

FEDERAL OWNERS' FORUM

Summary Report
May 4, 2017



Convened by Design-Build Institute of America
and Society of American Military Engineers

INTRODUCTION

Federal agencies face unique challenges delivering high quality, innovative projects while also providing the best value for the American taxpayer. These challenges include shifting priorities, resource and budget constraints, differing mandates, socio-economic procurement goals and an often unpredictable funding/appropriations process. Further, projects must be delivered in with existing federal regulations and individual agency practices.

The Design-Build Institute of America (DBIA) and the Society of American Military Engineers (SAME) have joined forces to host a series of federal forums.

The primary goal is to facilitate improvement in federal project delivery by bringing together officials with similar responsibilities from different agencies – and thus different cultures and specific charges — to compare experiences, concerns, best practices, lessons learned, effective tools and methods for success.

We hosted 11 industry leaders from eight federal agencies at this year's Forum. This select group continued the collaborative process began at our first session in 2016 to identify methods and strategies which optimize federal project delivery. The participants last year were key decision-makers in their agency's design and construction programs. This year we invited primarily procurement and contracting professionals to expand the conversation and capture that key aspect of improving project delivery.

Most importantly, this year's participants not only provided their perspectives, but they also built on the challenges and proposed solutions from the 2016 Forum to help define the path forward for Federal agencies eager to optimize the benefits of alternative project delivery methodologies.

In general the discussion included:

- Procurement professionals' key role in achieving an agency's mission and goals;
- Fostering a culture of collaboration;
- The strategic (vs. transactional) aspects of procurement;
- Methodology for determining selection factors;
- Managing risk vs. risk aversion;
- The important role legal counsel plays in project delivery;
- Attracting and retaining talent.

These discussion points have been further classified into three (3) buckets:

- The Right Tools
- The Right People
- The Right Processes



In addition to DBIA and SAME leaders and facilitators, the following agency representatives participated:

U.S. General Services Administration

[Chaun Benjamin](#)

Acting Assistant Commissioner for the Office of Acquisition Management

U.S. Army Corps of Engineers

[Timothy D. Black](#)

Jacksonville District, District Contracting Chief

National Aeronautics and Space Administration

[Jeffrey Cullen](#)

Director, Analysis Division, Office of Procurement

Federal Highway Administration

[Aimee Drewry](#)

Director, Acquisition Policy and Oversight, Office of Acquisition and Grants Management

Architect of the Capitol

[Jacob Edwards](#)

Program Manager

Federal Law Enforcement Training Centers

[Richard Formella](#)

Chief, Bio-Containment Contracting Branch

U.S. Army Corps of Engineers

[Denver Heath](#)

Principal Assistant Responsible for Contracting — Dallas

Architect of the Capitol

[Tony Hutcherson](#)

Head of Procurement/Contracting Division

U.S. Department of Veterans Affairs

[Katie Kuehn](#)

Director, Acquisition Support, Central Division

U.S. Army Corps of Engineers

[Kenny Simmons](#)

Headquarters, Construction Branch

U.S. Department of State

[David W. Vivian](#)

Chief, Architectural-Engineering (Contracting) Branch

What follows provides an overview of the key issues and challenges discussed along with Proposed Solutions to further enhance project delivery in the federal sector. DBIA and SAME will continue to work together and seek out additional allies to implement the solutions and promote improvements.

We will build on this and the 2016 Forum to further refine the challenges, define and implement the solutions. We also will continue to bring new agency partners into the collaborative problem solving process that is at the heart of the Federal Owners' Forum Series.

Sincerely,



Lisa Washington, CAE

Executive Director/CEO

The Design-Build Institute of America



Brig. Gen. Joe Schroedel, P.E. F.SAME, USA (Ret.)

Executive Director

The Society of American Military Engineers

THE RIGHT TOOLS

THE FEDERAL ACQUISITION REGULATION (FAR):

Inconsistencies in applying the FAR continue to be prevalent among agencies and procurement professionals. An important part of managing risk is knowing and understanding the difference between “may” and “shall” in regulations and particularly the FAR. Successful procurement professionals adhere to the requirements, but also understand the flexibility that exists within the regulations to foster greater innovation and more successful outcomes.

In the Statement of Guiding Principles for the Federal Acquisition System [FAR 1.102 (d)] it is stated:

(d) The role of each member of the Acquisition Team is to exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer’s needs. In exercising initiative, Government members of the Acquisition Team **may assume if a specific strategy, practice, policy or procedure is in the best interests of the Government and is not addressed in the FAR nor prohibited by law (statute or case law), Executive order or other regulation, that the strategy, practice, policy or procedure is a permissible exercise of authority.** (Emphasis added)

In addition, the White House Office on Federal Procurement Policy has issued three memoranda which dispel many misconceptions as it relates to appropriate communication between federal owners and industry professionals during pre-award. These important tools for agency officials include the following:

- February 2, 2011 — “Myth-Busting”: Addressing Misconceptions to Improve Communication with Industry During the Acquisition Process
- May 7, 2012 — “Myth-Busting 2”: Addressing Misconceptions and Further Improving Communication During the Acquisition Process
- January 5, 2017 — “Myth-Busting 3”: Further improving Industry Communication with Effective Debriefings.

