

## MEETING AGENDA

**AGC– Bureau of Reclamation (USBR) Meeting**

**8:45 AM – 9:40 AM**

### Welcome Remarks and Introductions

Todd Roberts

*Past AGC Federal Division Chair, Past AGC Bureau of Reclamation Chair*

### BOR Remarks

*Members of Bureau of Reclamation Headquarters*

### AGC Questions for USBR

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#### 1. Agency Budget Overview and Update

- A. Please provide a general update on upcoming and anticipated projects included in the approved FY2022 enacted budgets and the FY2023 Request.
- B. What is the breakdown of projects? By project types; By procurement/project delivery method (design-build, CMc, design-bid-build); By state/location.
- C. There are projects that are authorized, but do not have funds appropriated. What is the status of these projects, and when are appropriations expected?

#### 2. Infrastructure Investment

A record-setting [AGC backed](#) construction investment bill, the \$1.2 trillion bipartisan infrastructure bill, represents a critical chance to significantly invest in building and maintaining a broad range of physical infrastructure without unnecessarily burdening the construction industry with new mandates. The infrastructure bill provides significant money to [USBR](#) for infrastructure investments.

- A. Please describe USBR plans to execute projects originating from this infrastructure bill.
- B. Will there be a preferred project delivery method? For example: For example: IDIQ programs, Design–Build, Best-Value, etc.
- C. How can AGC and USBR work together to expedite the completion of these projects?

#### 3. Contracting

- A. What do you see as the future program growth areas for the construction contracting community regarding the Reclamation program?

#### 4. PLA Executive Order

On February 4, 2022, President Biden signed a new [Executive Order on Use of Project Labor Agreements For Federal Construction Projects \(PLA\)](#). When in effect, this Executive Order (E.O.) will require every prime contractor and subcontractor to engage in negotiation or agree to PLAs on federal construction projects valued at \$35 million or more. (AGC of

America [statement](#)) According to an AGC of America [analysis](#) of data obtained via a [Construction Advocacy Fund](#)-financed lawsuit under the Freedom of Information Act, the Department of Defense federal construction agencies rejected PLA mandates 99.4 percent of the time even when encouraged to do so under the Obama Administration.

- A. How does USBR intend to apply it?
- B. How does USBR intend to pursue exemptions for its programs?

#### **5. USBR and USACE Partnership**

- A. Over the last several years, USBR and the U.S. Army Corps of Engineers (USACE) have solidified partnerships in a range of activities. Please explain where/what projects USBR is partnering or working closely with USACE.
- B. What USBR construction projects resemble those performed by USACE Civil Works, i.e., flood control, environmental restoration, dam and lock repair harbor maintenance dredging?
- C. What construction opportunities are there currently or in the future for those types of projects?

#### **6. COVID-19**

On Sept. 9, 2021, President Biden issued Executive Order 14042, [Ensuring Adequate COVID Safety Protocols for Federal Contractors](#). This E.O. directs executive federal agencies to ensure compliance with all guidance for contractor or subcontractor workplace locations published by the [Safer Federal Workplace Task Force](#) (Task Force). These workplace safety protocols, including COVID-19 vaccine mandates, will apply to all covered contractor employees, including employees in covered contractor workplaces who are not working on a direct federal contract or contract-like instrument. Sept. 24, the Task Force issued [Guidance for Federal Contractors and Subcontractors](#) implementing a broad vaccination mandate for direct federal contractors. Oct. 1, the [FAR Council directed agencies](#) to issue Class Deviations implementing these requirements, including a [DoD Class Deviation](#).

AGC of America and two of its chapters, TEXO and AGC of Texas, filed their lawsuit on December 14, 2021, and immediately filed a motion for a Temporary Restraining Order (TRO) and a (second) preliminary injunction against the mandate that federal contractors require their employees to be fully vaccinated for COVID-19. (A GA court had issued a preliminary but nationwide injunction on Dec. 7, resulting in an extension of compliance date.) In addition, AGC submitted [regulatory comments](#) laying out the same arguments as its lawsuit. The Administration issued [guidance](#) to hold implementation of the mandate pending a decision from the Eleventh Circuit regarding whether the existing nationwide freeze of the mandate should be maintained or not. AGC's motion for a preliminary injunction is still pending but could be granted at any time. AGC has been urging its members to show the videos to all their workers and is also placing ads featuring the videos in key construction markets. AGC also created a [vaccine toolkit](#) for the industry.

- A. Please describe how USBR is implementing these requirements.
- B. What direction or guidance has USBR given to Contracting Officers and Federal Contractors?
- C. What will happen if contractors must make a substitution to key personnel or subcontractors?

**7. New Buy American Rule and Domestic Content Requirements**

- 8.** On July 29, a proposed rule was released to amend to the FAR to add Buy American Act Requirements. The proposed rule increases the domestic content required to 60% with increases in two years to 70% and then 75% in five years. It permits acceptance of products and construction materials up to 6 years after publication of the rule which are unavailable at an acceptable cost. It also states that a higher price preference may be identified for critical end products and construction materials. However, the new requirements will not apply to Commercially Off The Shelf (COTS) items. The rule was initiated based on President Biden’s Executive Order on [Ensuring the Future Is Made in All of America by All of America’s Workers](#). AGC had several conversations with the White House and the Made in America Office to provide the construction industry’s perspective. [AGC commented](#) on this rule, and will continue to advocate for the construction industry to ensure that policy makers are well informed about the uniqueness of construction.
- A. What does USBR see as impacts from these increased requirements to its contracts, material, and time estimates?
  - B. What does USBR account for the impacts of these Buy American requirements in its cost estimates?
  - C. How can AGC and USBR work together to address the challenges.

**9. Partnering**

AGC believes that engaging in project-level partnering as committed team members with USBR will improve project execution, staff efficiency (USBR and contractor), safety, trust, and the project team relationships. AGC members have embraced partnering and are committed to bringing key decision makers into the fold 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, etc.).

- A. What is USBR’s policy on Formal vs. Informal Partnering?
- B. Does USBR have a policy regarding what agency staff should participate in this process?
- C. If so, what is that policy and what can contractors do to help encourage attendance by key decision makers, particularly on large or complex projects?
- D. How does USBR ensure that partnering is actually followed through and abided by? What metrics are tracked from the date of partnering through project completion?
- E. How can AGC and USBR work together to increase partnering?

**AGC- USBR Meeting**  
**2022 Federal Contractors Conference**  
**Virtual**  
**June 21, 2022**

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**OPEN DISCUSSION**

- Questions from the floor.
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