



AMERICAN COUNCIL OF ENGINEERING COMPANIES

**ACEC
International Committee Meetings with
Congressional Committees' Staff Members
August 3, 2010
Congressional Office Buildings
Washington, DC**

ACEC participants:

David Baxter - Jacobs
Melissa Bertoli - Transsystems
Nancy Butler - AECOM
Eric Cook - Louis Berger Group
Jane Howard - Bechtel
Ryan Linthicum - Langan
Maureen O'Neil - Parsons Brinckerhoff
Al Rabasca - XL Group
Raj Rangaswamy - Target Engineering
Mark Steiner - ACEC
Frank Swit - Gannett Fleming
Ellis Turner - CDM

Separate meetings were held with staff members of the:

- Senate Committee on Foreign Relations;
- State, Foreign Operations, and Related Programs Subcommittee (House Committee on Appropriations); and the
- House Committee on Foreign Affairs.

At each meeting, the attached issues paper and ACEC International Committee description were provided to staff members, along with the *ACEC Means Business* brochure and a copy of the latest *Engineering Inc.* A brief background on ACEC, identification of the ACEC member firm representatives attending, the impact of U.S. engineering industry on the balance of trade the impression of U.S. overseas, and a discussion of the items contained in the issues paper took place. The connection between qualifications and quality final products was stressed, as was the low relative cost of engineering services when compared to their impact on the performance and the life cycle costs of the resulting infrastructure and facilities. Each staff noted that tax issues are not something they address. A brief summary of each meeting's highlights follows.

Senate Committee on Foreign Relations

Steven Feldstein (majority) and Paul Foldi (minority) both expressed interest in the heavy use of local firms and personnel used by U.S. firms when working internationally. More information on this subject should be provided to show the use of U.S. firms is actually beneficial to in-country capacity development.

There was mixed opinion on the ability to raise physical infrastructure development to the level of other policy initiatives (e.g. health, education, governance, food/agriculture, etc.). The fact that infrastructure impacts all of the other initiatives and needs more visibility was accepted.

The use of host country contracting is dependant on the country involved. Steven stressed the capabilities of certain countries, but when pressed understood that they are more the exception than the rule. A Haitian recovery spending plan is still being developed, but hopefully will be finalized with all parties shortly. The Pakistan situation is very political and the purpose of assistance is not always stated mission success. We stressed that good infrastructure is a lasting (decades to a century) example of U.S. involvement and commitment to a country. He **requested specific examples of NGOs doing infrastructure work without professional involvement, especially for larger projects.**

The idea of the U.S. government (Commerce – ITA) providing “incubation” space in certain countries where opportunities exist, to help small and medium sized U.S. engineering firms get involved was raised and valued. The ITA Market Cooperator Program provides grants to small groups and trade associations to help penetrate foreign markets. Such a grant allowed the Association for Manufacturing Technology (AMT) to establish the Shanghai Technical Center, which houses display, service, and maintenance people from 50 small and medium-sized companies. The need for a greater understanding of the differences in advocating for and focus on engineering services within Commerce was stressed.

Other information requested included:

- **Specific examples of infrastructure paid for by U.S. funds that has collapsed or failed due to inferior standards or design, in Haiti or elsewhere.**
- **Examples of NGOs doing road design and construction.**
- **Details on the China “incubator” or similar programs.**
- **Real data to support our issues and any “asks” we have in the future.**

State, Foreign Operations, and Related Programs Subcommittee (House Committee on Appropriations)

The conversation was similar to the previous session. The appropriations committees try to stay out of policy, but don’t always succeed. Anne Marie Chotvacs (minority) requested information on:

- **Contracts cancelled in Pakistan to shift funds to new priorities.**
- **Statistics on actual use of local firms and labor by U.S. firms doing work overseas.**
- **Any information on written requirements in legislation, regulations, rules, or agency policies that provide a preference for U.S. firms.**

It was noted that an appropriations bill is targeted for late September, but meeting that milestone is unlikely.

House Committee on Foreign Affairs

This Committee is trying to get a bill to reform the Foreign Assistance Act ready this fall. It is a priority for Chairman Berman. A preamble on the “spirit” of the bill and asking for input is on the Committee website, including links to papers on [Concept Paper for Foreign Aid Reform](#), [Discussion Paper #1: Development Assistance Reforms](#), [Discussion Paper on Peacebuilding](#) (issued jointly with the Senate Foreign Relations Committee), and [Discussion Paper #3: Human Rights and Democracy](#). Our issues and discussion will feed into their efforts.

