Subject: National Meeting with Associated General Contractors of America, Inc. (AGC)

Applicability: Directive

The purpose of this Engineering and Construction Bulletin (ECB) is to provide information about the annual meetings with the Associated General Contractors of America, Inc. (AGC) which were held in Washington, DC on May 9, 2006 and a follow on meeting of the AGC Federal Owners Advisory Council held on May 10, 2006. USACE representatives at the 9 May meeting were BG Temple, Mr. Jerry Barnes, Mr. Walt Norko, Mr. Al Young, and Ms. Angela Premo. On May 10, 2006, Mr. Walt Norko represented USACE at the Federal Owners Advisory Council meeting. Mr. Dan Fordice, Chairman of the AGC-USACE Committee chaired the meeting, which included general contractors, subcontractors, surety association representatives, dredging firms, and a variety of other interested parties. This ECB represents a summation of the issues and concerns of the AGC membership as regards their interaction with USACE and it’s districts in complying and managing Corps of Engineers construction contracts.

ISSUES & CONCERNS

1. FedTeDS – Usage and operation of the FedTeDS system in lieu of the USACE contracting websites. Specific concerns and problems noted were as follows:
   a. Contract Amendments are not getting posted to the FedTeDS sites and/or are not posted with adequate time to respond – Leads to less competition on solicitations.
   b. No plan-holder listings and no separation of prime, subcontractors, and supplier names
   c. Sign-up for contract solicitation notification seems to be haphazard. Firms sign up and then get dropped from system with no notification. Requires constant monitoring and re-registration.
   d. System changes and problems have led to some contracts having no bidders.
   e. Requested that contract solicitations be more definitive when they specify a price range for these construction contracts.
   f. Comment – Other Federal agency FedTeDS sites seem to perform better than USACE FedTeDS.
   g. Preferred that USACE maintain at least a contracting webpage that notes all solicitations and amendments so that contractors can verify contract requirements prior to proposal date.

Action Needed: The FedTeDS HQ Team will address most of these issues with the developers of FedTeDS. This is now a mandatory system per the FAR as of 19 may 2006.

   Districts need to review their current practices and raise problems and issues for resolution to the HQ FedTeDS Team (POC: Mr. Bob Bank & Mr. Dwight Dukes)
2. Cost Increases & USACE Budget Estimates – Significant concern from several contractors was voiced on the continuing cost increases for materials, supplies, and labor that they are experiencing on their projects. They view these increases as a significant risk and do not view them as merely localized spikes in prices. Prices are being raised on many varied products and services on a continuous basis (Concrete escalating at 1% per month +/-), and suppliers are not holding or guaranteeing prices for more than several days or weeks. Lot’s of uncertainty and risk that contractors indicate will lead to higher bids. Some remedies that they felt USACE should implement are as follows:
   a. Reduce procurement and solicitation times and reduce multiple BAFO’s that delay procurement. Contractors cannot get supplier and subcontractor quotes that are valid for 90 to 120 days for procurement. They indicate that this is also hurting their availability of bonding capacity, if it is tied up in lengthy procurement decisions.
   b. USACE must validate project government estimates closer to the time of contract solicitation to make sure that the intended project scope and estimate are in-line. Contractors are seeing many more bid busts, multiple BAFO’s, and re-negotiations as a result of unaligned estimates with the current industry marketplace and cost environment. They view current DoD historical cost parameters as not in tune with market conditions. USACE districts need to re-focus on this issue to obtain adequate competition.
   c. Want USACE to use more options and alternates in contracts to make projects awardable within this unique cost environment.

**Action Needed:** Districts should valid that their estimates are as current and realistic as possible at the time of contract solicitation. Estimates should reflect market conditions as close as possible, and bid schedules should be flexible to allow options and alternates. HQ will be establishing a metric to be reported at PRB’s that measures government estimates against PA’s at time of RTA and again at award.

3. MILCON Transformation (MT) – In addition to the industry cost escalation issues noted above, there were a couple of specific issues that they would like changed as follows:
   a. Apparently there are some restrictions on contractor’s ability to bid multiple facility types in current solicitations.
   b. Conflicts in MT RFP specifications that want innovative industry solutions and yet also require that the local Installation Design Guide (IDG) be followed for more than just local restrictions. A contractor indicated that in these types of instances, they must propose the most stringent solution in order to protect themselves contractually.

**Action Needed:** Districts should make sure that the national MILCON Transformation strategy is reflected in their RFP and that prescriptive requirements are limited and do not eliminate the contractors ability to propose innovative and industry accepted proposals. A joint policy letter from HQUSACE, IMA, and ACSIM is being staffed and will be issued shortly that addresses how Installation Design Guides (IDG) shall be applied to MT projects.

4. Continuing Contracts Clause – Several industry firms stipulated that the removal of the old continuing contracts clause will cause them to re-evaluate whether they will bid USACE work. They mentioned several problems with the solicitation documents and revised contract clause as follows:
   a. Contracts advertised are not aligned with the scope of the projects, and the risks of mobilizing large assets on contracts where the initial funding is inadequate at the start and future funding is unknown creates significant risks. If the revised continuing contracts clause were to be used, then
they would like to see some guaranteed funding stream at the time of contract award. Otherwise they cannot judge how to deploy their company’s assets.

b. The cost of mobilizing and de-mobilizing large pieces of equipment is significant and they cannot re-deploy quickly. Dredging firms said they decide on which contracts to bid based on the known income stream that can be expected over the contract period. Based on the revised continuing contracts clause language, they will be forced to either include large contingency costs for demobilization and re-mobilization in their bids and/or not bid on contracts where the funding stream is uncertain.

**Action Needed:** a. The revised continuing contracts clause has been submitted for publication in the Federal Register for open comment by industry participants and others. HQ will review the clause language based on the Federal Register comments received. b. Districts should implement the guidance in EC 11-2-189 which presents the Civil Works execution strategy for 2006 and the requirement to use full funded contracts to the maximum extent possible.

5. Construction Contract Solicitation Documents – A common issue among many industry participants is the fact that there is no common response form among USACE districts for obtaining feedback from their customers. This causes each contractor to continuously request new customer feedback forms be filled out for every solicitation. They would like for USACE to require that all districts use the same form for different solicitations and that the customer feedback form can then be used on multiple proposals over a given timeframe. Their customers have gotten annoyed at contractors requesting that the same customer feedback information (reference information) be supplied on different forms for every contract that the contractor is preparing a proposal for.

**Action Needed:** This issue will be referred to the PARC’s office to manage along with their contracting offices. HQ will work with the PARC’s office to develop one common response form that is consistently used throughout the Corps.

6. Performance and Payment Bonds – There is continuing concern on the availability of these surety bonds for large construction contracts and contracts that are over 3 years in length. Contractor representatives indicated that the surety market is changing and that owners need to be cognizant of the more restrictive underwriting environment today and how that affects the competitive environment for government contracts.

**Action Needed:** Districts should review how they structure their contracts to reduce the potential for bonding issues to detrimentally affect the competitive environment for construction services. It is requested that each district review their operating procedures in light of the industry concerns noted and make sure that USACE construction contract solicitations, procurement, and contract administration processes are fair, reasonable, and enhance competition among contractors.

7. The POC for this ECB is Mr. Walt Norko, CECW-CE, 202-761-5443.

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