



AMERICAN COUNCIL OF ENGINEERING COMPANIES

**ACEC
International Committee Meeting
at the ACEC Fall Conference in Puerto Rico
October 18, 2010**

ACEC participants:

Steve Cavanaugh – Cavanaugh & Assoc.
Manish Kothari – Sheladia Assoc. (Chair)
Bill Othon – Othon, Inc.
Sergio Pecori – Hanson Professional Services
Al Rabasca - XL Group
Bennett Reischauer – Stanley Consultants
Mark Steiner - ACEC
Greggs Thomopulos – Stanley Consultants

On October 16th Manish Kothari presented a report on the International Committee status and initiatives (see Attachments 1-3) to the Executive Committee of ACEC. Stressed was the need to recapture the leading position once held by U.S. engineering firms in the World marketplace. The Executive Committee was supportive of the work being done by the International Committee and the initiatives underway. They requested that the legislative initiatives be focused on the top three priorities and requested a list of them.

The International Committee meeting started with introductions and then Manish Kothari summarizing the Executive Committee meeting and presenting a short list of legislative priorities for Legislative Committee Consideration (Attachment 4). The discussion included agreement on needing to take actions to fight any Brooks Act or other Federal Acquisition Regulations procurement processes waiver requests from USAID missions or other federal agencies involved with international work funded through U.S. appropriations. After discussion, the members were asked to provide input on their top three legislative initiatives prior to the end of the day. The meeting then proceeded to the prepared agenda (Attachment 5).

Federal Initiatives

The Agenda points were addressed as part of the legislative initiatives. The items not included as top priorities will continue to be pursued.

Development Banks Initiatives

In addition to the items included as legislative priorities or supplemental items, the need to address due diligence requirements was clarified to focus on common and consistent due diligence to avoid debarment by any development bank, as opposed to avoiding cross debarment. Cross debarment is already a fact and opposing it may be counter productive.

FIDIC Initiatives

An overview of the FIDIC conference, to supplement the notes distributed earlier by email (Attachment 6), was provided. ACEC represented FIDIC at a World Bank meeting on the Bank's Construction Sector Transparency Initiative (CoST). It was noted that CoST makes information available for infrastructure construction oversight, internally and by stakeholders, with the final goal being "certification" that a country has an adequate program for doing this. Such data gathering identifies apparent problems. ACEC raised the issue at the meeting that the initiative does not focus on discovering system faults (procurement and management) and developing corrections to avoid resulting problems. It was noted that FIDIC had also invited ACEC to join them in their annual meetings with the World Bank and Inter-American Development Bank in Washington, DC, later in October.

The initiatives identified in Attachment 6 and the added climate change adaptation and integrity initiatives were accepted by the Committee members present. It was also agreed to continue to investigate closer relationships with FIDIC's African and American regional associations to better understand the costs, benefits, and problems with such relationships prior to making final decisions. This includes revisiting the reasons for ACEC's and the Canadian association's reasons for withdrawing from the American regional association previously and coordinating our actions with the Canadian association. With the changing World economy and growth of individual country's investment in infrastructure, U.S. firms should explore all avenues to reinforce and expand our market positions and ability to compete.

Follow Up

The top three legislative initiatives going forward are included on Attachment 7. Members of the International Committee will provide written input into the specific parameters they believe need to be addressed in each initiative by November 15th. In parallel to this effort, the Committee and ACEC Government Affairs will develop a strategy for incorporating these initiatives into legislation. This may include drafting specific legislation, letters to Congressman and Senators, etc.

Satch Pecori will address the legislative initiatives with ACEC's Design Professionals Coalition to gain the support of that organization.

The Committee will continue to pursue other initiatives as time permits. This includes working with the Multilateral Development Banks, U.S. Treasury Department and the Banks' U.S. Executive Directors, U.S. Department of Commerce and the Trade Representatives, USAID, MCC, and others.

The growing ACEC relationship with FIDIC needs to be strengthened through close cooperation and communications. Through this relationship, the interests of U.S. engineering firms can be raised World-wide. ACEC is becoming more involved as the representative of FIDIC to meeting held with organizations located in the U.S.

