# MEETING AGENDA

**AGC – US Army Corps of Engineers MILCON/Civil Works**

8:30 AM – 11:30 AM

## Welcoming Remarks and Introductions

Shea DeLutis-Smith
Chair, AGC Corps of Engineers Committee—Military Construction

Greg Ford
Chair, AGC Corps of Engineers Committee—Civil Works

## Military Construction Program & Discussion

8:30 AM to 10:00 AM

## Civil Works Program & Discussion

10:15 AM to 11:30 AM

## AGC Questions for USACE Military Construction Program (Domestic MILCON)

### CHANGE ORDERS & PAST PERFORMANCE EVALUATIONS

- We will speak with the USACE contracting leaders later this afternoon. However, AGC wants to ensure that you are aware of the problems contractors and projects face. The primary problems AGC hears from its members about on Corps’ projects are dealing with (1) untimely execution of and payment for change orders and (2) past performance evaluations under CPARS. AGC will take a brief moment prior to USACE HQ’s presentation to explain its concerns.

### 2017/2018 BUDGET, APPROPRIATIONS, & PROJECTS OUTLOOK

- Please provide a general update on the budget and projects for FY 2016/2017.
  - What is the breakdown of projects? By project types (barracks, medical, schools, etc.); Open versus set aside; By procurement/project delivery method (design-build, design-bid-build, so forth); By state/location
- Is BRAC still under consideration? If so, please explain.
- How have policy/project priorities changed from the Obama to the Trump administration and how have those changes impacted USACE?

### THE MILITARY CONSTRUCTION VISION

- Please discuss the vision for the military construction program given the change in the administration and congressional inputs. Will there remain a continued strive for energy efficient facilities? What role will “green” construction have in the program? How is the Milcon program adapting to military needs and changing strategies?
THE BORDER WALL EXECUTIVE ORDER & CUSTOMS & BORDER PATROL
- On January 25, 2017, President Trump issued an executive order on border security and immigration enforcement improvements. That executive order calls for “immediate construction of a physical wall on the southern border.”
- AGC is aware that USACE is in consultation with the Department of Homeland Security’s Customs and Border Patrol (CBP) agency and has an existing interagency construction agreement with CBP concerning border wall and fencing construction.
- Please explain the latest on this project.

DEPARTMENT OF VETERANS AFFAIRS
- In 2015, Congress passed and the president signed into law a measure that requires another federal construction agency to execute projects above $100 million for the U.S. Department of Veterans Affairs (VA). As it stands, USACE and the VA are working on an agreement to determine which VA projects USACE will execute.
- Please name the existing VA projects for which USACE and VA know or have:
  o The status of the project in the study/design/construction process;
  o Established, firm agreements for execution (and which projects do not);
  o The various states of funding for those existing projects; and
  o Outlook for putting solicitations on the street.
- Where are USACE/VA in their negotiations on individual project/global project management agreements?
  o Will details of these agreements or arrangements be shared in writing with industry?
  o What are the most difficult issues to address or the issues that remain unresolved?
- Please explain the role the VA and USACE will have in various stages of the design and construction processes. For this topic, the agencies should consider touching upon:
  o Which agency will conduct project feasibility studies?
  o Which agency is responsible for project design, project delivery method selection?
  o Please explain the role of the agencies during procurement. Which agency conducts the design/construction procurement process?
  o Which agency’s rules apply when: DFARS or VAARS? USACE specs or VA specs? VA small business set-aside rules or USACE’s?
- Please explain the role USACE/VA will have during construction when it comes to contract administration and project management decisions, i.e., change orders, construction scheduling, so forth.
Will there be any time restraints in place to help ensure timely decision making when the agencies communicate between one another during construction? How will contractors know which agency has ultimate authority on issues during execution? Will partnering be required?

How will decisions concerning medical equipment be made (identification, purchase and installation)?

Will there be representatives from both agencies on the construction site?

How will project closeout work? How does the custody transfer happen? Which agency makes decisions as to whether a project is substantially complete, so forth?

