

# **Associated General Contractors of America's Recommendations Regarding the U.S. Army Corps of Engineers**

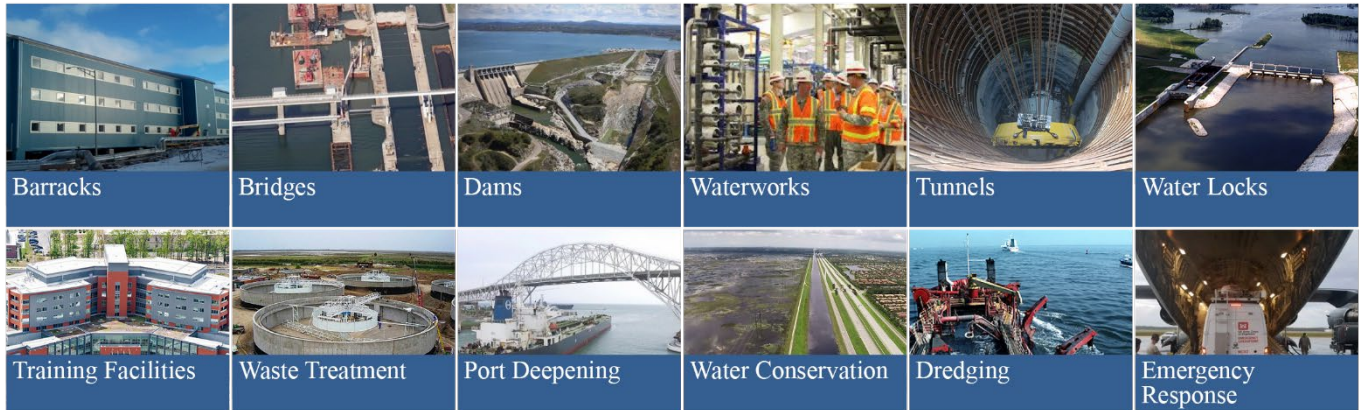
# Preamble



US Army Corps of Engineers®



The Associated General Contractors of America (AGC) and the U.S. Army Corps of Engineers (USACE) have a long and successful history of working together to build our nation’s infrastructure. This includes:



AGC firmly believes that effective communication and accountability between contractor, contracting authority and owner are essential to delivering a construction project in a safe, efficient and timely manner. While much progress has been made, there remains more that AGC and USACE can do to improve our productive partnership to ensure the delivery of high-quality facilities and infrastructure worthy of taxpayers’ dollars and our nation.

On October 13, 2017, members of the construction industry met with the USACE leadership for a half day discussion that addressed the challenges companies face working with USACE and ways to make the agency a better client. USACE and AGC agreed to form a working group to address several items discussed at the meeting and to provide candid feedback to improve project outcomes within both the contractor community and USACE. USACE called on AGC to provide candid and unfiltered feedback from the construction industry. In the winter of 2017-2018 AGC formed the AGC working group consisting of ten large, medium, and small construction contracting companies that collectively puts in place over \$20 billion worth of construction annually. Many of these companies have over a century of experience working with USACE.

A great attribute of USACE is its readiness to listen to its partners in the construction industry, try new and more efficient practices, and value the high

degree of trust the public places upon it. Nowhere else is this better reflected than in USACE’s motto, *Essayons*. In keeping with this spirit, let us try to improve upon the policies and practices that are employed to build and maintain our nation’s infrastructure. AGC's recommendations follow four guiding (4) principals:

1. desired outcomes are only achieved through collective trust
2. communication and expectation alignment
3. timely decision making is a commitment of all project stakeholders to provide the right people, expertise and authority to solve collective problems in the most expedient manner
4. ensure timely payment of work performed so as not to financially burden private industry especially small businesses which are the vast majority of construction prime and subcontractors; and utilization of best practices is essential to attract industry.

Provided are AGC’s recommendations for a streamlined change order/modification process, USACE personnel key performance indicators, leading indicators for early detection and correction to improve project delivery outcomes, and best practice suggestions.

# The 60 Calendar Day Change Order Process

(AGC Recommendations for USACE Change Order/Modification Process)

## Overview of the 60 Calendar Day Change Order Process

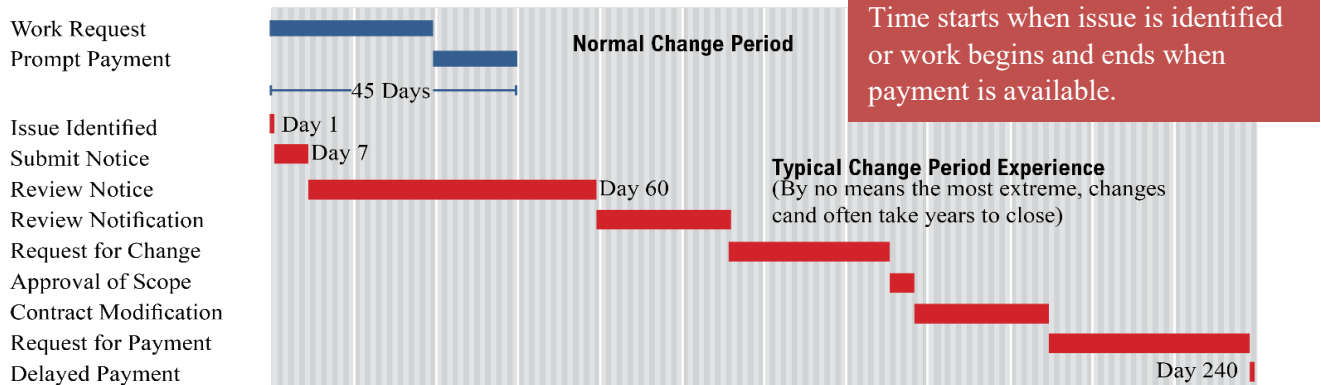
This section identifies what AGC believes is a more efficient USACE change order/modification process that provides for early and frequent collaborative discussions, improves overall understanding and alignment of the work to be performed, expedites decision making at the proper levels, and reduces the financial burden for the construction community.

