
MEETING AGENDA

AGC – USACE Meeting

1:00 PM – 2:00 PM

Welcome and Introductions

Matt K. McCaulley
Chair, AGC Corps of Engineers Committee—Military Construction

Tim J. Orr
Chair, AGC Corps of Engineers Committee—Civil Works

U.S. Army Corps of Engineers

Members of USACE Headquarters

AGC Questions for USACE

1. 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 workers 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.
 - A. AGC appreciates our partnership with USACE and opportunities to discuss concerns before USACE finalizes new safety policies, as was done during the [latest EM 385-1-1](#) revision.
 - B. Are there any new policies or EM 385-1-1 revisions that you are considering? If so, what additional planned outreach to AGC/industry is planned?

2. 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.

Questions:

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

3. 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. Widespread material shortages, unavailability, longer lead times, price escalation, etc. continue to threaten federal construction.

Questions:

- A. What are USACE 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 USACE 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 USACE considering inclusion of this clause for recovery in future and/or modifying current solicitations for delay costs?
- D. Does USACE account for the impacts of supply chain and material costs in their cost estimates?
- E. Does USACE account for the impacts of supply chain in their schedule estimates?
- F. How can AGC and USACE work together to address the challenges?

4. Partnering

USACE, AGC, and AGC members have a long history of partnering to deliver the high-quality infrastructure projects in a safe and effective manner. AGC believes that engaging in project-level partnering as committed team members with USACE will improve project execution, staff efficiency (USACE and contractor), safety, trust, and the project team relationships. Over the last few years, cooperation between USACE and AGC have strengthened. Among the many joint initiatives, USACE and AGC have jointly published [USACE-AGC Joint Study on Construction Contract Modifications](#); USACE-AGC Joint Construction Contract Modifications Playbook; USACE-AGC Partnering Playbook; recently signed USACE-AGC Partnering Agreement; and more.

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.

Questions:

- A. USACE to provide an update on partnering goals or initiatives.
- B. How does USACE ensure that partnering is actually followed through and abided by?
- C. What metrics are tracked from the date of partnering through project completion?
- D. How can AGC help in providing help to contractors on Partnering training, expectations, best practices, etc.

5. Early Contractor Involvement (ECI) Program

AGC members report seeing more Early Contractor Involvement (ECI) as a project delivery method in some USACE solicitations.

Questions:

- A. Please give an update on the stats of ECI Projects and any USACE initiatives.
- B. Are there plans to more feedback from the AGC and industry?

6. Project Starts

Project starts. AGC members continue to see challenges in getting projects started on time after award such as scheduling of kickoff meetings, design reviews, administrative submittals, unforeseen conditions, occupancy of existing facilities, etc.

Questions:

- A. Does the USACE recognize this issue and if so, is there any information you can share with AGC on your findings?
- B. Has USACE considered holding Notice-to-Proceed direction on design-bid-build projects until the kickoff meeting in lieu of at the time of award?

7. Contract Modifications

Timely issuance of Contract Modifications continues to be an issue for contractors. Although there have been improvements in the process, overall, the burden is still with contractors to fund and continue 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 USACE 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.

Questions:

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- A. Please comment on USACE procedures for handling small and large modifications, 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.
 - B. How can AGC help the USACE in resolving the excessive amount of time needed to process a modification?
 - C. Please describe USACE's efforts to address its upward obligations.

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

9. 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 or other information Controlled Unclassified Information registry published by the National Records and Archives. In 2019, the Department of Defense initiated the Cybersecurity Maturity Model Certification (CMMC). CMMC is intended to be "go/no go" requirement in all Department of Defense solicitations. CMMC Accreditation Body is the sole authorized accreditation and certification partner CMMC program and C3PAOs. In November 2021, after months of internal review, the Department of Defense [announced](#) significant changes to the CMMC program, now called CMMC 2.0. Among these changes are: reducing the number of companies that would require a

3rd party assessment, reducing the CMMC rating from 5 levels to 3 levels, suspending CMMC pilot programs until a final regulation, allow for annual self-assessments for certain levels, and brings back Plans of Action and Milestone (POAM). AGC has communicated the difficulty many contractors have had implementing these new cybersecurity requirements and the challenges of that the CMMC model brings. DoD acknowledges the challenge of being 100% compliant with CMMC, but suggest a firm’s “policies, plans, processes, and procedures” may offset the need for full compliance. The proposed CMMC 2.0 rule will go through the public notice and comment period, but a date has yet to be announced. AGC is committed to working with the federal government to ensure that cybersecurity requirements are clear and consistent that reflect input from impacted stakeholders and provide adequate lead time for compliance.

Questions:

- A. Please provide an update on CMMC and USACE Contracts. How is USACE implementing these requirements?
- B. Will USACE provide guidance as to what information contractors will be liable for protecting?
- C. How will these requirements be addressed in the new RMS System?

General Questions

Open questions from the floor?

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