- A common feature in federal construction regardless of the agency is the need for the agency to effectively manage and communicate with end users.

  - How will VA/USACE manage the expectations/input of the end users? What is the pre- and post-contract award plan for this? How do the agencies prevent scope creep, failures to make timely decisions?

  - How will VA/USACE effectively communicate with the end users?

  - What role, if any, does VA/USACE see for the construction contractor to play in communicating with the end users—either before or after construction begins?

- USACE preforms both civil works and military construction work. AGC members are deeply concerned with USACE using civil works personnel—who may have very limited to no vertical construction experience—on complex hospital projects.

  - How will USACE ensure that it has qualified, experienced personnel on these complex medical facility projects? Will USACE utilize or establish centers of expertise? Hire CMs? Tap resources from Defense Health Agency?

- Building upon the previous inquiry, how will USACE hold Divisions and Districts accountable? Will HQ provide clear escalation ladders for when decisions need to be made or issues resolved?

**USACE Questions for AGC**

USACE may provide questions for contractors on issues or policy reforms.

**General Questions**

Open questions from the floor?

**Break**

Break from 10:00 AM to 10:15 AM with refreshments in East Room.
AGC Questions for USACE Civil Works Program

CHANGE ORDERS & PAST PERFORMANCE EVALUATIONS
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2017/2018 BUDGET, APPROPRIATIONS, & PROJECTS OUTLOOK
- Please provide a general update on the budget and projects for FY 2016/2017.
- How have policy/project priorities changed from the Obama to the Trump administration and how have those changes impacted USACE? To what extent has USACE

WRDA 2014 & WIIN ACT 2016: POLICIES & IMPLEMENTATION
- In 2014 and 2016, Congress passed the Water Resources Reform and Development Act (WRRDA 2014) and Water Infrastructure Improvements for the Nation Act (WIIN Act), respectively. The bills included authorizations for a host of new projects as well as a number of policy reforms. Would USACE please briefly review which authorizations in those bills that have received funding and the various policies adopted in the bill? In addition, AGC would like USACE to discuss:

PUBLIC PRIVATE PARTNERSHIP PILOT PROGRAM
- WRRDA 2014 (Section 5014) authorized a water resources P3 pilot program. However, the Corps has not implemented guidance for the program. Please explain the program’s status, problems it faces and how USACE is addressing those problems.

FARGO-MOORHEAD P3
- WRRDA 2014 authorized $1.8 billion for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project. Half of the project will be delivered via a P3 through a diversion authority and the other half will be delivered via traditional government financing means by USACE. Please explain this project and its status.

OTHER CORPS P3/P4 PROJECTS UNDER EVALUATION
- Please briefly discuss the other P3/P4 projects under Corps consideration. To AGC’s knowledge those include: Illinois Waterway (IL) lock and dam improvements; Great Lakes dredging; Whittier-Narrows (CA) flood risk
management and water storage/supply dam improvement proposal; Sabine Neches Deepening (TX/LA); and Ala Wai, (HI) flood risk management project.

- **WATER INFRASTRUCTURE FINANCE & INNOVATION AUTHORITY (WIFIA)**
  - WRRDA 2014 also authorized a $350 million federal loan program for water resources PPPs called the Water Infrastructure Finance and Innovation Act (WIFIA). However, the Corps has not implemented guidance for this program. Please explain this program and why the Corps has not either received or requested appropriations for the program.

- **NON-FEDERAL INTEREST CONSTRUCTION RECEIVING CORPS FUNDS**
  - WRRDA 2014 and the WIIN Act include several provisions under which non-federal interests (i.e., states or municipalities) may carry out a water resources development project or separable element of the project and receive federal funding for that project. See 33 USC 2232. Please explain this process?

**HARBOR MAINTENANCE**

- The WIIN Act included a provision that allows federal funding to help pay for harbor deepening up to 50 feet. Previously federal funds could not support harbor deepening beyond 45 feet. How will this help USACE further its mission?