Construction projects are subject to a wide array of variables that may require USACE to alter its initial plans through a change order/modification. The concern is not with reasonable delays and changes to the initial contract. Rather, AGC members' concerns rests with USACE bureaucratic processes that result in failure to execute many change orders in a timely fashion, and similarly, lengthy delays in paying contractors for changed work for months—and even years—at a time. Unsurprisingly, this delay causes serious harm to the project schedule and has a deleterious impact upon the prime, subcontractors, and small businesses which depend upon that cash flow to remain in business. Under the present and much slower USACE processes, months are often required to agree on the scope of pending modifications, the underlying clause(s) which prescribe compensation, estimating, preparation of pre- and post-negotiation memorandums, negotiating the cost and time impact, and the administrative

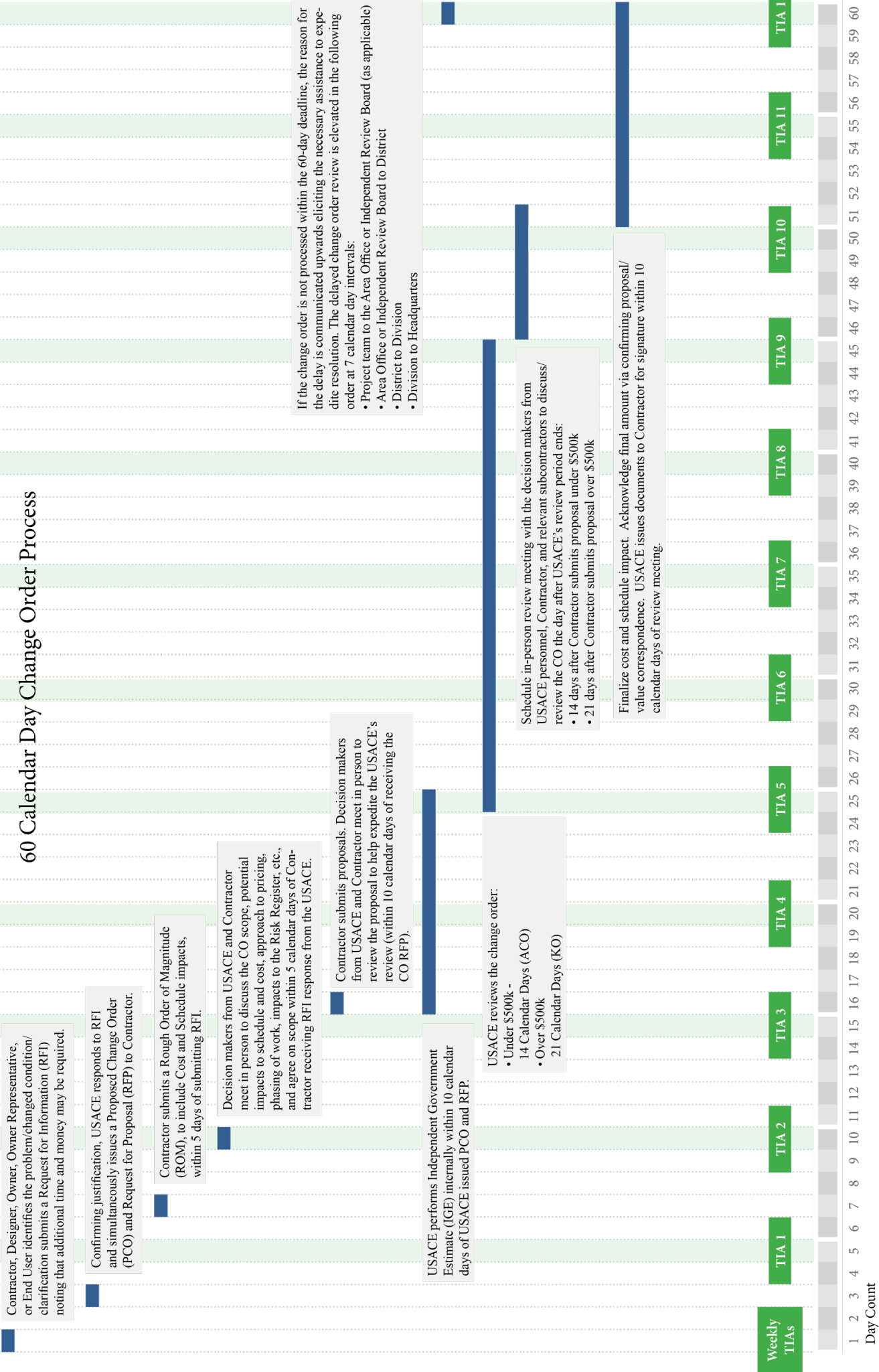
process of executing the change order/modification. Meanwhile, the passage of time adds impact and angst. The concept of bundling change orders for administrative ease further creates negative consequences for the project and contractors. The unfortunate result is that the original change or differing site condition is often lost or combined with other changes.