Even with this additional guidance, misconceptions surrounding what the FAR allows continue to adversely affect innovation in project delivery.



Greg Gersch
Graphic Recorder
Illustrated at Forum on May 4, 2017

Proposed Solutions:

- *Create Uniform Regulatory Definitions: Develop clear guidance on what is allowable, as well as clarify the flexibility and opportunities to increase innovation within federal regulations.*
- *Define the FAR's Role as a Tool: Determine ways to provide consistent education and training across Federal agencies to define the FAR as a tool, clarifying what it requires and allows, how rare protests are (especially successful protests), and generally thinking "out of the box" when using the FAR in helping to achieve exceptional outcomes in project delivery.*
- *Provide more Streamlined Consolidation of Smaller Contracts: Federal agencies have some authority to consolidate smaller contracts to ease administrative burdens and increase efficiency. However, for some agencies the threshold of \$2 million is very low and should be revisited and increased. This relatively simple change could greatly assist in streamlining the entire process, allow for better allocation of resources, but not compromise quality or innovation.*

THE RIGHT PEOPLE

Procurement professionals are uniquely positioned to play a key role in driving agency goals, to innovate and to be part of the larger team that delivers successful projects, helping to shape our nation. As with any profession, however, there are challenges that, if addressed, would further enhance their ability to help drive success.

WORK FORCE CAPACITY

The sheer volume of work faced by professional federal agency officials often leaves them no choice but to fall back to doing things "the way it's always been done." While not intentional, this vicious cycle works against innovation and the ability to seek and embrace new ideas. It also leads to a risk-averse environment.

Agency officials have the important role of oversight, yet lack of staff capacity and/or experience can lead agencies to be overly conservative and default to the status quo rather than try alternative delivery methods which could provide more time and budget efficiencies. This lack of staff capacity often extends to the project sites where the ability for some agencies to devote adequate staff to on-site involvement and management is hindered.

Funding constraints and/or uncertainty are driving these work force capacity issues and the various challenges they generate. The constraints and associated uncertainties directly affect the agencies' ability to build adequate and useful acquisition tools in advance of identifying needs.

Size matters, however. It appears easier to be successful on a large or high-profile project which is typically provided dedicated staff. Nonetheless, there are real challenges with smaller projects. Agencies simply don't have the staffing capacity to manage smaller projects as effectively. Many small projects have big impact, so the staffing need doesn't change because the project size is smaller.

SKILLED LABOR SHORTAGE

The shortage of skilled labor across the AEC industry is a challenge that both agencies and industry firms know well. These shortages affect the entire project delivery cycle. It affects contractors' ability to respond adequately to federal agency contracting requirements, and it affects agencies' ability to harness the innovation that can come from effective communication and partnering with industry. Creating the workforce we need to grow and improve as an industry spans far beyond just the Federal sector. As such, this is an issue that will be explored further at future forums and other appropriate venues.

THE LEGAL COMMUNITY

Legal counsel serves an important role on all projects and a big part of their job is managing risk. Unfortunately, this sometimes leads to or enhances cultural risk-aversion that, in turn, stymies innovation that could add value to the process and the project. Engaging the legal community in a dialogue with program managers and procurement professionals must be a top priority. Such a dialogue must focus on risk identification, mitigation and management, as opposed to risk aversion, as well as pursuing the use of flexibilities within the FAR to enhance use of innovative contract vehicles for solution delivery.

One example of such an issue is the use of Guaranteed Maximum Price (GMP) contracts. Department of Defense agencies were offered as specific examples where GMP could be effectively utilized. However, advice from legal counsel has been inconsistent with some agencies believing it is allowed by the FAR and others disagreeing.



REPORTING REQUIREMENTS

The burdensome amount of reporting, sometimes duplicative, takes away from the ability of professionals to do their core jobs. Reporting requirements should focus on what is truly needed, is in the interest of the American people and can be completed effectively and efficiently.