No additional new business was addressed. Dates for the International Committee Winter meeting will be addressed in separate correspondence to all Committee members.



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.

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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:

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AGENDA ITEM

**EXECUTIVE COMMITTEE MEETING
AMERICAN COUNCIL OF ENGINEERING COMPANIES
EL CONQUISTADOR RESORT, PUERTO RICO
OCTOBER 16, 2010**

TITLE

International Committee Report

ISSUE

The International Committee Chair will provide an update on the activities of the Committee.

DISCUSSION

The International Committee of ACEC is ramping up its engagement with federal agencies and multilateral banks involved with funding and guidance of infrastructure projects in foreign countries. In addition to identifying business opportunities for our members and providing guidance on how to effectively work with each agency or entity, the Committee is taking direct actions to achieve the following:

1. Increasing the use of Qualifications-Based Selection (QBS) for architecture/engineering and related services.
2. Requiring minimum technical standards and specifications, the use of licensed professionals and QBS for acquiring engineering services, and effective methods of enforcing these requirements for all physical infrastructure projects in developing nations.
3. Preventing NGOs from performing infrastructure work without the involvement of licensed professionals.
4. Requiring multilateral development banks (MDBs) and other funding organizations to verify host country minimum capability to have functional and fair procurement policies and procedures and the mechanisms to enforce them.
5. Requiring MDBs to clarify, issue, and identify their minimum due diligence requirements for those pursuing, proposing on, and performing contracts, prior to using cross debarment as a tool to fight fraud and corruption. Without this, many good firms, teaming with local firms or individuals, may become victims without any wrongdoing on their part.
6. Developing and implementing programs (incubators) that facilitate and help small and mid-size engineering firms to deal with individual country requirements and be able to open foreign branch offices in various countries.
7. Identifying infrastructure as a priority mission within developing nations, since other identified priorities – including agriculture, health care, economic growth,

- education, and other mission initiatives – all depend on good infrastructure to succeed.
8. Encouraging the selection and use of teams that include in-country or local/regional firms as partners, with programs for associated development and training.
 9. Working with the U.S. Agency for International Development (USAID), the committee is developing specific position papers on country capacity development, improvements to procurement methods and staffing at USAID, and disaster response pre-planning and programs (including the use of pre-volunteered services from ACEC member firms).
 10. Working with the U.S. Department of Commerce, Foreign Commercial Service to focus on expanding the export of U.S. engineering services and highlight the quality of U.S. engineering industry.

The Committee is also working with Congress to:

1. Provide a preference for U.S. firms tied to U.S. funding of foreign infrastructure development.
2. Challenge legislation restricting, complicating, and/or decreasing the competitive position of U.S. firms doing business internationally, including dual country taxation of employees.

The International Committee continues to work with FIDIC (International Federation of Consulting Engineers) on:

1. Getting the international consulting community to adopt our positions on QBS, minimum technical standards for funded infrastructure projects, involvement of licensed professionals, verification of host country procurement policies and their ability to enforce them, identifying infrastructure as a priority missions in developing nations, and other generally applicable actions listed as desired achievements above.
2. Supporting the sustainability, integrity, and general capacity building initiatives of FIDIC.

M. Steiner

9/14/10



The U.S. Government should balance national diplomatic, humanitarian, and economic interests in policy and through authorizations and appropriations. Economic interests include increasing international business opportunities for US engineering firms and assuring that the physical infrastructure projects developed in host nations are professionally planned to support other initiatives and be sustainable long-term.