Some of the initiative includes

- Building back the capability of USAID to manage and administer technical planning, design, and construction activities. This does not mean doing the actual work with government employees.
- Create a 3-5 year process to replace the current 1 year process.
- Focus on measured results, such as poverty elimination.

Dr. Mark Little (GSA/AAS Science and Technology Policy Fellow on the Committee staff) is very interested in local firm and personnel use by U.S. firms. This is not clear to those setting policy and is part of capacity building that is pushing them toward host country contracting. The ability of local firms to successfully transition from small projects to very large projects without experienced guidance was questioned by ACEC participants.

It was also noted that some other countries we compete with don't involve any locals (or even inspection of their work). They bring in all of their own forces and self contained logistics support. U.S. firms bring considerable Project/Program management expertise that improves the work products while educating the local forces. For a design-build contract for the Alba aluminum smelter in Bahrain, Bechtel employed and trained over 1000 domestic workers in life-time skills that remain in-country. This is common when U.S. firms are involved. It is also a way for countries with inadequate procurement processes and enforcement capabilities to achieve success. **Mark requested detailed information to support the large percentage of work performed we claimed is by locals when U.S. firms do work internationally.**

We were asked why U.S. firms have not responded to recent solicitations for large projects (e.g. Mozambique Airport). The responses included lack of advance time to adequately plan and form teams (including locally), no prequalification process (over emphasis on low cost), and similar rationale. The staff expressed surprise that non-response was not due to security issues, as this is the common thinking. The ACEC meeting participants all concurred that security issues can be solved, but lack of a fair "playing field" cannot. Fairness and the perception of a real possibility of winning the work is the key decision maker. Host country procurements that lack a reasonable process and enforcement of known rules do not attract U.S. firms. Also as noted in our issues paper, U.S. firms want to deliver a quality product. Without minimum standards and requirements for professional involvement on infrastructure projects, a quality product is not a real criterion.

It was also noted that policies of the Export-Import Bank (Ex-Im Bank), requires a very strict foreign (non-U.S.) content limit of 15%. The next most conservative country credit agency has a 50% limit. Recognizing that today's norm for U.S. firms involves using a global supply chain and maximizing local work forces, American companies run into this barrier frequently. It causes U.S. companies to be less competitive than firms using European, Canadian, and Asian export credit agencies. One of the most liberal export credit agencies for foreign content is Export Development Canada (EDC). Many American companies cross the border to finance their international projects through EDC because of this welcome approach. Internal changes in policies within the Ex-Im Bank could keep those loans at home. The 15% foreign content "rule" is not a legislative requirement.

While the MCC program is a sound, performance based foreign assistance tool, it relies on the ability of compact eligible countries to demonstrate that they have adequate capability to manage compact funds. For infrastructure, many of these countries and their operational agencies are used to managing projects and programs that are less than \$50 million in size and often much smaller. MCC compact funds provide the country with infrastructure funding that is often in the \$150 million to over \$500 million range. The scale up that is required for a country

to move to this level is a challenge that the current compact countries are struggling with—resulting in delays, limited decision making, and questions about the long term sustainability of these programs. Almost all donors provide a significant capacity building component as part of or in parallel with their funding. MCC has very limited capacity building activities and in-house skills to support this component. A marriage of USAID's capacity building focus and MCC's infrastructure funding program could help address this shortcoming.

Follow Up

In each meeting the staff members indicated a desire for further involvement by ACEC and the ACEC participants offered follow up. A foundation has been set for greater U.S. engineering industry involvement with the Congressional staff members concerned with the setting of policies for and funding of programs that impact our international marketplace and the foreign initiatives of our government. We look forward to building on this foundation.

If any International Committee member (or your firm) can contribute to the information requested by the Congressional staffs (see bolded items above) please provide it by close of business August 27th or sooner. We need to have our responses in before Congress returns from this recess.



Our Government's goal should be to increase international business opportunities for US engineering firms. Engineering services continue to grow as a factor in our balance of trade. We need to assure that the policies of the U.S. government facilitate and encourage the use of U.S. firms' expertise and quality by other nations. This is especially true when U.S. funding is provided to those nations.