Further, AGC members find that projects are more successful and work progresses in a timely, sequential manner when USACE gives its representatives on site the direction and authority to make decisions. Empowerment to solve problems should be given to the lowest organizational level possible within USACE. When there are many levels of USACE decision makers, or when so many decisions are elevated above the field level, it decreases accountability, effectiveness and timely resolutions that ultimately delay the project schedule and increase project costs. In addition, the cause and effect of delays resulting from the lack of decision making authority at the field level makes it difficult for contractors to find resolutions to the issues and recourse that is fair and equitable. Once decisions go into the USACE administrative approval process it often becomes difficult for contractors to know who is responsible. AGC believes that if the USACE does more to champion effective formal partnering, improve communications, and increase the experience and talent development at the USACE, the resulting negative impacts will be substantially mitigated.

AGC submits the following recommendation: The 60 Calendar Day Change Order Process.



# 60 Calendar Day Change Order Process



## Key Performance Indicators for USACE Personnel Overview of Key Performance Indicators (KPI)

This section identifies what AGC members believe are the most important Key Performance Indicators (KPIs) for USACE's contracting and project management personnel. The ability of a project team to meet the desired project outcome is wholly dependent on individuals who meet their job responsibilities and work together effectively as a team with trust, communication and aligned goals. Effective personnel management is a function of awareness, relationships, recognition, accountability and metrics.

Use CPAR format “in reverse” to have contractors assess COE performance.  
Complete Joint CPARs two times on project, using feedback to:

- Identify location challenges and successes
- Drive improvement in challenges
- Identify strength to capitalize on

Recommendation metrics focus on technical competency, contract administration and relationships. These KPIs suggest that USACE must develop metrics that reward action and decision over inaction. USACE employees appear active and motivated to find problems yet disengaged in solving them. The recommended KPIs focus on ways USACE can incentivize action, decisions, and solutions. Further, AGC recommends that USACE should measure ACO/COR personnel by the same metrics by which the contractor is evaluated. Currently there is a lack of alignment; there are few incentives for USACE to expedite construction progress and every incentive to hinder progress in the field because current measurable metrics focus almost exclusively on finding problems and very little on solving them.

### List of AGC Recommended KPIs

- Expediting Construction and Response Time
- Partnering Approach
- Issue resolution
- Project Performance History

<b>CONTRACTOR CPAR Evaluation of USACE Project Delivery Team</b>		Moved Up	
		Neutral	
Legend: Unsatisfactory = 1, Marginal = 2, Satisfactory = 3, Very Good = 4, Exceptional = 5		Moved Down	
Rating Period		Eval Period 1	Eval
Date		Jan-18	Jan-19
<b>REQUIRED CPAR EVALUATION TOPICS:</b>			
<b>Quality</b>			
USACE provides adequate and timely review of Contractor's Quality Plan	4	4	4
Ability to maintain quality control of design elements incorporated into the prime contract	4	3	3
<b>Schedule</b>			
Takes appropriate corrective action in response to Client-directed changes effecting schedule	2	4	4
Review of material submittals and shop drawings promptly	5	5	5
<b>Cost Control</b>			
USACE is effective in administering the change processes resolving contract issues	4	5	5
USACE provides timely decision making on clear scope changes	3	4	4
<b>Management</b>			
USACE provides one point of contact for project director/decision maker	2	4	4
Effective management of USACE's "third party owner" during design and construction	2	4	4
<b>Utilization of Small Business</b>			
USACE is engaged and provides timely input and feedback with Small Business Plan implementation	5	5	5
<b>Regulatory Compliance</b>			
USACE timely review of certified payrolls	3	3	3
<b>OTHER CPAR EVALUATION TOPICS:</b>			
<b>Compliance with Safety Standards</b>			
USACE provides adequate and timely review of Contractor's Safety Plan	2	4	4
All USACE personnel are actively involved in the contractor's safety program	2	4	4
The USACE team is integral to the project safety culture.	3	4	4
<b>Design Performance (Design Build)</b>			
USACE is engaged and collaborative through design process	4	4	4
USACE provides timely reviews and approvals	3	4	4
USACE manages the design process in accordance with the contract documents	3	4	4

### 1. Expediting Construction and Response Time

Measurement of this KPI by USACE is needed to obtain USACE personnel buy-in into meeting project schedule objectives and to reduce delays caused by a lack of timely decisions/dissemination of information critical to progress in the field. Measuring these metrics will incentivize USACE personnel to find faster solutions to problems faced by the project team rather than simply identifying problems.

Incentivizing USACE personnel to solve problems and expedite construction collectively as a team with the contractor will minimize delays and waste caused by a lack of timely decisions. This KPI includes such items as fast turnaround of RFIs, reducing resubmittals that place administrative burden on the Contractor and provide little value added to the project, reducing spurious/irrelevant deficiencies and DrChecks, the USACE system for capturing design comments. AGC believes tracking response times (and instituting prescribed allowable/mandated time frames for responses) will benefit the project and USACE in resolving issues before they become detrimental to the successful completion of the project resulting in on time delivery and greatly reducing claims, cost and schedule growth.

### Recommendations

- AGC recommends a "scorecard" for USACE personnel that considers the following metrics:
- Average RFI turnaround times
- Percentage of RFIs reissued due to non-answer
- Average submittal turnaround time
- Percentage of Construction & Engineering coded submittals and resubmittals
- Average response time to request for direction
- Time to close deficiencies after opening
- DrChecks comments (Number and closure time)
- If/when those trackable items meet or exceed the allowable time period for response, next level management shall engage and require the overdue response.
- Trust Indicator – an informal questionnaire before the partnering meeting indicating the level of trust (1-10) between Contractors, clients or other stake holders.