Major Priorities:

1. **Institute infrastructure (physical infrastructure in a country) 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, MCC, and other funding entities must be rebuilt to deliver infrastructure and be empowered to do so. Infrastructure is an enabler of other initiatives; it should be recognized as an end in itself.
2. **Provide a preference for U.S. firms in executing physical infrastructure projects paid for through U.S. funding.** The best way to assure attainment of overall U.S. goals is to have the work performed by U.S. firms. At the same time the U.S. economy benefits. Oppose bills diluting use of U.S. firms.
3. **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. To reinforce these requirements, acquisition of services must be fair, balanced, and enforceable.
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.
5. **Require planned use of local host country firms and individuals as a selection factor for design and construction activities.** Infrastructure projects need to go beyond creating good infrastructure, but need to contribute to capacity development and bettering lifestyles. This includes creating resources for the operations and maintenance of infrastructure created.
6. **Involve the engineering community (ACEC) in selection of directors of Multilateral Development Banks, including nominating candidates.** This facilitates influence of Multilateral Development Banks in policy implementation. U.S. policy must extend to influencing these organizations to support changing government policies.



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- 2. Provide a preference for U.S. firms in executing physical infrastructure projects paid for through U.S. funding.** The best way to assure attainment of overall U.S. goals is to have the work performed by U.S. firms. At the same time the U.S. economy benefits. This also includes use of U.S. business practices such as requiring minimum standards and specifications, planned use of local manpower, 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. To reinforce these requirements, acquisition of services must be fair, balanced, and enforceable. Oppose bills diluting use of U.S. firms.
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**International Committee
Fall Agenda
Monday, October 18, 2010
Puerto Rico**

- Welcome and Introductions
- Federal Initiatives
 - Tying Project Funding to Use of U.S. Firms
 - Making Infrastructure Development a Critical Mission for Developing Nations
 - Stressing the Need for QBS, Minimal Technical Standards, Use of Licensed Professionals, and Verifiable Fair Procurement Processes as a Condition for Infrastructure Funding
 - Making Effective Use of In-Country Personnel a Selection Factor
 - Controlling NGO Performance of Infrastructure Work
 - Developing Incubator Programs in Certain Countries and Regions
- Development Banks Initiatives
 - Same Funding Limitations as for Federal Initiatives
 - Clarifying Due Diligence Requirements to Avoid Cross Debarment
- FIDIC Initiatives
 - Attached Listing
 - Call for Climate Change Impacts Baseline for Design Adaptation
 - Relationships with African and American Regional Association of Country Associations and Individual Asian Country Associations
 - FIMS, CoST, and Similar Integrity Related Initiatives
- New Business
- Adjourn

FIDIC 2010 Conference Focuses on Innovation and Issues

At its largest gathering ever (nearly 800 participants), the International Federation of Consulting Engineers (FIDIC) Conference was filled with energy and commitment. The Conference theme was *Managing Innovation; The Way Forward*. In a series of plenary sessions, business seminars, forums, and workshops, innovation drivers, research and development, financing, strategies, and best practices were addressed. In addition, project sustainability, climate change, inclusive development, and integrity management were addressed. Every session was packed and the interaction between panel members and the audience was extensive and meaningful. The ACEC Delegation was lead by Jerry Stump (ACEC Chairman and CEO of Wilbur Smith).

The agenda and copies of the presentations made throughout the Conference can be downloaded at <http://217.197.210.21/conference/2010//talks/>. Notable ACEC recommendations raised at the Conference included:

1. Climate change activities should not only address halting and reversing man-made impacts (e.g. carbon emissions) and conserving depleting natural resources, but should include adapting to changes happening and unavoidable. The engineering and scientific communities must work together to define the regional climate impacts of the future so that infrastructure and buildings can properly perform under anticipated conditions. FIDIC should be at the forefront of establishing criteria and working with governments to recognize it.
2. The FIDIC Integrity Management System (FIMS) should include criteria for choosing physical infrastructure related work that minimizes the probability of becoming "trapped" in a corrupt or fraudulent practice. This criteria should include contractually identified:
 - a. Minimum required technical standards and specifications
 - b. Required use of licensed professionals
 - c. Qualifications based selection of professional services
 - d. Written functional and fair procurement policies and procedures
 - e. Mechanisms for enforcing all requirements and record of effective use of them
3. Capacity development actions should include consideration of planned performance of work (and prior experience in doing so) by indigenous work force (individuals and firms) in the selection process for new work. Include development and training programs.
4. The need to create infrastructure master planning and implementation as part of and equal to "missions" in developing nations. Agriculture, health care, education, economic growth, and similar missions or initiatives depend on effective infrastructure to succeed.

