
MEETING AGENDA

AGC-NAVFAC-USACE
Defense Agencies Joint Session: NAVFAC & USACE

1:00 PM – 3:30 PM

Welcome and Introductions

Mac Caddell
Chair, Naval Facilities Engineering Command

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

Defense Agencies Joint Session: NAVFAC & USACE

NAVFAC & USACE Personnel

AGC Questions for NAVFAC & USACE

1. 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 that contracts and contract-like instruments covered by the order include a contract clause requiring the contractor and all tier subcontractors to, for the duration of the contract, comply 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](#). Currently solicitations and some contracts are required to comply, Nov. 14 all new federal contractors will comply, with a deadline of no later than Dec. 8 for covered contractor employees to be fully vaccinated.

**AGC-NAVFAC-USACE
Defense Agencies Joint Session: NAVFAC & USACE
2021 Federal Contractors Conference
November 9, 2021**



Questions:

- A. Please describe how USACE and NAVFAC is implementing these requirements.
For example:
 - I. Has USACE and/or NAVFAC issued Class Deviations or is the DoD Class Deviation controlling?
 - II. How will USACE and/or NAVFAC apply this vaccine mandate to existing contracts? Will USACE and/or NAVFAC issue broad guidance or will application of the vaccine mandate be left to the discretion of the individual districts and/or contracting officers?
 - III. If applied to existing contracts, does USACE and/or NAVFAC intend to apply this requirement via bilateral modification? Do you envision any situation where the FAR would be applied via unilateral modification?
 - IV. Will the DOD, USACE or NAVFAC apply the EO mandates and rules consistently across ALL contracts or will they be applied based on the individual Contracting Officer's personal interpretations?
 - V. Will the revised EM385-1-1 address Infectious Diseases and provide detailed requirements for APP development by the contractors?
 - VI. If the revised EM385-1-1 addresses Infectious Diseases does the regulation resemble OSHA's Emergency Temporary Standard?

- B. Will USACE and NAVFAC follow the same guidance or will there be variables by Agency?
 - I. There may be some variables by agency simply due to the different nature
 - II. Do you see base access directives varying from the Safer Federal Workforce Deviation USACE/NAVFAC Headquarters are incorporating as required?

- C. What direction or guidance has USACE and NAVFAC given to Contracting Officers and Federal Contractors?

- D. Existing and future projects will likely fall behind schedule as a result of this mandate and its impact on further reducing the qualified labor pool for federal projects. Does USACE and NAVFAC have the authority for additional time or costs allotted for delays associated? Where will the funding for these added costs come from? How does USACE and NAVFAC intend to capture these added cost and time impacts on projects that are funded but not yet procured?

- E. What will happen if contractors must make a substitution to key personnel or subcontractors?
 - I. Will USACE/NAVFAC encourage contracting officers to be flexible even when it comes to qualifications?

-
- F. Once applied to a covered contract, what is the enforcement mechanism for these requirements? Will contractors be required to self-certify or will there be an audit process? What are the penalties if contractors are found to be non-compliant with these requirements?
-

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. Where are you seeing the biggest concerns from the field?
- B. What is the current and anticipated state of USACE and NAVFAC construction projects?
- C. Do USACE and NAVFAC account for the impacts of supply chain and material costs in their cost estimates?
- D. What are USACE and NAVFAC's expectations as it relates to changes in pricing, materials, and schedules?
- E. How can AGC, USACE, and NAVFAC work together to address the challenges.

General Questions

Open questions from the floor?

3. Change Orders

AGC often reports on the difficulties contractors face with requests for equitable adjustments (REAs) process. While change orders wait to be approved and paid by federal agencies for months or even years, contractors must continue to pay their own bills—payroll, material costs or even taxes. AGC thanks USACE and NAVFAC for its engagement in addressing this issue. Among these efforts includes a [Joint Study](#) by the USACE and AGC. As well as efforts with NAVFAC to better track change orders.

- A. AGC requests an update as to how USACE and NAVFAC is trying to address change order/REA approval delays.
- B. What efforts has USACE Headquarters undertaken to bridge the gap?

C. How can AGC, USACE, and NAVFAC work together on this issue?

General Questions

Open questions from the floor?

4. Past Performance Evaluations

Past Performance Evaluations (such as CPARS) are critical for both federal agencies and construction firms. Past performance evaluations—no matter the reporting system—face inherent problems that stem, in large part, from subjectivity, miscommunication and lack of communication during the review process. AGC has long worked with federal agencies to reduce subjectivity in these reports to the greatest extent possible.

- A. AGC requests an update on any efforts from USACE and NAVFAC to address this issue.
- B. Is there consistency in how both USACE and NAVFAC evaluate contractors?
- C. How can AGC, USACE, and NAVFAC work together on this issue?

General Questions

Open questions from the floor?

5. Partnering Engagement

AGC thanks USACE and NAVFAC for its partnership. For one hundred years, our partnership has been key in building the infrastructure our Nation needs at home and abroad. AGC members commit to sustaining safety and quality in construction, meeting the challenges of change in the industry, and improving our support to the Nation and the public. AGC believes that engaging in project-level partnering as committed team members with USACE and NAVFAC will improve project execution, staff efficiency, 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, FEAD Director, Public Works Officer, etc.).

-
- A. What initiatives are being made at USACE and NAVFAC Headquarters to encourage partnering?
 - B. What are USACE and NAVFAC's policy on Formal vs. Informal Partnering?
 - C. Does USACE and NAVFAC have a policy regarding what agency staff should participate in this process?
 - I. 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?

General Questions

Open questions from the floor?

6. Key Performance Indicators

AGC members believe Key Performance Indicators (KPIs) are important for successful execution of our projects. The ability of a project team to meet the desired project outcome is wholly dependent on the team's ability to identify potential risks and challenges in not only the delivery of the project itself, but also the processes utilized to facilitate delivery. We talked the importance of partnering and having the right team members working together in the above partnering discussion. What are some of the other key performance indicators that you utilize to assess project health and risk of delivery?

- A. What are some of the KPIs USACE and NAVFAC currently utilize to measure project performance? How are we using these KPIs to address concerns in delivery and performance?
- B. How can AGC help with these initiatives?
 - I. USACE Questions for Industry: We'd like to be able to best align how we measure project health and performance with industry best practices. Can you please provide us with some examples of how you, as an executive at your company, assess your project's health? What measures do you use such as productivity, planned vs. earned income/profit, etc.? How can we transform those into measures that USACE and NAVFAC also use?

General Questions

Open questions from the floor?