**EPA/USACE 2015 “WATERS OF THE UNITED STATES” RULE**

- In 2015, the EPA and USACE issued a final rule that would—in AGC’s opinion—increase federal jurisdiction over wetlands, thereby increasing the need for USACE to issue even more Clean Water Act permits (404/Nationwide permits). The new rule is currently halted nationwide under court order. Is there any update in regards to legal action or White House directives concerning this rule?

**“SANCTUARY CITIES” EXECUTIVE ORDER**

- On January 25, 2017, President Trump signed an executive order that seeks to bring “sanctuary cities” in compliance with federal immigration enforcement law and efforts. The order threatens the withholding of federal grant funding to jurisdictions that refuse to comply. In states like California, state leaders are seeking to become sanctuary states. In states like Texas, state leaders are seeking to withhold state funding to sanctuary cities/counties. Could or are federal/state funds for USACE projects impacted?

**USACE Questions for AGC**

USACE may provide questions for contractors on field issues or policy reforms.

**General Questions**

Open questions from the floor?

**Adjourn**
MEETING AGENDA

AGC – USACE Contracting, Small Business & Safety Meeting 1:00 PM – 4:00 PM

Welcoming Remarks and Introductions

Shea DeLutis-Smith
Chair, AGC Corps of Engineers Committee—Military Construction

Greg Ford
Chair, AGC Corps of Engineers Committee—Civil Works

Safety Program & Discussion

Contracting Program & Discussion

Engineering and Construction Program & Discussion

Small Business Program & Discussion
AGC Questions for USACE Safety Program

SAFETY

- AGC and its members firmly believe that construction employees are the most important asset the industry has. Ensuring the safety of those workers is of utmost importance. As such, sound and reasonable safety policies must be in place to protect works and ensure the job can be completed in a safe, efficient and timely manner. To that point, AGC and USACE spent significant time during the most recent EM 385-1-1 revision collectively reviewing each provision of the manual and discussing the pros and cons of various provisions and suggested reforms.

- **QUESTIONS:**
  - Will USACE continue to meet with AGC/industry and earnestly consider its concerns before it finalizes new safety policies, as was done during the latest EM 385-1-1 revision? Are there any new policies or EM 385-1-1 revisions that you are considering? If so, what planned outreach to AGC/industry is planned?

USACE Questions for AGC

USACE may provide questions for contractors concerning field issues or policy reforms under consideration.

General Questions

Open questions from the floor?

AGC Questions for Contracting Program

PARTNERING

- The AGC membership believes that partnering as committed team members with USACE will improve project execution, staff efficiency (USACE and contractors), safety and trust. During the past five to seven years AGC members have observed a severe reduction in project level partnering. Many have commented that partnering is now the rare exception rather than the rule. AGC is aware of an official effort within USACE to push for partnering. Please provide an update of where that effort stands.

- AGC also would like to work with HQ to push Districts and Divisions to hold more annual, open-house industry days.
CHANGE ORDERS/REAs/CLAIMS

- Many AGC contractors report waiting more than six months and even more than a year—on average—for many change orders to be executed and paid. This situation detrimentally impacts project schedule, costs, prime and subcontractors, especially small businesses.

- In addition, contractors note difficulties receiving responses to or consideration of requests for equitable adjustments (REAs). Then, when REAs move to claims, the claims process can take years.

- AGC respectfully requests that HQ explain/discuss:
  - What is the USACE process for approving, executing and paying change orders? What are the various levels of approval—from the field on up—for change orders? How long is the auditing process taking and does USACE have its own audit team or rely on DCAA? Is there some point in the process that USACE believes is particularly problematic?
  - How does HQ monitor change orders to identify particularly problematic project types, project delivery methods, Divisions/Districts or other variables that encounter numerous change orders and long delays for execution and payment?
  - Are requests for equitable adjustment monitored by HQ? Is there any USACE policy on how COs should respond to REAs? Would the Government consider putting in more specific time periods for responding to and resolving REA issues?
  - How many pending REAs/contract claims are there before USACE Contracting Officers? What is the total dollar amount of pending REAs/contract claims before USACE Contracting Officers?
  - What is the process for resolving claims? How many USACE pending appeals are there before the Armed Services Board? In these pending ASBCA appeals, in how many cases has USACE chosen to offer Board assisted ADR? What is the total dollar amount of the pending ASBCA appeals? How old are the cases on appeal?

