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## **MEETING AGENDA**

**AGC– U.S. Army Corps of Engineers (USACE)  
Contracting, Small Business, and Safety Meeting**

**1:00 PM – 3:00 PM**

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**Welcome and Introductions**

**Remarks**

**Contracting, Small Business, and Safety Discussion**

**AGC Questions for USACE Safety Program**

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### **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 Safety and Health Requirements Manual (EM 385-1-1) revision collectively reviewing each provision of the manual and discussing the pros and cons of various provisions and suggested reforms.
  - AGC appreciates our partnership with USACE and looks forward to continued opportunities to discuss concerns for earnest consideration before USACE 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**

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

### **General Questions**

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Open questions from the floor?

### **AGC Questions for Contracting Program**

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## **AGC'S RECOMMENDATIONS**

- On October 13, 2017, members of the construction industry met with the USACE leadership to discuss addressing the challenges companies face working with USACE and ways to make the agency a better client. USACE and AGC agreed to form a working group to address several items discussed at the meeting and to provide candid feedback to improve project outcomes within both the contractor community and USACE. On March 11, the Federal Division formally briefed USACE leadership on its recommendations to USACE Headquarters. The document represents many months of collaboration among AGC member contractors, most having multi-generational history of working with USACE. AGC thanks the Army Corps for their collaboration and partnership and pledges to continue to work with USACE.
  - Please give an update on steps taken by USACE Headquarters in response to AGC recommendations?
  - Please give an update on Joint Risk Register. When will Joint Risk Registers be used?
  - Please give an update on USACE Scorecard.

## **BUY AMERICAN AND HIRE AMERICAN**

- On April 18, 2017, President Trump signed an Executive Order (EO) calling for federal agencies to review procurement practices in an effort to use domestically produced materials and equipment whenever possible. On January 31, 2019, President Trump issued the "Strengthening Buy American Preferences for Infrastructure Projects" executive order. The order calls on federal agencies to encourage—not mandate—recipients of new federal financial assistance awards to use—to the greatest extent practicable—iron and aluminum as well as steel, cement, and other manufactured products produced in the U.S. in every contract, subcontract, purchase order, or sub-award. Ultimately, agency lawyers will make the determination on a program-by-program basis and—under the EO—must provide guidance by, on, or about May 1, 2019.
  - Are there any efforts to incorporate "Buy American and Hire American" restrictions in Civil Works projects beyond existing "Buy American" requirements?

## **PAST PERFORMANCE EVALUATIONS**

- Over the past year, AGC worked with the Naval Facilities Engineering (NAVFAC) Command to update and standardize the contractor performance ratings system (CPARS) across all NAVFAC regions. The updated performance rating system

includes clear guidance, CPARS matrix, and NAVFAC Commanders Summary and Narrative. The updated rating system will be consistently applied to all past performance information, accurately reflect actual contractor performance, and will be mutually understood by the government and contractor.

- Does USACE expect any changes to its current CPARS system?

### **USE AND FUNDING OF MATOC/IDIQ CONTRACTS**

- In recent years, AGC members have seen an increase in the use of Multiple Award Task Order Contracting/ indefinite delivery/indefinite quantity (MATOC/IDIQ) contracts.
  - What are the reasons and 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?
- 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?
  - How does the USACE foresee use of MATOC/IDIQ contracts for the recent Disaster Aid Supplemental that was recently enacted into law?
  - How does the USACE foresee use of MATOC/IDIQ contracts should Congress pass a comprehensive infrastructure package?
  - How can industry support regional index?

### **CHANGE ORDERS/REAs/CLAIMS**

- AGC often reports on the difficulties contractors face with requests for equitable adjustments (REAs) process. AGC requests an update as to how USACE is trying to address change order/REA approval delays.
- 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?

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- 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?
- 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 Alternative Dispute Resolution (ADR)? What is the total dollar amount of the pending ASBCA appeals? How old are the cases on appeal?

**ELECTRONIC SUBMISSION OF PRICE & TECHNICAL PROPOSALS**

- At least two districts within USACE—Savannah 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?

**TARIFFS**

- Citing a trade law which permits the president to impose tariffs in the interest of national security, the Trump Administration has imposed recommendations by the Department of Commerce regarding the imposition of tariffs and/or quotas on steel and aluminum imports. In March, President Trump announced the administration's intent to impose tariffs on a variety of construction related materials, including on aluminum imports and steel imports.
  - How is the USACE evaluating the impact to cost and schedule to FY20 and FY20 MilCon and SRM projects?
  - How is USACE acting to protect contractors and stake holders from market volatility created by existing tariffs and potential additional tariffs discussed by the President?

**USACE Questions for AGC**

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**General Questions**

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Open questions from the floor.



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## **AGC Questions for Engineering & Construction Program**

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### **RMS 3.0 UPDATE**

- USACE is in the process of updating the RMS system. The update was released in 2017.
  - What changes were made the RMS system?
  - Are there any further updates that USACE is considering?

### **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.

### **CONTRACTOR CYBER SECURITY REQUIREMENTS**

- In December 2017, DOD contractors implemented NIST 800-171 security controls on their internal systems. A 2016 FAR rule imposes a set of “basic” security controls for contractor information systems upon which “federal contract information” transits or resides. The NIST 800-171 applies to all contractors’ government-wide that have controlled unclassified information on their systems.
  - How is USACE implementing 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? When will the requirements be expanded to Civil Works?

### **ONLINE CQM COURSES**

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

### **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?

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### **AGC Questions for Small Business Program**

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#### **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.
  - 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?
  - 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 it concerns regarding specific projects?

#### **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. The final rule implements Section 1614 of the National Defense Authorization Act for Fiscal Year 2014, Public Law 113–66, December 26, 2013. Currently, prime contractors can only take credit for their small business subcontracts at the first-tier. This 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? How and when will USACE implement the Small Business Administration Rule 13 CFR Parts 121 and 125 RIN 3245–AG71 Credit for Lower Tier Small Business

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Subcontracting effective January 23, 2017? Are the contracting officers being trained? Will existing contracts be retroactively modified when the FAR is officially changed?

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