and maintenance to B-21 Squadron operations and maintenance. *Id.*; Agency Report (AR), Exh. 3, PLA Special Notice at 7.¹

The solicitation incorporates FAR provision 52.222-33 (Notice of Requirement for Project Labor Agreement) and clause 52.222-34 (Project Labor Agreement) and states that failure to submit the required PLA will result in an offeror's ineligibility for award. AR, Exh. 16, Part 1, Solicitation at 25, 76. As background, Executive Order No. 14063, signed on February 4, 2022, established a requirement that "in awarding any contract in connection with a large-scale construction project,"² agencies require every contractor or subcontractor to enter into a PLA with one or more appropriate labor organizations, unless granted an authorized exception from the requirement by a senior agency official no later than the solicitation date. Executive Order No. 14063, 87 Fed. Reg. 7363, 7364 (Feb. 9, 2022). In accordance with the executive order, the FAR Council issued final regulations, effective January 22, 2024, to amend the FAR to include the PLA requirement (located at FAR subpart 22.5) and the required solicitation and contract clauses (located at FAR provision 52.222-33 and clause 52.222-34).³ 88 Fed. Reg. 88708-88729 (Dec. 22, 2023).

The FAR defines a PLA as 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. FAR 52.222-34(a). Prior to issuing the solicitation, the agency issued three sources sought notices and PLA surveys on SAM.gov⁴ seeking responses to multiple questions regarding PLAs, as directed by the U.S. Army Corps of Engineers Acquisition Instruction. COS at 5. The surveys were issued on or about December 12, 2023, March 22, 2024, and July 3, 2025, and the agency received multiple responses from labor organizations and construction contractors, including

¹ All page citations in this decision are to the Adobe Acrobat PDF page numbers.

² A large-scale construction project means a federal construction project within the United States for which the total estimated cost of the construction contract is \$35 million or more. Executive Order No. 14063, 87 Fed. Reg. 7363 (Feb. 9, 2022) (§ 2(c)).

³ On February 7, 2025, the Department of Defense issued a class deviation waiving the PLA requirements, Class Deviation 2025-O0002, however that class deviation was rescinded on June 2. See https://www.acq.osd.mil/dpap/dars/class_deviations.html (last visited Feb. 18, 2026).

⁴ SAM.gov is the current governmentwide point of entry which serves as the single point where government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. FAR 2.101; *Navarre Corp.*, B-423602, Aug. 14, 2025, at 1-2 n.1.

responses from the protester. *Id.* at 5-7. The agency also conducted additional market research regarding the labor pool in the area. *Id.* at 7.

Based on the market research performed by the agency and the sources sought and PLA survey responses, the agency determined that no exception to the PLA requirement applied to the project. Accordingly, FAR provision 52.222-33 and clause 52.222-34 were included in the solicitation. Proposals were due on October 7, 2025. On November 13, HHI filed this protest.⁵

DISCUSSION

The protester argues that the PLA requirement violates CICA and must be removed from the solicitation in accordance with a recent U.S. Court of Federal Claims decision, *MVL USA, Inc., et al. v. United States*, 174 Fed. Cl. 437 (Jan. 21, 2025). Specifically, the protester argues that a federal agency's implementation of Executive Order No. 14063 restricts full and open competition, inclusion of the PLA requirement in the solicitation is arbitrary and capricious, and the agency has not identified any statutory authority that permits it to violate CICA. Protest at 4-5.

The protester alternatively argues that the agency must issue a PLA exception on this project in accordance with FAR section 22.504(d)(i)(C) because it requires special construction. Specifically, the protester argues that the solicitation calls for a specialized supervisor and subcontractors with a minimum of five years of experience in radio frequency (RF) shielding and requires employment of an RF shielding specialist. In addition, the protester argues that other aspects of the project require special oversight of the construction (*e.g.*, construction adjacent to and needing integration with an active airfield, demolition of existing facilities and infrastructure to include hazardous material soils). *Id.* at 6-7.

