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## MEETING AGENDA

**AGC – Naval Facilities Engineering Command Meeting**

**1:00 PM – 4:00 PM**

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### Introductions

Mac Caddell  
*Chair, AGC NAVFAC Committee*

### Welcoming Remarks

### Chief Engineer Update

### Acquisition Update

### AGC Questions for NAVFAC

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#### SAFETY

- *Prequalification of Subcontractors.* NAVFAC had undertaken an initiative to prequalify subcontractors based on certain safety criteria, including their: (1) Experience Modification Rate (EMR); and (2) OSHA Days Away from Work, Restricted Duty, or Job Transfer (DART) Rate. AGC explained its concerns and recommendations concerning this policy during its meetings with NAVFAC over the last several years. What is the status of this initiative? What are the findings of NAVFAC FECS that have undertaken the initiative? Is there continued interest to roll out such an initiative nation-wide?
- *EM 385-1-1 revisions.* Please give AGC members an update of the EM 385-1-1.

#### ACQUISITION

*Best Value: LPTA versus Trade Off.* Over the last few years, NAVFAC has increased use of Best Value Low-Price Technically Acceptable (LPTA) compared to Best-Value Trade Off acquisitions. LPTA equates to simply taking the low price. AGC understands the need for LPTA in certain circumstances, however, AGC encourages NAVFAC to return to the Best Value Trade Off delivery system to avoid the noticeable increase in change orders, claims, project delays, and disputes. Does NAVFAC have plans to utilize more of the Best Value Trade-Off delivery system?

- *Design Build.* It appears that the Government is planning to use the Design Build delivery methods less in the coming years. What is the reason for reducing the

number of acquisitions using the Design Build Delivery method? Are there any updates to the Government's acquisition strategy that would increase the use of Design Build determinations?

- *Project Award Delays.* Delayed awards and bid extension requests are common. The impact on contractors, particularly small and mid-sized firms, is unreasonable. Among the many impacts is the strain on bonding capacity – for example: if a firm has a \$150M bonding capacity inclusive of current backlog and pending bids, that contractor would no longer be allowed to bid any additional work if the contractor in this example had an active backlog of \$50M and pending bids at any given time of \$100M (not an unrealistic scenario). Delays in awards keeps both the contractor and the contractor's bonding company on the hook until an award is made. The options this contractor faces are to stop bidding on new work or to not extend their bid when asked by the Government.
  - We understand that there are many reasons to ask contractors to extend bids, but there are things the Government can do to help contractors to make informed decisions such as keeping the contractors in the loop on why project awards are pushed, what is being done to rectify, what is the solution (i.e. obtaining additional funds, removing scope from the work, etc.), what is the realistic timeframe for resolution, and finally when asking contractors to extend their bids for extended periods (greater than 30 days?) give the contractors the ability to confirm or rebid the project prior to an award.
  - There may be other solutions – is the Government considering the impact on contractors and is the Government willing to improve how those extensions are managed in the future?
  - What is the Government doing about avoiding putting projects out to bid that are over budget?
- *Tariffs.* Without an appropriate price escalation clause in such a contract, spikes in material prices for items such as steel and aluminum can be problematic. Federal Acquisition Regulation (FAR) subpart 16.203 specifically allows for economic price adjustments in fixed-price contracts. In order for it to assist a direct federal construction contractor, however, it must be implemented as part of any contract through FAR parts 52.216-2, 3 or 4. Moving forward, if tariffs on steel and aluminum are in fact implemented, and a contractor discovers a solicitation in which they have interest which does not incorporate one of these clauses, it should be brought to the attention of the Contracting Officer during the Q&A stage.
  - How does NAVFAC expect contractors to handle the cost increases on fixed price contracts due to newly imposed tariffs on materials?

- *Is NAVFAC considering escalation clauses in future contracts?*
- Past Experience Factor stipulates a look-back period from the date of the RFP for completion of relevant projects. On some RFP's it is allowed to use partially completed projects as example relevant projects. The default look back period is typically 6 years and typically the RFP is looking for 3 to 5 relevant projects within this 6 year look back period. We request that the agencies re-visit how the look back period is established as it is problematic especially for technical and specialty projects that are not regularly pursued by the Government.
  - Would NAVFAC consider extending the look back period for technical and/or specialty projects?
  - On a D/B project, if the look back period is 6 years, and you completed a relevant project say 5 years ago, but the design was actually done beyond the 6 year period, why is the design deemed not relevant?
  - The DoD is doing less and less D/B projects, so when a solicitation comes out for a D/B project with a 6 year look back, contractors are running out of relevant projects to show. How does NAVFAC intend to handle this issue?