A list of International Committee issues for FIDIC are attached.

ACEC International Committee issues for FIDIC consideration:

1. Requiring minimum standards and specifications, the use of licensed professionals, and qualifications based selection of engineering services and methods of enforcement for all physical infrastructure projects in developing nations.
2. Controlling the use of NGOs performing infrastructure work without the involvement of licensed professionals.
3. Requiring multilateral development banks (MDBs) and other funding organizations to verify host country minimum capability to have functional and fair procurement policies and procedures and the mechanisms to enforce them. This includes not waiving those minimum requirements in order to get countries into programs, as the World Bank is trying to get the ITAG to go along with on the in-country pilot procurement program.
4. Requiring MDBs to clarify issues and identify the minimum due diligence requirements in pursuing, proposing on, and performing contracts prior to using cross debarment as a tool to fight fraud and corruption. Without this, many good firms, teaming with local firms or individuals, may become victims without any wrongdoing on their part. Also, how does self policing and disclosure of problems get handled?
5. Developing and implementing programs (incubators) that facilitate and help small and mid-size engineering firms to deal with individual country requirements and be able to open foreign branch offices in various countries.
6. Tying infrastructure development to missions within developing nations. Agriculture, health care, economic growth, education, and other initiatives all depend on good infrastructure to succeed. Too often such programs treat infrastructure as an afterthought. This often results in poor infrastructure that does not help the mission or actually impedes it.
7. Encouraging the use of teams that include performing a significant percentage of their work with in-country or local regional firms and individuals and have programs for associated development and training. Some country firms bring in their workers and processes and don't even allow observation or inspection of their work until it is complete. The former results in local capacity building. The latter does not.
8. Working to establish an accepted basis for the future impacts of climate change. Examples would be sea level rise, frequency and intensity of storms, and temperature changes. With this basis, consistent designs can be developed for infrastructure expected to last for many decades. If reality differs, adjustments become easier from a common base.



The U.S. Government should balance national diplomatic, humanitarian, and economic interests in policy and through authorizations and appropriations. Economic interests include increasing international business opportunities for U.S. engineering firms and assuring that the physical infrastructure projects developed in host nations are professionally planned to support other initiatives and are sustainable long-term.

Major Priorities:

5. **Institute infrastructure (physical infrastructure in a country) development as an "initiative" rather than a support sector for foreign assistance.** Present U.S. initiatives include faith based and community, business reform, education, global health, transition government, food security, etc., all of which depend on a good infrastructure. USAID, MCC, and other funding entities must be refocused to deliver infrastructure and be empowered to do so. Infrastructure is an enabler of all our other development initiatives; it should be recognized as an end in itself.
6. **Provide a preference for U.S. firms in executing physical infrastructure projects paid for through U.S. funding.** The best way to assure attainment of overall U.S. goals is to have the work performed by U.S. firms and at the same time the U.S. economy benefits. This includes the use of U.S. business practices such as requiring minimum standards and specifications, planned use of local manpower, 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 our foreign policy. Poorly built and unsustainable infrastructure negates our other initiatives over time and puts the beneficiaries at risk. To reinforce these requirements, acquisition of services must be fair, balanced, and enforceable. Oppose bills diluting the use of U.S. firms and/or any allowing the bypass of the Brooks Act or Federal Acquisition Regulation Section 36 (QBS) processes - intended to ensure that the US public funds are being spent responsibly - so that infrastructure spending results in safe and effective projects (buildings, roads, bridges, etc.).
7. **Involve the engineering community (ACEC) in the selection of directors of Multilateral Development Banks, including nominating candidates, as well as any other appointments that involve US taxpayers monies for infrastructure development overseas.** This facilitates influence of Multilateral Development Banks in policy implementation. U.S. policy must extend to influencing these organizations to support changing government policies.