PAST PERFORMANCE EVALUATIONS

- Whether CCASS or CPARS, AGC contractors note little difference in the improvement of the inconsistent and subjective past performance evaluations. AGC hopes USACE would please address how USACE is working to ensure timely issuance of past performance evaluations; accurate ratings and sufficient
narratives for those ratings; and the process of addressing contractor/AO evaluation disputes. Is a new Engineering and Construction Bulletin forthcoming?

- The FAR holds that CPARS evaluations—interim and final—remain in PPIRS for six years. However, how interim evaluations are treated by Source Selection Evaluation Boards is something that is not explained in the FAR or USACE guidance. Please comment on how SSEBs weigh the value of interim evaluations?
- Would USACE consider holding a CPARS webinar for contractors and/or its employees as a means to ensure that both parties hear the same message?
- As a means to improve this process, would USACE allow contractors to submit self-evaluations to the AO/AORs prior to their writing and submitting the official evaluations? These self-evaluations could help AOs/AORs write their narratives and provide what can be forgotten during a project: what went right, as it is often easy to remember anything that went wrong.

**USE OF MATOC/IDIQ CONTRACTS**

- AGC is not opposed to federal agencies’ use of MATOCs/IDIQs for the procurement of construction services. AGC is, however, concerned that these contracts can limit competition for federal construction projects and are not always structured and administered to make the best use of taxpayers’ money. Since AGC first brought up issues with MATOCs/IDIQs in 2013, AGC would like to follow up and learn how USACE is using these contracting vehicles.
- What are the various trends on MATOC/IDIQ use within USACE (milcon/civil works)? How are Districts determining whether to deliver projects under MATOCs or full and open, individual contract competition? Are there USACE guidelines?

**FUNDING OF MATOC/IDIQ CONTRACTS**

- Contractors report problems with MATOC/IDIQ contracts and USACE underfunding of those contracts resulting in unreimbursed standby or mobilization/demobilization costs to the contractor to keep labor and equipment productive. How is USACE working to ensure that it is effectively using/funding MATOCs/IDIQs?

**TERMINATION FOR CONVENIENCE**

- Contractors are reporting that settlement of Termination for Convenience projects can take years to be finalized, costing contractors considerable sums of money and posing problems during annual audits and bonding company reviews, among other things. Would USACE consider establishing a time limit or a more efficient process for resolving Termination for Convenience projects? Is there any existing protocols concerning T for Cs?
ELECTRONIC SUBMISSION OF PRICE & TECHNICAL PROPOSALS
- At least two Districts within USACE—Savanna and Fort Worth—have instituted electronic acceptance of price and technical proposals from contractors. Have other Districts begun using this system? Has USACE HQ provided Districts with any information concerning electronic bidding? If not, is guidance under consideration?

PROJECT LABOR AGREEMENT EXECUTIVE ORDER
- In 2009, President Obama issued an executive or encouraging—but not requiring—federal construction agencies to utilize government mandated project labor agreements. Is there any indication that this executive order will be rescinded?

“BUY AMERICA” PRESIDENTIAL MEMORANDUM
- On January 24, 2017, President Trump signed a presidential memorandum calling for new pipelines built within the U.S., use materials and equipment domestically produced. Are there any efforts to incorporate “Buy America” restrictions in Civil Works projects beyond existing “Buy American” requirements?

USACE Questions for AGC
USACE may provide questions for contractors concerning field issues or policy reforms under consideration.

General Questions
Open questions from the floor?

AGC Questions for Engineering & Construction Program

RMS 3.0 UPDATE
- USACE is in the process of updating the RMS system. The update is scheduled to take effect in 2017. AGC would like further details, if possible, regarding what changes may be made so contractors can prepare accordingly.

