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**MEETING AGENDA**

**AGC – Defense Agencies Joint Session: NAVFAC & USACE**

**1:30 PM – 3:30 PM**

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**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*

**Defense Agencies Joint Session: NAVFAC & USACE**

Cindy Readal  
*Assistant Commander for Acquisition*

Herman Pablo  
*Construction Product Line Leader, Capital Improvements*

Tim Bayse  
*Senior Construction Engineer*

Kimberly Armstrong  
*Senior Construction Engineer, Capital Improvements*

Pete Perez  
*Chief, Engineering and Construction Division*

Jill Stiglich  
*Director of Contracting*

Kenny Simmons  
*Chief, Construction Branch*

Darrick Godfrey  
*Senior Construction Engineer*

Andrea Hinkle  
*Senior Construction Engineer*

Rick Calloway  
*Senior Construction Engineer*

Mukesh Kumar  
*Cost Engineering Community of Practice Leader*

*Additional NAVFAC & USACE Personnel*

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## **AGC Questions for NAVFAC & USACE**

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### **1. 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 the expectations of NAVFAC and USACE 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 NAVFAC and 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.
  - i. Is NAVFAC and/or USACE considering inclusion of this clause for recovery in future and/or modifying current solicitations for delay costs?
  - ii. Are there any updates to procedures related to *Best and Final Offer*?
- D. Does NAVFAC and USACE account for the impacts of supply chain and material costs in their cost estimates?
- E. Does NAVFAC and USACE account for the impacts of supply chain in their schedule estimates?
- F. AGC believes that awarding projects quickly will help to mitigate some of the impact to construction material inflation.

- i. What is NAVFAC and USACE doing to shorten the amount of time before award?  
For example, any Continuing Contract Authority.
- G. How can AGC, NAVFAC and USACE work together to address the challenges?

## **2. New Buy American Rule and Domestic Content Requirements**

On July 29, a [final 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 prospective. [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.

### Questions:

- A. With all of the various new rules and requirements for federal contracting being promulgated, the federal construction market is increasingly complex. In addition, the Administration has a list of government-wide priorities, such as “Buy Clean” requirements, increased cybersecurity requirements, increased equity in contracting, etc. AGC members to provide NAVFAC and USACE feedback on the impacts from these increased requirements, emphasizing Buy American impacts, to its contracts, material, time estimates, etc.
  - i. What are AGC members doing to mitigate these impacts?
- B. What does NAVFAC and USACE account for the impacts of these Buy American requirements in it cost estimates?
- C. How can AGC, NAVFAC and USACE work together to address the challenges?
  - i. Are there specific specifications that could be relaxed or updated that will address some of these negative impacts?

## **3. 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 and NAVFAC have 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

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to process a changed condition from inception to obtaining a fully executed modification is still a real concern.

Questions:

- A. Please comment on NAVFAC and 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 NAVFAC and USACE in resolving the excessive amount of time needed to process a modification?
- C. Please describe NAVFAC and USACE's efforts to address its upward obligations.

#### **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.

Questions:

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

#### **5. Partnering**

USACE, NAVFAC, 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. 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.).

Questions:

- A. NAVFAC and USACE is requiring/mandating more frequently in contracts, are metrics being tracked and if so which ones and can they be shared, are other improvements being implemented as previously suggested by AGC.

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

**General Questions**

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Open questions from the floor?