The agency argues that the FAR requires that the PLA requirement be included in the solicitation, its market research supports inclusion of the PLA requirement, and none of the exceptions to inclusion of the PLA requirement apply. Memorandum of Law (MOL) at 2-8. Specifically, the agency contends that any special construction requirements represent "a vanishingly small portion" of the specification requirements, and the RF shielding for sensitive compartmented information facility (SCIF) requirements of the project do not qualify the project for the special construction exception because SCIFs are common in Corps construction projects, particularly those for the Air Force. *Id.* at 9.

Contracting agencies have the primary responsibility of determining their needs and the method for accommodating them. *KBR Servs., LLC*, B-422839, Nov. 22, 2024, at 6.

⁵ GAO was closed from October 1 through November 12, 2025, due to a lapse in appropriations. On November 13, following enactment of legislation that included funding for GAO, our Office resumed normal operations. We consider any protests where the deadline to file fell during the lapse in appropriations as timely filed if they were filed on the first day GAO resumed normal operations.

We will not question an agency's choice of procurement approach absent clear evidence that its decision is arbitrary, unreasonable, or violates law or regulation. *Id.*

The FAR states that “[w]hen awarding a contract in connection with a large-scale construction project . . . agencies shall require use of project labor agreements for contractors and subcontractors engaged in construction on the project, unless an exception . . . applies.” FAR 22.503(b). The FAR provides that an exception to PLA requirements may be granted by the senior procurement executive, providing a specific written explanation of why one of the following conditions exists:

(i) Requiring a project labor agreement on the project would not advance the Federal Government's interests in achieving economy and efficiency in Federal procurement. The exception shall be based on one or more of the following factors:

(A) The project is of short duration and lacks operational complexity.

(B) The project will involve only one craft or trade.

(C) The project will involve specialized construction work that is available from only a limited number of contractors or subcontractors.

(D) The agency's need for the project is of such an unusual and compelling urgency that a project labor agreement would be impracticable.

(ii) Market research indicates that requiring a project labor agreement on the project 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 10.002(b)(1) and 36.104). A likely reduction in the number of potential offerors is not, by itself, sufficient to except a contract from coverage under this authority unless it is coupled with the finding that the reduction would not allow for adequate competition at a fair and reasonable price.

(iii) Requiring a project labor agreement on the project would otherwise be inconsistent with Federal statutes, regulations, Executive orders, or Presidential memoranda.

FAR 22.504(d).

Here, the record shows that the agency issued three sources sought and PLA survey notices. The first notice requested PLA survey responses to the following questions:

(1) Do you have knowledge that a PLA has been used in the local area on projects of this kind? If so, please provide supporting documentation.

(2) Are you aware of skilled labor shortages in the area for those crafts that will be needed to complete the reference project? If so, please elaborate and provide supporting documentation where possible.

(3) Are you aware of time sensitive issues/scheduling requirements that would affect the rate at which the referenced project should be completed? If so, please elaborate and provide supporting documentation where possible.

(4) Identify specific reasons why or how you believe a PLA would advance the Federal [Government's] interest in achieving economy and efficiency in federal procurement.

(5) Identify specific reasons why you do not believe a PLA would advance the Federal [Government's] interest in achieving economy and efficiency in federal procurement.

(6) Identify any additional information you believe should be considered on the use of a PLA on the referenced project.

(7) Identify any additional information you believe should be considered on the non-use of a PLA on the referenced project.

The information gathered in this survey should include the following information on projects completed in the last 2 - 5 years:

1. Project Name and Location
2. Detailed Project Description
3. Initial Cost Estimate vs. Actual Final Cost
4. Was the project completed on time?
5. Number of craft trades present on the project
6. Was a PLA used?
7. Were there any challenges experienced during the project?

AR, Exh. 3, December 2023 Sources Sought Notice and PLA Survey at 6. The subsequent notices additionally asked the following questions:

(8) How would the use of a PLA impact project costs and schedule?

(9) How would the use of a PLA impact small business participation as subcontractors?

(10) How would a PLA on this project impact small business prime and subcontractors who are non-signatory to a PLA concurrently working a separate contract in the vicinity?

AR, Exh. 5, March 2024 Sources Sought Notice and PLA Survey at 8; Exh. 11, July 2025 Sources Sought Notice and PLA Survey at 8.