CONTRACTOR CYBER SECURITY REQUIREMENTS
- Beginning December 2017, DOD contractors will need to implements NIST 800-171 security controls on their internal systems. A 2016 FAR rule imposes a set of fifteen “basic” security controls for contractor information systems upon which “federal contract information” transits or resides. The NIST 800-171 will apply to
all contractors’ government-wide that have controlled unclassified information on their systems.

- How is USACE planning to implement these requirements? Will it provide guidance as to what information contractors will be liable for protecting? How will these requirements be addressed in the new 3.0 RMS System? Will there be exceptions for certain contracts (milcon v. civil works)?

UNMANNED AERIAL VEHICLES

- The WIIN Act mandates that USACE HQ designate an individual who shall serve as the lead official for developing USACE’s process and procedures for UAV use in the context of civil works and emergency response missions. Who is that lead official? What is the timeline for any civil works-specific guidelines? Will there be different guidelines for civil works/milcon work?

EARLY CONTRACTOR INVOLVEMENT

- USACE and the National Institute of Building Sciences held a meeting with several contractors in July 2015 to discuss the possibility/feasibility of the agency revisiting the use of CM-at-Risk, which USACE calls ECI. There have been continued talks since then about using ECI. Is USACE considering using ECI in the near future? Please explain.

BUILDING INFORMATION MODELING

- USACE, like many agencies, continues to advance in its use of BIM. USACE has said that it may require COBie as part of its requirements for future contracts. Please explain what COBie is and what exactly will be required when. What other plans does USACE have concerning BIM? What other policies are in the planning stage? What new policies are being implemented?

ONLINE CQM COURSES

- What is the status of USACE’s initiative to hold construction quality management courses online?

USACE Questions for AGC

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General Questions

Open questions from the floor?
AGC Questions for Small Business Program

SMALL BUSINESS CONTRACTING: SOURCES SOUGHT

- AGC represents over 26,000 construction contracting and related service/supply companies throughout the nation, about 80 percent of which are small businesses of 20 or fewer employees. However, even as an association that advocates for small business opportunities, AGC does not support federal agencies restricting competition for small businesses on projects small businesses cannot objectively perform. As it stands, a general construction contractor meets the small business threshold if its annual gross revenues are at or below $36.5 million.

  o How does USACE conduct market research and use it to make a determination as to whether or not to set-aside projects for small businesses?
  o Can any contractor—small or non-small business—reply to a source sought market survey seeking information concerning a small business set-aside determination? Is this the best time in the process for contractors to inform USACE of its concerns regarding specific projects?

EXPANDED SBA MENTOR-PROTÉGÉ PROGRAM

- In 2016, the SBA finalized a rule creating an expanded mentor-protégé program, allowing any type of small businesses—regardless of set-aside category, size, or stage of development—to form a joint venture arrangement as a protégé with a small or large mentor business. This expanded mentor-protégé program is in addition to and modeled after the 8(a) mentor protégé program. As such, a large business mentor joint venturing with a small business protégé would be considered a "small business" just like a stand-alone small business, thereby able to compete on small business set aside work or be considered a small business for determination as to whether a contract should be set aside under the Rule of Two—which mandates that if two qualified small businesses would compete for the contract, it must be set aside for small business. Is this new program impacting USACE set-aside competitions? Under this new regime where a small business and large business can JV and win small business set-aside work, is USACE seeing that the project/contract values for set-asides are increasing?

LOWER-TIER SMALL BUSINESS SUBCONTRACTOR COUNTING RULE

- The SBA released a final rule that would allow prime contractors to count both first and lower-tier, small business subcontracts towards their small business
subcontracting goals. Currently, prime contractors can only take credit for their small business subcontracts at the first tier. This proposed rule will allow prime contractors to take credit for subcontracts at any tier to meet such goals. Is USACE working on implementing this proposal or at least aware of it? Are the contracting officers being trained? Will existing contracts be retroactively modified when the FAR is officially changed?

USACE Questions for AGC

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General Questions

Open questions from the floor?

Adjourn