



AMERICAN COUNCIL OF ENGINEERING COMPANIES

**ACEC
Federal Agencies and Procurement Advocacy
Fall Committee Meeting Minutes
October 19, 2010
ACEC Fall Conference
Puerto Rico**

Signed In (others present)

Philios Angelides - Alpha Corp.
Ron Billstein – DOWL HKM
Jim Blake - GPI (Chair)
Nick Cerro - C+S Cos.
Fouad Daoud - WHKS
Harvey Floyd - KCI
Les Fukuda - HDR
Dana Knight – McCormick Taylor
Mike Matthews – H&A Arch. & Eng.
Mark Steiner - ACEC
John Wells - DJG

Introductions were made and Chair Jim Blake assumed control of the meeting. Jim's introductory remarks included a review of the agenda (attached), thanking the member firm representatives attending, and encouraging active involvement in Committee and subcommittee activities. The meeting then followed the distributed agenda.

Subcommittee/Work Groups Reports and Initiatives

Les Fukuda reported on the Procurement Subcommittee and notified the Committee that ACEC is in the process of finalizing an update to *An Owners Guide to QBS*. It is in internal review and additional reviewers are invited. Copies of the current draft are available, with comments due in mid-December. The GSA Schedule use survey is still tied up with ACEC leadership.

Philios Angelides reported on the Facilities Subcommittee and focused on the progress in partnering agreements. The GSA turnover in acquisition leadership has disrupted issues discussions, but they have provided a Memorandum of Understanding to replace the draft partnering agreement. Its basic premise of GSA membership in ACEC may present a significant problem. The Veterans Administration (VA) partnering agreement is proceeding well and is targeted for a Spring Convention signing. The hope is to give that signing and any others some prominence. A partnering with SAME has been reopened with a focus on opening military personnel to ACEC's education, practices, and publications. Meeting will be held in the near future.

The Defense Subcommittee was not represented, so progress on the USACE and NAVFAC issues lists was discussed. Progress has been slowed by pressing activities for both the government personnel and Subcommittee leadership. A winter meeting is being targeted to get back on track. The NAVFAC partnering agreement is targeted for the ACEC Spring Convention. AFCEE has a new director, so a renewed

effort to establish ongoing dialog and a partnering agreement will be attempted. Philios has a direct link to Gen. Beyers if needed.

The Small Business Subcommittee was not represented. Progress on Congressional initiatives to change small business procurement and use monitoring was addressed. The repeal of the CompDemo program in the Small Business Jobs Act was noted, as was progress on redefining A/E prime contracts to include lower tier contracts involving responsible roles that are identified during the selection process and later executed.

The Homeland Security Subcommittee was not represented. The start of a FAPA SharePoint site has been delayed due to the inability to get involved Committee members together. This excellent communications tool and place for posting documents for active use needs to be launched. On establishing an ongoing relationship and partnering agreement with the Department, the lack of progress has resulted in a refocusing on the subcomponent agencies. A meeting to discuss the QBS process with new acquisition operational personnel at FEMA has been arranged by Dave Greenwood.

The Programs Subcommittee has been disrupted by the loss of Melissa Bertoli to the Council on Competitiveness. The need for volunteers to fill this void and take the opportunity to have direct contact with leadership in the federal departments and agencies was addressed. The ACEC Spring Convention includes business opportunities sessions with all federal agencies offering engineering and related services work. In addition, a major small business networking venue is being added to the Convention. The Committee needs a strong Programs Committee for these initiatives and for our own quarterly meetings. Jim requested that Committee members identify interested and active participants for the Subcommittee. On the small business networking venue, comments included the need to consider adding agency involvement, prior signup to effectively use the time available, limiting to engineering services only, and follow up with regional meetings across the country.