The screenshot displays a project dashboard with several widgets:

- Custom project links:** A grey box with a plus icon.
- InEight Estimate:** A blue box with a "Launch application" button and "PROJECT SUITE" logo.
- Members:** A dark grey box showing "18" members with a plus icon.
- Employees:** A dark grey box showing "23" employees with a plus icon.
- Equipment:** A dark grey box showing "25" pieces of equipment with a plus icon.
- Control:** A white box with a "Manage budgets and forecasts" button.
- Bid packages:** A white box showing "Awarded: 0" and "Unawarded: 0".
- Contracts:** A white box showing "Executed: 5" and "Non-executed: 1".
- Supporting documents:** A white box showing "Pending: 6", "Rejected: 0", and "Expiring: 0".
- Change management status:** A white box with a legend for "Closed", "In Pro..", and "Active", and a table for "Issue", "Potential client change orders", and "Client change orders".
- Project:** A white box with a "View project documents" button.
- Project settings:** A white box with a "View project settings" button.

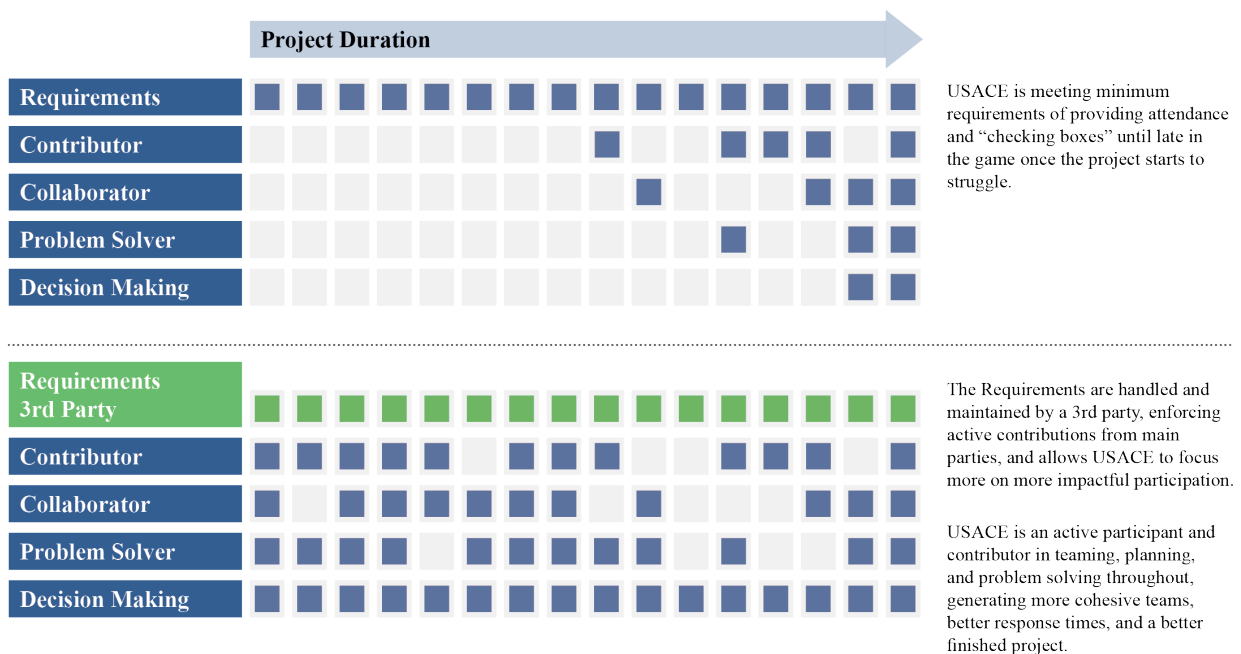
A red callout box at the bottom right contains the text: "Project Dashboards could be created to provide early feedback on selected Key Performance Indicators or Leading Indicators".

## 2. Partnering Approach

This KPI measures collaboration between USACE, Designer and Contractor, and key stakeholders of the project. Contractors feel that partnering has increasingly become a "check the box" exercise for USACE personnel rather than an integral component that facilitates positive project outcomes. When trust between the USACE and contractors is low, it leads to duplication of efforts, wasted time in disputes, and a lack of collaborative solutions that delay projects and drive cost overruns. AGC does not view this KPI as a "popularity contest," but rather a metric to measure the partnering culture of the overall team, which is driven by USACE, Designer and Contractor leadership. Trust is the foundation of successful outcomes, and returning partnering from an exercise to a foundational aspect of project delivery is critical to building this trust.

## Recommendation:

AGC suggests that the initial formal partnering session, facilitated by a third party, for the project be followed up by regular surveys that measure key metrics such as decisiveness, trust, fairness, and cohesion of the overall team. USACE should adopt an Acquisition 360 evaluation<sup>1</sup> process which would include key stakeholders such as USACE, contractors, designers, subcontractors, and government end users. Further, AGC believes that greater partnering would drive home the message that success can only be obtained if shared, and is the result of a collaborative team working towards shared goals rather than solely determined by the contractor's performance.



<sup>1</sup> In 2015, the Administrator of the Office of Federal Procurement Policy issued guidance for Acquisition 360 for IT projects. AGC recommends USACE develop a similar approach for project delivery. Rung, Anne E. (2015). Acquisition 360 – Improving the Acquisition Process through Timely Feedback from External and Internal Stakeholders (Memorandum). Washington, D.C. Office of Federal Procurement Policy.