The agency received multiple responses to the sources sought notices and PLA surveys each time they were issued. In December 2023, the agency received responses from three contractors, including HHI, all of which expressed opposition to the inclusion of the PLA requirement. AR, Exh. 4, December 2023 PLA Survey Responses. HHI responded that it did not believe that a PLA would advance the government's interest, stating: "[PLAs] often have the effect of reducing competition, which is not beneficial for the economy, and could make it difficult for the Government to acquire the most skilled workers and competitive pricing for the project." *Id.* at 5.

In March 2024, the agency received five responses, including responses from labor unions and contractors. AR, Exh. 6, March 2024 PLA Survey Responses. The responses provide a variety of positions both in favor of and opposition to PLAs. For example, one contractor responded that it was "prepared to execute a PLA with local trade organizations as required by the [FAR] mandate," and further stated:

The Federal Government's interest would advance through a PLA by reducing the risk of construction delays associated with strikes, lockouts, labor disputes, and similar job disruptions in unionized areas of the country which Rapid City, [South Dakota] / Ellsworth [Air Force Base] is not located in [a] unionized area of the country. These risk-mitigation measures may ensure project delivery in a timely and cost-effective manner, allowing the Federal Government to meet its project requirements and mission.

Id. at 3. This contractor also asserted that "pre-hire bargaining agreements inflate project costs and reduce competition of qualified trade subcontractors," and "we do not believe a PLA would be beneficial to the Government on this procurement." *Id.* Yet, this same contractor submitted a joint response with a trade union located in Rapid City, South Dakota along with five other firms that concluded "using a PLA on the Ellsworth [Air Force Base] project will undoubtedly serve the [Corp's] interests in project economy and efficiency." *Id.* at 8.

PLA survey responses received by the agency in July 2025 again expressed views both in favor of and against the PLA requirement. For example, one contractor characterized the decision to include a PLA requirement as a choice between a "potentially higher priced project, limited competition, [and] virtually no local contractor or subcontractor participation" and a "high-quality project delivered at a competitive price." AR, Exh. 12, July 2025 PLA Survey Responses at 12. However, another contractor identified trades in which its "regional research and past project experience confirm persistent shortages"

and indicated that one “proven solution” it had deployed was “**PLA-based hiring hall access**, which reliably delivers multi-craft crews and prevents labor scarcity.” *Id.* at 27; *see also id.* at 29 (“Although PLA administration may add **1-3** [percent] to upfront costs, this is offset by labor stability, reduced overtime, and lower risk of stoppages.”).

The record shows that the agency’s market research identified three large businesses, one small business, and one historically underutilized business zone small business as potential sources to fulfill the requirements. AR, Exh. 13, Market Research Report at 5. In addition, the record reflects that the agency considered the responses to the PLA survey questions, noting that respondents were both for and against inclusion of the requirement, and that:

The project location is somewhat remote, making skilled labor somewhat difficult to access; however, there is no credible reason to believe that a PLA requirement would further restrict access to the skilled labor market. Data provided by the South Dakota Department of Labor and Regulation states that as of June 2024, construction worker employment levels have added at total of 2,000 workers (6.6 [percent] increase), and, of those, specialty trade contractors added 1,000 workers (5.8 [percent] increase).

AR, Exh. 9, Project Management Plan at 11.

On this record, we find no basis to conclude that the agency unreasonably included a PLA requirement in the solicitation. As noted above, the FAR requires an agency to include the PLA requirement in contracts for large-scale construction unless an exception applies.

Based on the PLA survey responses and information gathered for the procurement, the agency determined that no exception to the PLA requirement applied. COS at 8. The contracting officer explains:

[W]hile many contractors submitted complaints regarding the PLA requirement, none of them indicated they were less likely to bid on solicitations that included them. With mixed results from the PLA surveys . . . there was no evidence that the inclusion of a PLA requirement would be detrimental to competition or qualify the project for an exception under FAR 22.504(d).

Id. at 10. We find that the record supports this conclusion given that the market research did not indicate 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.”⁶ See FAR 22.504(d)(1)(ii).

⁶ The protester asserts that at least one respondent to the sources sought and PLA surveys stated that they would not compete for the project if there was a PLA

(continued...)