Action Items Follow On

An update on the General Business and Outstanding Action Items (attached) was provided. Comments to the ANSI Prevention Through Design Standard (including changing the title) were provided by the Construction Site Safety Working Group, to assure designers are not held responsible for construction site safety. OSHA and NIOSH continue to pursue the issue.

Legislative and Regulatory Update

The limited summary of ongoing activities (attached) was briefly discussed.

New Business

The continued requirement for Bentley BIM by the USACE for "standard designs" was raised. USACE Headquarters had previously indicated that this is the only area where a specific software system would be required. There is concern among Committee members that conversion between BIM systems is not progressing and USACE Headquarters control of districts is not strong enough to prevent requirements from becoming the norm. ACEC needs to continue to address the issue as part of our USACE discussions (including Bob Bank).

The Winter Committee meeting will be scheduled around USACE and NAVFAC schedules. A minimum of 3 weeks advance notice will be attempted.



**Federal Agencies and Procurement Advocacy (FAPA) Committee
Fall Agenda
Tuesday October 19, 2010
Puerto Rico**

- Welcome and Introductions
- Subcommittee and Work Group Reports
- Action Items Follow On
- Legislative and Regulatory Update
- New Business
- Adjourn

DRAFT

Action Items:

General Business

Action items:

1. Set up a meeting with USACE for mid-November (James Dalton). [ACEC]
2. Set up a meeting with GSA for mid-November (Bob Pack). [ACEC]
3. Provide Dan Gordon with papers on Small Business Use Reform and Comments on Guidelines for Work that should be Performed by Government Employees [ACEC] <Done>
4. Draft partnering agreement for DOS OBO. [Facilities Subcommittee]
5. Provide paper to ACEC leadership on the importance of partnering agreements with federal agencies and the respect and attention they should receive. [Chair and Vice-Chair] <PRIORITY>
6. Solidify "slots" and programs for annual convention. [Programs Work Group]
7. Develop a small business partnering opportunities forum for the annual convention. [ACEC]
8. Schedule Share Point training and initiation. [HLS Subcommittee]
9. Switch DHS partnering agreement focus to internal agencies [HLS Subcommittee]
10. Create link with SAME. [Facilities Subcommittee and ACEC]
11. Pin down AFCEE on partnering agreement [DOD subcommittee]
12. Process to promote innovation in design for DOS OBO and others [Facilities Subcommittee] Potential sources include MITRE paper on the 13 Greatest Challenges to the Veterans Administration, charette process, value engineering, and design excellence program.
13. Identify candidates for engineering "peers" to GSA, PBS [All]
14. Set up Committee business meeting during the ACEC Fall Conference in Puerto Rico in mid-October. <Done>

Prior Outstanding Items

1. Partnering Agreements with NAVFAC, AFCEE, GSA, DHS, VA, and DOS/OBO. [Various]
2. Publish survey to ACEC membership on GSA Schedule use. [ACEC]
3. Locate and distribute ABA paper on scoring of public-private partnerships. [Larry Bory]
4. Hold meeting of the Small Business Size Standards Working Group. [Small Business Subcommittee]
5. Finalize paper on the effective use of small businesses. [ACEC]
6. Locate USACE prior study on "why QBS takes so long". [Open]
7. Finalize list of Quick Response Team members. [Procurement Subcommittee]
8. Establish work group to develop procurement "desk guides" for FEMA. [Vice-Chair provide prior developed guide]
9. Request exemptions or changes to Industry Classification System. [Small Business Subcommittee]
10. Finalize Bonding Solutions Paper. [Open]

Legislative and Regulatory Update:

ACEC is working with Congress and the Administration on muting the impacts of:

- Executive Orders and Administrative memos have resulted in a proposed OFPP Policy Letter on Work Reserved for Performance by Federal Government Employees. Needs wording to assure reasonableness and cost effectiveness and in the case of A/E services the need for performing work by the most qualified, effect of limited durations for special capabilities, and flexibility of response. Recent DOD actions have already resulted in the arbitrary transference of work to government employees and even the direct hiring of existing private sector personnel previously performing the work.
- Numerous Congressional and Administrative initiatives to deal with perceived waste, fraud, and abuse situations have resulted in a series of data gathering, public access, and reporting penalties actions involving tax delinquencies, executive compensation, payments of subcontractors, sole source contracts, etc. This data often impacts competitive positions, subcontract relationships, and overhead costs and could result in unjustified debarments.
- Contracting reforms being included in the Small Business Jobs Act of 2010 (and being added to other legislation) are inappropriate for a bill intended to focus on increasing funding and incentives for small businesses. The extensive contracting changes create additional reporting requirements, limit competition, and confuse subcontracting. Such reforms need more time and industry involvement through a focused Act. ACEC wants to address contracting changes from the perspective of qualifications based A/E services work and competition, significant contractual roles at all tiers, reducing undue requirements, and retaining the CompDemo program.
- The Administration is working on a “High Road” initiative which may place requirements for employees hiring practices, salaries, benefits, business systems, union representation, and similar matters on contractors doing business with the government. This could effectively be “black listing”. The DOD has proposed rules to define specific required contractor business systems and to implement a compliance enforcement approach. The approach is through a business systems clause that requires contracting officers to withhold at least ten percent of contract payments per system on DoD contracts whenever they determine that one of the enumerated business systems contains one or more deficiencies (as that term is defined in the proposed rule). The proposed rule is an unnecessary intrusion on the contractual relationship between industry and government that unfairly and arbitrarily establishes a punitive approach.
- Pro-union Executive Orders and implementing FAR rules;
 1. Executive Order (E.O.) 13502, *Use of Project Labor Agreements for Federal Construction Projects* places Unions in control of construction job sites. While ACEC succeeded in clarifying that engineering and related services (not performing actual construction) are not required to be under PLAs, indirect problems remain.

2. EX 13494: *Economy in Government Contracting* prohibits government contractors from being reimbursed for expenses (treated as unallowable costs) incurred when seeking to inform or influence workers regarding whether to organize, join a union, or engage in collective bargaining.
3. EX 13496: *Notification of Employee Rights Under Federal Labor Laws* requires employers holding government contracts to post (physically and electronically) Secretary of Labor prescribed notices that inform employees that the National Labor Relations Act:
 1. Encourages the practice and procedure of collective bargaining.
 2. Protects the exercise by workers of full freedom of association, self organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

It also reverses the prior Administration's Order requiring employers to post notifications of the workers' rights to limit financial support of unions serving as their collective bargaining representatives.

Included are requirements for contractors to incorporate required clauses in all subcontracts and to enforce them. The penalties for failure of government contractors or subcontractors to comply include contract cancellation, termination, or suspension in whole or in part and potential ineligibility for further government contracts.

- The current WRDA language repeals the Thomas Act, which placed restrictions on the ability of USACE to compete with the private sector for state and local government work. The Thomas Act already includes a waiver process for situations where USACE involvement is truly needed.
- The current House and Senate Defense Authorization Acts include:
 1. using of the Department of Interior (DOI) to provide support to the government of Guam for utilities and infrastructure review and improvements planning and design in response to the increased loads created by the realignment of military installations to the island. Emphasized the difference between DOI providing management assistance to Guam and performing the work. Legislating direct competition with the private sector.
 2. bringing in all functions closely associated with inherently governmental functions "to the maximum extent possible" without consideration of cost, capabilities, or mission needs. Ineffective and damaging to the private sector needed to support DOD efforts in the long term.
 3. requiring cost or price to be the most important factor in selection of contractors and publically posting all solicitations for which cost or price is not the most important selection factor. Need flexibility in application and conflict with QBS.
- The Navy Preferred Supplier Program being developed brings attention to the need for greater definition and consistency and specific consideration of the impacts to and inconsistencies with Brooks Act (A/E services) procurements based on qualifications.