Retrieved from: <https://obamawhitehouse.archives.gov/sites/default/files/omb/procurement/memo/acquisition-360-improving-acquisition-process-timely-feedback-external-internal-stakeholders.pdf>. See Also: FAR Case 2017-014. Retrieved from: <https://www.acq.osd.mil/dpap/dars/opencases/farcasenum/far.pdf>

### 3. Issue Resolution

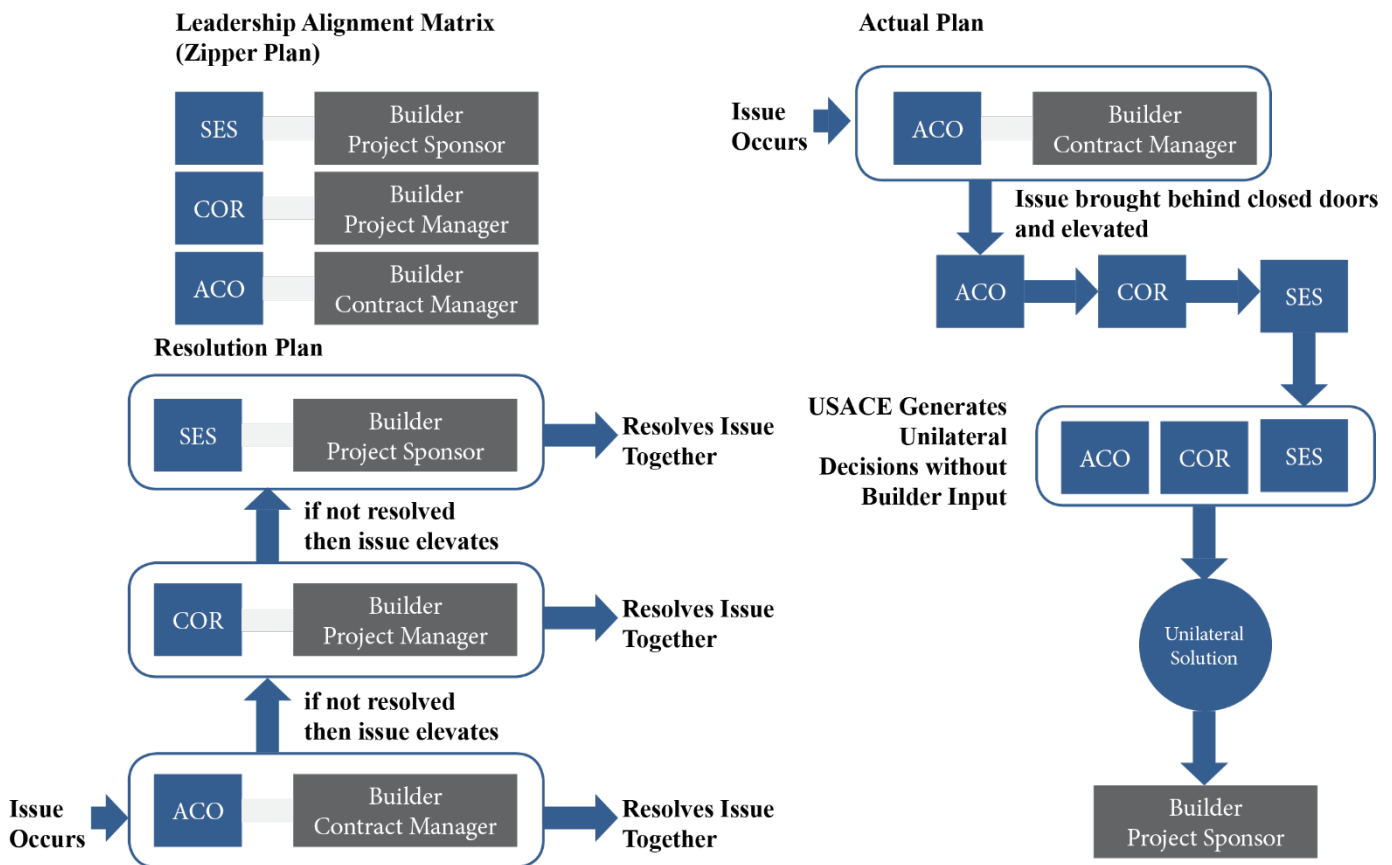
This metric measures the ability of USACE personnel (specifically ACO/COR/KO) to collaboratively resolve issues with the contractor to facilitate progress in the field. AGC believe that partnership between USACE and contractors has eroded significantly in recent years. Measuring this KPI will help incentivize USACE personnel and contractors to work together to find solutions to critical challenges, rather than elevating issues or relying on the dispute resolution process within the FAR. Benefits include more collaborative and enhanced solutions; less conflict; less wasteful effort in written disputes/letter writing; and more efficient construction administration.

### Recommendation

AGC suggests a "scorecard" for USACE personnel that takes into account the following metrics:

- Time to issue/resolve modifications
- Number of unilateral modifications
- Percentage of REAs/claims submitted by Contractor
- Dispute letters issued
- Hotlist items resolved monthly
- Trending of average schedule float
- Schedule earned value - comparison to baseline
- Trust Indicator – an informal questionnaire before the partnering meeting indicating the level of trust (1-10) between Contractors, clients or other stake holders.

Diagrams depicting a functioning relationship for problem solving, and the actual experience builders have with USACE.





