MEETING AGENDA
Shea DeLutis-Smith, Chair, AGC Corps of Engineers Committee—Military Construction
Greg Ford, Chair, AGC Corps of Engineers Committee—Civil Works

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
Mark Atkins
Chief, Safety and Occupational Health

Contracting Program & Discussion
James Dalton,
Chief, Engineering & Construction
Stuart Hazlett
Director of Contracting
Col. Kevin Stoddard
Deputy Director of Contracting
Robert Rizzieri
Deputy Chief of Engineering & Construction

Small Business Program & Discussion
Grace Fontana
Associate Director, Office of Small Business Programs
AGC Questions for USACE Safety Program

SAFETY

- TBD

- QUESTIONS:
  o TDB

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

CHANGE ORDERS

- In 2015, AGC issued a task force report and shared it with USACE HQ to review issues contractors faced after contract award. The report addressed what AGC members consider top priority, post-award issues with USACE. The number one issue in that report—identified by contractors across the nation in the MILCON and Civil Works programs—was the untimely execution of and payment for change orders. Many AGC contractors report waiting more than six months and even more than a year—on average—for change orders to be executed and paid. This situation detrimentally impacts project schedule, costs, prime and subcontractors, especially small businesses. AGC respectfully requests that HQ explain:
  o 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?
- Has there been any recent attempt to improve the change order process?

**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. Is there any official effort within USACE to encourage partnering?

**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. 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.
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?

RESPONSES TO RFIs AND DRAFT RFPs
- In the 2013 AGC Task Force on USACE Source Selection Policy Report, AGC members agreed that of all the source selection issues, the priority for contractors is improving the responses to RFIs and the need for draft RFPs as a means to improve RFPs themselves and reduce RFIs later. Has USACE HQ looked at this issue or taken any steps forward to improve this process?

EXTENDING THE REACH-BACK PERIOD FOR RELEVANT PROJECTS
- MilCon funding spent down over the last several years, a significant number of relevant projects are exceeding the five year threshold for consideration in a proposal. Many contractors report that they are either not submitting proposals or being eliminated from the competition because their relevant projects exceed that five year threshold. Would USACE consider increasing the threshold of the reach-back period to more than five years, given the decrease in its and other federal agency’s work in the last several years?

DESIGN–BUILD PROCUREMENT
- Congress has made a number of changes to military construction design–build procurement in the last year. Will you please update us as to new or forthcoming USACE HQ guidance concerning two-step and one-step design build procurement?
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. 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?

“FAIR PAY & SAFE WORKPLACES” (BLACKLISTING) EXECUTIVE ORDER
- The President last year issued an EO that would require both prime contractors to report to COs violations of 14 federal labor laws and “equivalent” state labor laws during the previous three years prior to bidding, and again every six months after contract award, on federal contracts over $500,000. Prime contractors would also be responsible for evaluating the labor law violations of its subcontractors at all tiers. A single violation, or a combination of multiple violations, could lead a CO to either (1) deny a prime contractor the right to compete for a federal contract; or (2) remove a prime contractor or subcontractor from an ongoing project. Such determinations would be made on an individual contracting officer basis with assistance from newly-created agency labor law compliance advisors. Has USACE taken any action to implement this EO?

EXECUTIVE ORDER ON PROJECT LABOR AGREEMENTS (PLAs)
- While AGC strongly opposes government–mandated PLAs, AGC members continue to see requests for information on the potential use of PLAs on
USACE projects. Please give an update on the use of PLAs on USACE projects.

**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 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.

  - 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?
  - What are the small business prime and subcontract statistics for contract award? What is the average contract award amount for small business set-aside contracts? Any sole-sourced contracts? What is the breakdown across set-aside small business categories, i.e., service-disabled veteran-owned, ANC, 8(a), HUBZone, so forth?
EXPANDED SBA MENTOR–PROTÉGÉ PROGRAM

- The SBA is close to issuing a final rule that would create an expanded mentor–protégé program that 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 would be 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 USACE preparing for this new SBA program? Under this new regime where a small business and large business can JV and win small business set-aside work, does USACE think or expect that the project/contract values for set-asides will increase?

LOWER–TIER SMALL BUSINESS SUBCONTRACTOR COUNTING RULE

- Last year, the SBA released a proposed rule that would allow prime contractors to count 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—above $650,000—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

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

General Questions

Open questions from the floor?

