
MEETING AGENDA

AGC – VA

10:45 AM – 11:45 AM

Welcome and Introductions

Dave Pastrick
Chair, AGC Federal Facilities Committee

Department of Veteran's Affairs

Michael D. Brennan, Ph.D., AIA, NCARB
Executive Director, Office of Construction and Facilities Management

Tony Costa
Deputy Executive Director, Office of Construction and Facilities Management

Additional Members of VA Headquarters

AGC Questions for VA

1. Budget Update

Please provide a general update on upcoming and anticipated projects included in the approved FY2022 enacted budgets and the FY2023 Request. Including Minor & Major Construction Program as well as the National Cemetery Administration (NCA) program.

Questions:

- A. What is the breakdown of projects? By project types; procurement/project delivery method (design-build, CMc, design-bid-build); state/location, etc.
- 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. 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 VA for infrastructure investments.

Questions:

- A. Please describe VA 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 VA work together to expedite the completion of these projects?

3. 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 VA intend to apply this to its projects?
- B. How does VA intend to pursue exemptions for its programs?

4. Asset and Infrastructure Review

The Secretary of the VA recently submitted recommendations to the [Asset and Infrastructure Review \(AIR\) Commission](#) regarding the modernization or realignment of Veterans Health Administration (VHA) facilities, as was required by the 2018 MISSION Act.

Questions:

- A. Please give an update on this program.
- B. What impacts will this have on construction and demolition of VHA facilities?

5. Revise and Streamline the VA Acquisition Regulation

AGC understands the VA is proposing to amend and update its VA Acquisition Regulation (VAAR). Under this initiative, all VA regulations will be reviewed in phased increments in order to: Revise or remove any policy that has been superseded by changes in the FAR; to remove any procedural guidance that is internal to the VA; and to incorporate any new regulations or policies.

Questions:

- A. Can you provide us with an update on the progress being made with this initiative? Specifically, any progress relative to Part 836 of VAAR: Specific Aspects of Contracting for Construction; Contract Clauses; and Architect-Engineer Services.
- B. What changes can the industry expect to Part 836 of the VAAR?
- C. Please speak to the proposed VAAR revisions already proposed:
- D. Adding a new section to encourage making payments to small business contractors within 15 days of receipt of invoice.
- E. What is the timeframe for a rollout of the updated VAAR?
- F. When the VAAR is finalized, how will it affect projects that are ongoing before the VAAR update? Will the new rules be retroactive?

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.

Questions:

- A. Please describe how VA is implementing these requirements.
- B. What direction or guidance has VA given to Contracting Officers and Federal Contractors?

-
- C. What will happen if contractors must make a substitution to key personnel or subcontractors?

7. 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.

Questions:

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

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 VA see as impacts from these increased requirements to its contracts, material, and time estimates?

-
- B. What does VA account for the impacts of these Buy American requirements in its cost estimates?
 - C. How can AGC and VA work together to address the challenges.

9. Partnering

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

General Questions

Open questions from the floor?