#### 4. Project Performance History (per project)

This KPI measures the number of disputes and/or claims. AGC believes evaluating the history/quantity of claims and/or disputes that a Contracting Officer has on his/her projects may be an indicator of the ability/inability to effectively communicate with the contractor, resolve problems and create a collaborative culture of success on the project(s). By measuring the quantity of claims and disputes by personnel, common denominators may be identified. It is highly likely, when investigating/reviewing the history of the claim(s), repetitive scenarios are present. By identifying and resolving those contractual and/or communication issues, future projects may resolve the issues before they turn in to claims.

#### **Recommendation**

AGC recommends that USACE identify the Project Manager and Contracting Officer per project claim. USACE should then identify the root cause/source of the claim. Afterwards, USACE should evaluate what caused the issue (RFI, change order, unforeseen condition, design issue, etc.) to evolve from a contractual discrepancy or disagreement into a claim.

# Leading Indicators

## Overview of Leading Indicators

This section identifies what AGC believes are the five (5) important leading indicators that should provide an early warning that unless there is a change of course, a problem(s) is likely to occur. These leading indicators, when discussed regularly with the proper stakeholder personnel, will allow USACE to take actions that will mitigate potential negative consequences.

- Failure to Partner or Practice Formal Partnering
- Open/Unresolved Issues
- Inexperienced Project Lead
- USACE Project Personnel Not Empowered to make Decisions
- USACE Personnel Turnover

### Leading Indicators:

#### 1. Failure to Partner or Practice Formal Partnering

During the past five to seven years AGC members have observed a severe reduction in project level partnering. Many see partnering as becoming the exception rather than the rule. When USACE partnering sessions are held it is often done under “informal partnering.” Supplementing “formal” partnering with “informal” partnering is inadequate because there lacks accountability for the team goals and metrics of the project. For partnering to be effective, representatives with authority on USACE and contractor staffs must be involved. The greatest problem in this area is the lack of USACE District or Division participation on a periodic basis. As a result, there can be a lack of oversight on the project that can lead to problems. Without involvement of personnel with authority on the project or engagement in a proactive manner, problems that could have been addressed often fester until a District or Division office can no longer ignore it. By requiring that USACE engage in proactive, periodic meetings at the District/Division levels, problems can be identified either before they happen or before they become worse. Formal partnering will help change the culture on projects where USACE will be more inclined to help solve problems and make decisions. For partnering to be successful, all parties involved

must: start early and commit to a regular schedule (quarterly or biannually) and partnering process during the initial preconstruction meetings; agree on a lead from each party for each session; the leads should meet with the Facilitator beforehand to agree on agenda and discussion materials; maintain issue tracking document to support accountability and resolution; and the group should be kept to a manageable size (6-10 total) of decision makers and project champions.

	USACE			Builder		
	ACO	COR	KO	District Manager	Project Manager	Contract Manager
Partnering	■	■	■	■	■	■
Kickoff	■	■	■	■	■	■
Play of the Day			■		■	■
Day to Day issue Resolution			■			■
Play of the Day			■		■	■
Periodic Participation	■	■	■	■	■	■
Play of the Day			■			■
Day to Day issue Resolution		■	■		■	■
Play of the Day			■			■
Major issue Resolution	■	■	■	■	■	■
Play of the Day			■			■
Day to Day issue Resolution			■			■
Milestone	■	■	■	■	■	■

## 2. Open/Unresolved Issues

When USACE personnel fail to timely process and pay change orders, the contractor is left with few options and the project suffers. RFIs not answered or not answered in a timely manner, submittals not reviewed/returned in a timely manner, long outstanding change orders, no reply/response to emails and phone calls all lead to costly delays and, ultimately, puts undue risk on the contractor to, in some cases, self-fund the project, move forward without concurrence from USACE to try to finish the project on time and minimize the financial risk associated. AGC recommends the following metrics to be tracked:

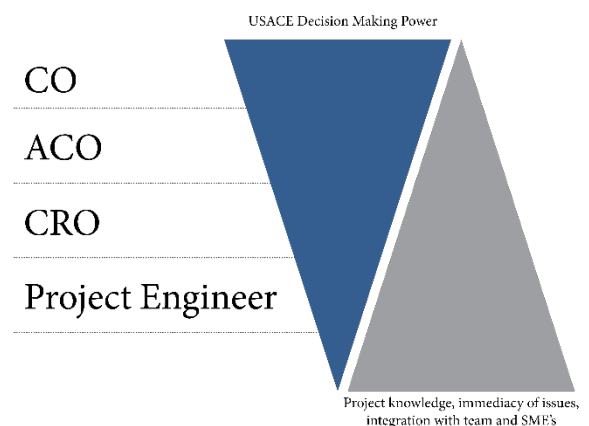
- Agree to reasonable, timely response times for RFI's, submittals, change orders, etc. on for each project during the partnering process;
- Utilize and assign the Green, Yellow, Red status of response times by each party.

## 3. Inexperienced Project Lead

As with most endeavors, inexperienced leadership can result in problems on the job. USACE project leadership is no exception. Inexperienced USACE project leaders need to be mentored into management positions and have access to those mentors to discuss problems and assist in resolving complicated issues.

## 4. USACE Project Personnel Not Empowered To Make Decisions

AGC members find that projects work best when USACE gives the representatives at the jobsite the direction and authority to make decisions. If the Contracting Officer and/or Specialist does not have actual authority to make binding/final decisions on contractual and financial issues, the project is set up for failure. Field and area office level employees must be empowered and encouraged to make binding decisions.