The protester contends that the agency failed to consider whether the PLA requirement was tailored to the government's needs for this procurement and that the agency has not shown a PLA is appropriate for this procurement. Comments at 4-12. The FAR, however, establishes an express mandate for agencies to include PLAs on construction contracts unless an exception applies. As noted above, the FAR states that "agencies *shall* require use of project labor agreements for contractors and subcontractors engaged in construction on the project, unless an exception . . . applies." FAR 22.503(b). Thus, per the express terms of the applicable procurement regulations, there was no need for the agency to specifically demonstrate that a PLA requirement was tailored to its needs or appropriate for this specific procurement. Instead, consistent with the FAR, the agency analyzed whether an exception applied and reasonably concluded that one did not.⁷

CICA sets requirements for the conduct of a given procurement and requires agencies to obtain their minimum needs through full and open competition. Solicitation requirements are not necessarily objectionable under CICA simply because they have the effect of excluding certain offerors that cannot satisfy the government's requirements. Rather, the inquiry is whether the agency has a reasonable basis for its stated needs. The PLA FAR provision and clause address the government's needs for large-scale construction projects and specifically establish a preference for the use of PLAs when awarding contracts for such projects. This preference is based on identified performance benefits to the government associated with the use of PLAs on large-scale construction contracts that have been outlined in Executive Order No. 14063. Any impact on competition resulting from the use of PLAs does not place the regulations *per se* in conflict with CICA.

Thus, to the extent the protester maintains that the stated preference for PLAs established by FAR subpart 22.5 has the effect of limiting competition and is therefore in conflict with CICA, such an argument does not provide a basis to conclude that the

requirement. Comments at 11. Where only one respondent indicated it would not compete for the project, the agency still reasonably concluded that an exception did not apply. In this regard, the FAR provides that a "likely reduction in the number of potential offerors is not, by itself, sufficient to except a contract from coverage . . . unless it is coupled with the finding that the reduction would not allow for adequate competition at a fair and reasonable price." FAR 22.504(d)(1)(ii).

⁷ Moreover, we disagree with the protester that the *MVL USA* decision applies to this procurement. See Protest at 4-5; Comments at 6. Our Office has previously concluded that the holding in the *MVL USA* decision was limited to "the functionality of the mandate as applied to *the individual contracts in this case*" and "the FAR requirements [for PLAs] in the solicitations . . . as applied to *the contracts at issue here*." *4K Global-ACC JV, LLC--Recon.*, B-423092.2, Apr. 11, 2025, at 4 (citing *MVL USA, Inc., et al.*, *supra* at 441, 463) (emphasis added).

applicable FAR regulations violate CICA on its face.⁸ Accordingly, until the applicable regulations have been rescinded, our Office will follow them. On this record, we find the agency's inclusion of a PLA requirement in the solicitation to be reasonable.

Regarding the protester's argument that the PLA exception for specialized construction applies to this project, based on our review, we have no basis to question the reasonableness of the agency's determination that the specifications do not include requirements that qualify for the exception. As noted, the exception for specialized construction applies if "the project will involve specialized construction work that is available from only a limited number of contractors or subcontractors." FAR 22.504(d)(i)(C).

The agency argues: "SCIF are present on numerous military facilities and are not an unusual requirement for [Corps] constructed buildings, particularly for the United States Air Force." MOL at 8-9. The contracting officer states:

The majority of the work for this Project is general construction and, due to the nature of it being a military contract, it has some specialized security requirements. Those requirements, including for RF Shielding, are not unusual in military construction contracts and most contractors who would be submitting proposals for this kind of project would not have difficulty meeting the [] requirements.

COS at 11. In this regard, the record shows multiple respondents to the sources sought notice and PLA surveys indicated experience performing other construction projects, including at Ellsworth Air Force Base and other military installations, that included requirements like those in the solicitation. See, e.g., AR, Exh. 12, July 2025 PLA Survey Responses at 6-9. Accordingly, we find no basis to conclude the agency should have found that the specialized construction work exception applied to the procurement.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

⁸ We recognize that the U.S. Court of Federal Claims recently issued a decision that may be considered contrary to our conclusion here. See *Brasfield & Gorrie, LLC v. United States*, ___ Fed. Cl. ___ (Dec. 18, 2025). While we have traditionally given careful consideration to decisions of the court, we are not bound by them. See, e.g., *4K Global-ACC JV, LLC--Recon.*, *supra* at 3.