Major Foreign Policy Issues:

- 1. Institute country physical infrastructure development as an "initiative" rather than a support sector for foreign assistance.** Present U.S. initiatives include a country's economic growth and trade, agriculture, education, health and environment, humanitarian assistance, and democracy and government, all of which depend on a good infrastructure. USAID must be rebuilt to deliver infrastructure as well as they used to do in the 60s and 70s, or another agency must be empowered to do so. Infrastructure is an enabler of other initiatives; it should be recognized as an end in itself.
- 2. Require minimum standards and specifications, the use of licensed professionals, and qualifications based selection of engineering services for all physical infrastructure projects financed through US tax dollars.** Development is a vital component of foreign policy. Poorly built and unsustainable infrastructure negates other initiatives over time and puts the public at risk. Haiti is an example of lacking requirements and enforcement.
- 3. Reevaluate the apparent current U.S. State Department policy being promoted on "National/Host Contracting" and utilizing NGOs to supervise infrastructure work.** Current activities include pushing funding to Pakistan without verification of procurement processes, fraud prevention, procurement and standards enforcement, etc. This repeats the errors of Afghanistan and Iraq.
- 4. Revise the tax code to promote U.S. firms to expand overseas.** Examples include increasing the tax threshold for workers overseas (Internal Revenue Code, Section 911) and foreign tax credits for firms. Also enter into treaties and agreements that avoid double taxation or put U.S. firms at a disadvantage. U.S. Engineering/Construction (E/C) firms have a difficult time competing in some foreign countries. Our competitors' Governments advocate for their respective firms at a very high level. U.S. Commerce Advocacy can't reach those political levels.

Other Items:

1. Require U.S. implementing agencies to develop and implement a program that facilitates and helps small and mid-size engineering firms to deal with individual country requirements and be able to open foreign branch offices in various countries, including in the European Union. This help should include efforts to verify that there is a justifiable market for a given product or service, making it worth the risk and effort to venture overseas. The outcome should be an increase in American jobs, revenues, balance of trade, and tax bases, while employing foreign workers in their home country.

2. Require Multilateral Development Banks (MDBs) to clarify cross debarment issues (where one bank's decision prevents work for all banks):

- a. Define exactly what constitutes an acceptable set of internal quality assurance/quality control procedures for proposal preparation and project implementation.
- b. Define for the lead firms or primes (normally the role taken by the large international firms) their due diligence obligation when selecting local borrower nation firms as well as others with whom to team.
- c. State whether their position of strict liability (cross debarment) will extend to the international firm even if it is a sub-consultant when the local firm is the prime.
- d. Establish training programs for all aspiring bidders.
- e. Hold all bidders to known and consistent standards.

3. Revise Millennium Challenge Account (MCA) procurement practices after review of outcomes and causes. The MCA's are the recipients of Millennium Challenge Corporation (MCC) funding. Current ratios of foreign versus U.S. contractors winning large MCA contracts by QCBS are heavily toward foreign contractors. This appears to be caused by foreign contractor cost advantages. A corresponding review of quality of service and long-term sustainability of services and infrastructure from U.S. tax payer monies funneled through the MCAs is needed.

4. Standardize contracts for key items, including:

- a. Civil code and decennial liability
- b. Contract language; English where possible
- c. Contract currency clauses, to mitigate foreign exchange movements

5. Assure that risk mitigation initiatives consider performance as well as cost. The use of Indefinite Quantity Contracting (IQC) is shunned, but timing and anticipated, fluctuating future workload may require such contingency contracts and competition is built in (especially for multiple award IQCs). Also, contractually pre-selected support contractors in significant roles (domestic and country local) should be credited as small and local business participation. Often large firms have the logistics capabilities and established systems to perform well around the world, while effectively including local and small entities for capability and efficiency reasons.

ACEC Contact:

Mark Steiner
Senior Policy Director
msteiner@acec.org
202-347-7474



International Committee of ACEC

COMPOSITION:

Senior leaders from ACEC member firms providing or interested in providing engineering or related services internationally.

PURPOSE:

The purpose of the Committee is to promote ACEC's international interests and to ensure that each committee and department of ACEC implements international programs as may be appropriate.

2010-2011 GOALS:

1. Advocate the international business interests of ACEC member firms with U.S. governmental agencies, international organizations, multilateral development banks, and relevant non-governmental organizations as appropriate.
2. Support ACEC participation in International Federation of Consulting Engineers (FIDIC), on policy and program issues.
3. Provide information to ACEC membership on international business issues and opportunities.
4. Identify and influence legislative issues regarding immigration and international policies that affect ACEC member firms
5. Provide ACEC participation on the U.S. State Department, Bureau of Overseas Buildings Operations' Industry Advisory Panel
6. Establish International Committee involvement in ACEC's Government Advocacy committees as appropriate to ensure that international interests of ACEC member firms are being addressed in legislation and regulation. The International Committee Chair is a member of the overall Government Advocacy Committee.

Committee Chairman:

Manish D. Kothari
President, Sheladia Associates, Inc.
mkothari@sheladia.com
301-590-3939

ACEC Contact:

Mark Steiner
Senior Policy Director
msteiner@acec.org
202-347-7474