## 5. USACE Personnel Turnover

AGC members have seen turnover of USACE personnel often accompany a lack of trust, lack of communication, repeated and unnecessary inspections, etc. Heavy turnover in staff combined with the low participation in partnering sessions is a leading indicator that problem on the project pose are a significant risk.

# Additional AGC Recommendations

## Overview of Additional AGC Recommendations

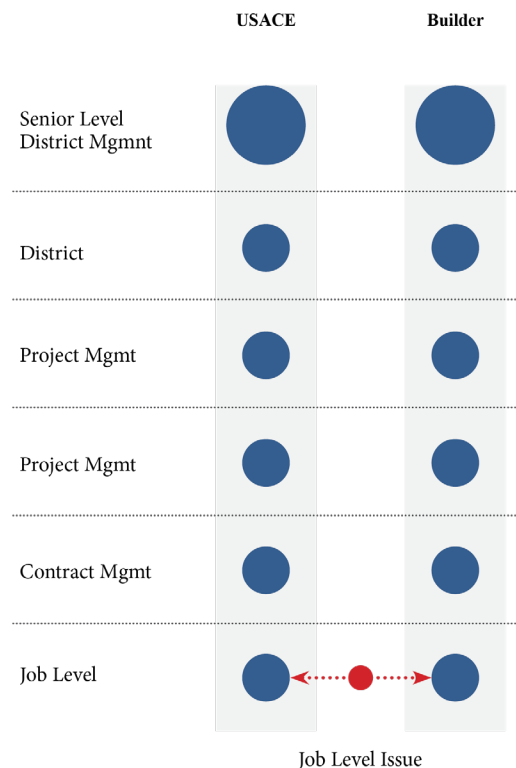
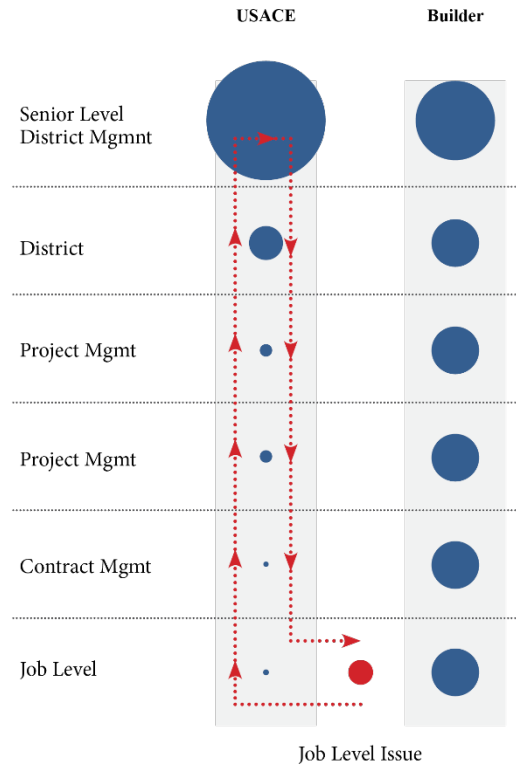
The original focus of the AGC working group was to make recommendations on a limited number of items. However, from the internal discussions of the AGC working group there emerged several additional recommendations impacting the four (4) guiding principles. AGC submits these additional recommendations for USACE consideration.

- Bureaucracy
- Cash Flow and Schedule Impact
- Shift Culture from Negotiation to Transparency and Verification
- Improving Budgets, RFP Estimates, and Performance

### Bureaucracy

The USACE bureaucratic process often makes it difficult to secure timely decisions on a project. There is a lengthy process for USACE personnel in the field to obtain someone from the District/Division/HQ to approve the change. Decision-making is not often permitted nor encouraged at the lowest possible levels (lack of empowerment of the ACO - i.e. \$500,000 real cost warrant). Often key USACE personnel do not have the authority or are fearful of making the wrong decision that, as a result, USACE field representatives wait for District/Division offices to tell them what to do. USACE previously delegated authority during the 2005 BRAC years and projects were completed more timely than today.<sup>2</sup> Additionally, USACE is generally behind the curve on adapting technology that has become common place in the private sector. AGC members believe that USACE should embrace new forms of technology that will increase productivity, communication between USACE and contractors, and tracking the metrics listed in this paper. AGC recommends USACE HQ empower USACE

personnel at the lowest level to make decisions, and incentivize lower level personnel to make good decisions that benefit the project. USACE should make every effort possible to eliminate or limit the bureaucratic speed bumps whenever possible.



<sup>2</sup> It is the basic principle of USACE ECB 2016-16.CB that this organizational structure should not be limited to mega projects for effectiveness.