Adjourn
MEETING AGENDA
Shea DeLutis-Smith, Chair, AGC Corps of Engineers Committee—Military Construction
Greg Ford, Chair, AGC Corps of Engineers Committee—Civil Works

AGC – US Army Corps of Engineers Civil Works Meeting 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 9:45 AM
Major General Mark W. Yenter
Deputy Commanding General for Military and International Operations
Lloyd Caldwell
Director of Military Programs
Richard Hancock
Chief, Military Programs Division
Carl Penski
Chief, Strategy, Policy, and Performance Management Branch, Military Programs

Civil Works Program & Discussion 10:00 AM to 11:30 AM
General Donald E. Jackson, Jr.
Deputy Commanding General for Civil and Emergency Operations
Mark Mazzanti
Chief, Programs Integration Division for Civil Works
AGC Questions for USACE Military Construction Program

2016/2017 BUDGET, APPROPRIATIONS, & PROJECTS OUTLOOK

• Please provide a general update on the budget and projects for FY 2015/2016.
• Is another BRAC round still under consideration? If so, please explain.
• How have events overseas impacted USACE project priorities?

MILITARY CONSTRUCTION VISION

• What is the MILCON program’s vision for domestic and international construction? Are there certain types of projects (energy, consolidation) that you believe will dominate the program in the years ahead? In what areas of the country/globe, do you plan focusing the program? What role, if any, may P3s play?

DEPARTMENT OF VETERANS AFFAIRS

• Last year, 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. To the extent possible, please explain that agreement. Which new or existing projects will USACE execute for VA? How will USACE adequately staff these projects? Does USACE have a Center of Expertise for Heath Care Facility Delivery? What role, if any, will the Health Facility Planning Agency play in providing expertise? Will USACE seek assistance—either detailees or experts—from other agencies or the private sector to help with the increased workload in the medical facility arena?
• What is the status of the VA Hospital in Aurora, Colorado? How has this impacted USACE resources in the Northwestern Division and elsewhere?

CHANGE ORDERS

• We will speak with the USACE contracting leaders later this afternoon. However, AGC wants to ensure that you are well aware of the problems contractors and projects face when dealing with timely execution of and payment for change orders.
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?

Break
Break from 9:45 AM to 10:00 AM with refreshments in East Room.

AGC Questions for USACE Civil Works Program

2016/2017 BUDGET, APPROPRIATIONS, & PROJECTS OUTLOOK
- Please provide a general update on the budget and projects for FY 2016/2017.

WATER RESOURCES REFORM & DEVELOPMENT ACT: POLICIES & IMPLEMENTATION
- In 2014, Congress overwhelmingly passed WRRDA. That bill included authorizations for a host of new projects as well as a number of policy reforms. Would USACE please review which authorizations in that bill have received funding and the various policies adopted in the bill? Additionally, where is USACE at in the implementation process for those policies? In addition to project acceleration reforms and others, AGC would like USACE to discuss:
  - PUBLIC PRIVATE PARTNERSHIP PILOT PROGRAM
    o WRRDA 2014 authorized a water resources PPP pilot program. However, the Corps has not implemented guidance for this pilot program. Please explain the status of the program, problems it faces and how USACE is addressing those problems. Does USACE see a path forward for its directly executing P3s?
  - WATER INFRASTRUCTURE FINANCE & INNOVATION AUTHORITY (WIFIA)
    o 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.

- **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 executed by the non–federal Diversion authority under a P3 and the other half will be executed by USACE under traditional government procurement and financing means. Please explain. What other projects may USACE consider executing in this manner?

**HARBOR MAINTENANCE TRUST FUND**

- Thanks to WRRDA 2014, Congress is spending more revenues collected in the Harbor Maintenance Trust Fund on actual harbor maintenance. As such, dollars spent have increased, so has the Operations & Maintenance Account. However, as the O&M account has increased, the Construction Account for new projects has remained flat. Please explain.

**INLAND WATERWAY TRUST FUND**

- In 2014, Congress enacted a 9 cent tax increase for the Inland Waterway Tax on fuel. How much has this increased revenues into the IWTF? What new projects will these funds help finance along the inland waterway system?

**WATERS OF THE US FINAL RULE**

- Last year, the Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers published finalized a rule that arguably expands federal jurisdiction over bodies of water regulated under the Clean Water Act (CWA). There have been a number of court actions concerning this rule. What is the current status of implementation within USACE? How is USACE working to ensure permits are issued in a timely manner? Is there a new rule in the works to address the nation–wide construction general permit? Please explain.

**CHANGE ORDERS**

- We will speak with the USACE contracting leaders later this afternoon. However, AGC wants to ensure that USACE HQ is well aware of the problems
contractors face in the field when dealing with timely execution of and payment for change orders.

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?

Adjourn