#### **POST-CONTRACT AWARD CONCERNS**

- *Project starts.* AGC members continue to see challenges in getting projects started on time after award for many reasons – scheduling of kickoff meetings, design reviews, administrative submittals, unforeseen conditions, etc.
  - Does the Government see the same issue and if so, is there any information you can share with Contractors on your findings?
  - Has NAVFAC considered delaying “starting the clock” on design-bid-build projects until the Kickoff Meeting in lieu of at the time of award?
- *Modifications.* Timely issuance of Contract Modifications continues to be an issue for Contractors. Although there have been improvements overall the burden is still with Contractors to continue with and fund work while Modifications are being prepared and issued. The alternative for contractors is to face project delays and the burdens of Time-Impact-Analysis. AGC appreciates the progress NAVFAC has made in this arena, however, a major hurdle still exists with the contract modification process. By and large, the unreasonable length of time it takes to process a changed condition from inception to obtaining a fully executed Modification is still a real concern. (We are talking in the range of 3-12+ months in some cases).
  - Please comment on NAVFAC procedures for handling small and large Mods, expected turn-around times, if any, and any guidelines or in-house training as to what is expected from your FEC's relative to processing Mods.

- How can the contracting community help the Government in resolving the excessive amount of time needed to process a Modification?
- What is the status of NETOPS #35, which requires field offices to use Lean/Ultra Lean process for modifications equal or less than \$150K?
- Please describe NAVFAC's efforts to address its upward obligations?
- Is NAVFAC aware of the tremendous strain the lengthy modification process puts on small businesses?

### **PAST PERFORMANCE EVALUATIONS**

- AGC contractors note little difference in the improvement of the inconsistent and subjective past performance evaluations under CPARS. Please address how NAVFAC is working to ensure timely issuance of past performance evaluations, accurate ratings and sufficient narratives.
  - Would NAVFAC consider that each CPAR be reviewed by the contract issuing District Office PRIOR to being initially submitted and starting the 14 day clock? This way it could be seen by an office that knows each contractor's historical project track record, as opposed to leaving the evaluation in the hands of the ROICC at the project that may have never worked with the Contractor. CPAR evaluations are arguably the most important thing to a Federal Contractor's livelihood, so we believe they should be treated appropriately.

### **CYBERSECURITY**

- *Cybersecurity*. DFARS 252.204-7012 (Safeguarding Covered Defense Information & Cyber Incident Reporting) requires covered contractor information systems to comply with NIST 800-171 (Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations). These rules require contractors to implement cybersecurity safeguards and reporting requirements that will cover unclassified Controlled Technical Information and other information, such as Controlled Unclassified Information, registry published by the National Records and Archives.
  - What steps is NAVFAC taking to educate its personnel on the new cybersecurity requirements?
  - What resources is NAVFAC providing for contractors?

### **CANCELLED PROCUREMENTS**

- The issue of under budgeting projects that are put out for bids and later cancelling the project, even without attempting to work with bidders who have advanced into

the second phase is overly burdensome and can strain bonding capacity for contractors. AGC members are concerned about these solicitations cancelled late in the procurement process. What steps is NAVFAC taking to minimize cancelled solicitations?

### **PARTNERING**

- The AGC membership believes that engaging in project-level partnering as committed team members with NAVFAC will improve project execution, staff efficiency (NAVFAC and contractor), safety, trust, and the project team relationships. AGC appreciates the commitment from RADM Muilenburg in our 2017 Federal Contractors Conference where he highlighted the importance of Partnering with the Contractor and we look forward to that continued emphasis.
- AGC Contractors have embraced partnering and are committed to bringing key decision makers in order to get the most out of the process. We see an opportunity to improve the process by getting a commitment from all parties attending to bring key decision makers (i.e. Design Manager, Contracting Officer, Contract Specialist, Project Manager, and Operation Manager, FEAD Director, Public Works Officer, etc.).
  - Does NAVFAC have a policy regarding who should attend partnering from the Government's staff?
  - What is that policy and what can a Contractor do to help encourage attendance by key decision makers (particularly on large or complex projects)?
- *Issue Resolution.* All parties would like for issues to be resolved at the lowest possible level, however some issues need the support of senior leadership for resolution. The process for Issue Resolution can be confusing for contractors when dealing with multiple leadership 'paths' that NAVFAC has in place and there is often a resistance to elevating issues in a timely manner.
  - Would NAVFAC consider an issue resolution process that could be applied uniformly across all projects for key issues such as Modifications, Time Impact Analysis, Final Design Approvals, etc.?

### **General Questions**

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- Open questions from the floor?

### **NAVFAC Questions for AGC**

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### **Adjourn**

