
MEETING AGENDA

AGC – OBO

10:45 AM – 11:45 AM

Welcome and Introductions

Carole Bionda
Past AGC Federal Division Chair

Bureau of Overseas Buildings Operations

Members of OBO Headquarters

AGC Questions for OBO

1. Budget Update

Please provide a general update on upcoming and anticipated projects included in the approved FY2022 enacted budgets and the FY2023 Request.

Questions:

- A. What is the breakdown of projects? By project types By procurement/project delivery method (design-build, CMc, design-bid-build); By location.
- B. 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. Supply Chain and Material Costs

The unending series of supply-chain bottlenecks, as well as extreme price increases and long lead times for a variety of construction materials, threaten federal construction procurement. AGC of America has published its [Construction Inflation Alert](#), a guide to inform owners, officials, and others about the cost and supply-chain challenges.

- A. What are OBO expectations as it relates to changes in pricing, materials, and schedules?
- B. Industry is seeing private clients including price adjustment clauses in solicitations as well as modify existing contracts to include a means for contractor recovery due to price escalation. Is OBO considering inclusion of this clause for recovery in both future and/or modifying current solicitations related to price escalation?
- C. Industry is seeing private clients including price adjustment clauses for reimbursement for costs associated with extended contract durations due to supply-chain issues. Currently, the Federal contractors are typically allowed an extension of

- time but no reimbursement for costs associated with the delay. Is OBO considering inclusion of this clause for recovery in future and/or modifying current solicitations for delay costs?
- D. Does OBO account for the impacts of supply chain and material costs in their cost estimates?
 - E. Does OBO account for the impacts of supply chain in their schedule estimates?
 - F. How can AGC and OBO work together to address the challenges?

3. EMBASSY AFTER NEXT Program

AGC of America met with leaders of the Department of State's OBO. AGC and OBO have had discussions to address the challenges OBO and the construction industry face in building embassies. Among the topics discussed were OBO's Embassy After Next program, formal partnering, and difficult contract requirements.

- A. Please give an update on the status of the Embassy After Next program.
 - B. How will this program be different from the past Standard Embassy Design and Design Excellence programs?
- ### **4. Small Business Subcontracting**
- FAR 17.702, statutory requirements Small Business Subcontracting Program, provides that subcontracting plans are not required "for contracts or contract modifications that will be performed entirely outside of the United States and its outlying areas"; both FAR 52.219-8, Utilization of Small Business Concerns, and FAR 52.219-9 Small Business Subcontracting Plans, employ FAR or SBA definitions of small businesses.
- A. Please confirm that for international projects, your agencies will not require the submission of Small Business Subcontracting Plans?
 - B. Federal agencies such as NAVFAC, USACE, and GSA are now requiring Small Business Participation Plans as an evaluation factor. While these plans are different from subcontracting plans, they employ the FAR and SBA definitions of small business. Would a given agency apply the small business evaluation factor on these international projects; and if so, how?

5. Applicability of Small Business Regulations Outside the United States

On May 26, the final [FAR rule](#) went into effect to support the Small Business Administration policy of including overseas contracts in agency small business contracting goals. This final rule allows small business contracting procedures, e.g., set-asides, to apply to overseas procurements.

- A. Please give an update on the implementation of this rule on OBO projects.
- B. What challenges/opportunities does OBO see implementing this rule?

6. New Buy American Rule and Domestic Content Requirements

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 OBO see as impacts from these increased requirements to its contracts, material, and time estimates?
- B. What does OBO account for the impacts of these Buy American requirements in its cost estimates?
- C. How can AGC and OBO work together to address the challenges.

7. General Contractors' Impediments When Performing Overseas

AGC has seen an increase in solicitations that require past performance experience to be limited to work in a given country. This seems to unreasonably restrict competition, particularly when the project's technical specification requirements mirror U.S. standards and goes above and beyond the agency's minimum past performance requirements.

- A. What is the agency's position on past performance qualifications?
- B. What positions are in the most need of flexibility.

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

9. Partnering

AGC believes that engaging in project-level partnering as committed team members with OBO will improve project execution, staff efficiency (OBO 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 OBO's policy on Formal vs. Informal Partnering?
- B. Does OBO 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 OBO 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 OBO work together to increase partnering?

General Questions

Open questions from the floor?

**AGC - Bureau of Overseas Buildings Operations (OBO) Meeting
2022 Federal Contractors Conference
June 21, 2022**



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