### Cash Flow and Schedule Impact

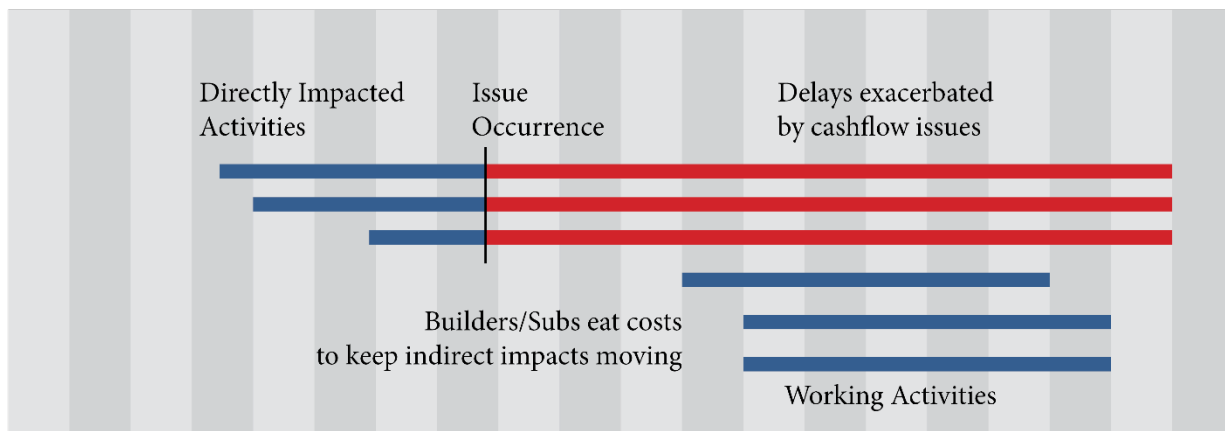
One of the greatest challenges contractors face when working with USACE is delay in processing change orders disrupting cashflow on the project. Cashflow is the oxygen that keeps the construction project functioning. As with most things, if you cut off the oxygen the entity will quickly wither. Construction projects are no different. Funds for a change order may not be available at the time the change work must be completed. When a federal agency fails to process and pay a change order in a timely manner, the contractor is left with few options. In the interim period, the contractor tries—as best as possible—to work around the issue. Depending on the issue, the contractor can be left in the precarious position of either (1) self-financing the work to meet project schedule; or (2) stopping work altogether. Either option generates real problems and threats, especially, to small businesses. When work must be stopped or slowed down because of the untimely processing of change orders, overhead costs remain. If demobilization and remobilization are required, this often results in unnecessary and inefficient costs related to the use of equipment. Contractors go to great lengths to keep the project going, but there are times when the agency issued change orders dictate the schedule. Rather than consider value engineering solutions or descoping portions of a project, USACE personnel often wait until additional funding is received before executing the CO. USACE should consider value engineering and increasing in contingency funds allocated for projects.

### Shift Culture from Negotiation to Transparency and Verification

AGC members believe USACE should work to create the paradigm that changes the agency perception that change orders are a verification rather than a negotiation. Contractors submit statements of truth and accuracy of the pricing for the change order, just like invoices, but often the USACE manuals describe the process as a negotiation. AGC believes USACE should encourage transparency in change order verifications by showing line items and sources for Internal Government Estimates (IGE) if there are discrepancies with contractor pricing. Such a process would help to justify decreases and increases to line items. USACE HQ should encourage sharing of the IGE with Contractors during negotiations. The ability to discuss the IGE allows the identification of discrepancies or scope differences between the contractor's proposal and the IGE, allowing collaborative resolution of differences and highlighting potential errors or omissions.

### Improving Budgets, RFP Estimates

AGC appreciates that USACE recognizes the value in early contractor involvement during the design phase and the limited utilization of the early contractor involvement (ECI) project delivery method. However, AGC Contractors are often dissatisfied that this tool, used by the private and other public-sector owners, is underutilized by USACE in comparison with other federal agencies. The U.S. General Services Administration (GSA), for example, has used its version of ECI—Construction Manager as Constructor (CMc)—regularly and with success for more than a decade. GSA's internal study



demonstrates CMC provided desirable outcomes. AGC recommends USACE undertake regulatory action needed to level the DFARS playing field so that it can utilize ECI as USACE undertakes its reforms.

AGC members note increasing frustrations with the quality of responses to RFIs across the country. A Lowest Price Technically Acceptable (LPTA) environment requires clear answers for contractors to best tailor their proposals to meet USACE’s needs. However, contractors typically receive responses to their questions that provide no further information or clarification but simply state, “refer to the RFP,” or worse, no response at all. When answers to RFIs are issued, contractors sometimes question whether agency contract administration specialists communicate with engineering/construction specialists on the response.

A general sense among contractors is that contracting administration specialists fear bid protests and see the RFI responses as a possible cause of or support for a bid protest. Contractors tend to believe that the current unresponsive/uninformative nature of the RFI system is based on this fear. The uncertain release of RFI responses is another source of contractor frustration. In some cases, RFIs go unanswered for weeks. Then, on an unannounced date, USACE releases a barrage of RFI responses. Additionally, contractors note that when RFI responses or amendments to RFPs are issued, they are often very close to the final bid deadline with little or no time extension provided to effectively alter proposals. Confusion may also exist as to when an RFI response is incorporated into the RFP or not.

To address these issues, AGC recommends that USACE institute a policy where RFIs should never include any derivation of the phrase “refer to the RFP” or “Bid as written and per Amendment X.” If there is a RFP section that answers the question, a direct citation to where in the RFP the answer exists should be required. In addition, AGC suggests instating policy that: (1) that provides a minimum deadline of 7 to 10 days before the RFP deadline for substantive RFP amendments, allowing for sufficient time for industry to alter proposals; and (2) clearly states whether an RFI response acts as an amendment to the RFP or not, as this can sometimes be a source of confusion. Lastly, to avoid mass numbers of RFIs and amendments, AGC recommends the attachment of a draft RFP with any presolicitation notice. As a result, the majority of RFIs and amendments would likely be made prior to the release of the final RFP.

## Conclusion

AGC appreciates the opportunity to provide our insights with USACE to advance our common goals of proving a highly motivated team environment based on trust and mutual respect, fair business practices, and aligned definition of success. AGC believes the above recommendations will help ensure a brighter future for the construction industry, USACE, and our nation.