Proposed Solutions:

- *Streamline Reporting Requirements: Stakeholders should work with agency leadership, Office of Management and Budget, and Congress to reduce the reporting workload.*
- *Increase Training: Standardized, consistent training for agency staff is important and adequate resources should be explicitly dedicated to this effort. Areas of focus should include:*
 - ◆ *Understanding the differences among project delivery systems.*
 - ◆ *Team training — including, procurement officers, project officers, attorneys to foster a joint understanding of what each faces.*
- *Reform the Protest Process: Contract managers in many agencies are graded, among other things, on the number of protests they receive. In fact, the current system incentivizes contract managers to avoid protests at all costs. This leads to an environment that limits innovation and creative thinking due to a lack of risk management. Determine ways to change the focus from “avoiding protests” to “ensuring successful outcomes for all.” Procurement professionals should not feel their job is endangered because a protest has been filed. Methods and strategies should be explored to develop incentives for contractors to prevent frivolous protests. In addition, agencies should consider wholesale reform to the protest process to remove negative incentives.*
- *Host a Federal Forum Including Legal Counsel: Providing a forum for legal professionals from across the federal agencies will allow stakeholders to engage in a similar discussion on the many shared issues raised and solutions proposed here.*

THE RIGHT PROCESS

Having the right tools, as well as understanding the challenges and realities of source selection and the competing interests is essential. Too often, aversion to risk coupled with resource and staff constraints lead to less project innovation.

SOURCE SELECTION

The Federal government is sometimes viewed as overly risk averse by many in the contracting community. In many instances, this can directly affect the engagement of premier contracting teams and their interest in pursuing projects. Further, contractors are growing increasingly worried about the volume of back-logged change orders, the pace at which they are resolved and the perceived design discrepancies that lead to those change orders. Contractors want to see timelier decision-making among agencies and the processing of Requests for Information (RFIs) sped up. This not only helps industry better manage resources and cash flow, but it helps streamline processes for the agency if timely decisions are made.

Agencies are sometimes competing with each other because the best contractors will work with the agencies that most effectively manage the project delivery schedule and/or appropriately allocate risk. Contractors and Federal agency officials need to work together to keep communication channels open. Unfortunately, there is a concern the divide between Federal agencies and the contractor community is growing.

All agencies want to ensure that the most highly qualified teams respond to their solicitations. Selecting the right team varies from project to project and agencies must be prepared to make a selection in the best interest of the project. There are a number of procedures, practices and tools seen across various agencies that may be helpful and/or examples of good practices when conducting source selection:

- Two-step procurement procedures where qualifications are the focus of the first step work well and is encouraged. As part of the process, agencies should appropriately shortlist the number of proposers that will provide the best opportunity for obtaining high quality competition.
- Federal agencies should offer a reasonable stipend to unsuccessful shortlisted proposers when the proposal preparation requires a significant level of effort. This clearly demonstrates to the contracting community that the agency is serious about producing top-notch projects, and will attract the most highly qualified teams.
- Gathering as much information as possible from contractors during the RFQ and RFP process is a great tool. Holding *Industry Days* not only generates interest in a project but also provides useful information which can be gleaned throughout the process.
 - ◆ Such *Industry Days* can also be helpful to simply gather information on the market or a specific market sector. They do not necessarily have to be tied to a project. Industry is generally very interested in participating and exploring options and opportunities.
 - ◆ Because subcontractors are responsible for a large percentage of the work on most projects, bringing in the key subcontractors for *Industry Days* is also important.



Proposed Solutions:

Proposed Solutions:

- *Improve Inter-Agency Communication:* There is much that can be learned from other agencies. Agencies should share source selection plans with each other on a more frequent basis. Although not all issues and specifics will be relevant, different perspectives and approaches can breed further improvements and creative thinking.
- *Standardize Forms.* The use of model templates and software to generate RFPs and RFQs whenever possible is strongly advocated, especially for facilities with standard design parameters.

SENIOR OFFICIALS

The typical contracting officer oversees a project from beginning to end. However, there are concerns that in too many cases senior officials spend the majority of their time and energy managing the pre-award activities and processes and not enough on the post-award phase of the contract. This concern is likely associated with funding constraints and capacity issues mentioned above. In any case, it has the effect of signaling to subordinates that the primary focus is on the pre-award phase. This naturally effects how effectively contracts are administered.



CONTRACTOR PERFORMANCE ASSESSMENT REPORTING SYSTEM (CPARS)

A contractor's past performance is one of the best indicators of their success on future projects. That means having good, reliable information on past performance is essential. CPARS is an online tool that collects and manages reports on the assessment of a given contractor's performance, both positive and negative, on a specific project or for a specific time period. It is intended to provide a source for vital information on contractors' past performance to agency officials when making key source selection decisions.

However, echoing many of the same concerns raised by their colleagues during the 2016 Federal Owners' Forum, it was generally agreed that CPARS needs improvement. The importance of CPARS is not generally understood or appreciated. It is too often seen as merely another reporting requirement that needs to be "crossed off" the to-do list. That, along with tight schedules, limited staff resources, and a general risk-averse atmosphere has contributed to CPARS being a much less valuable tool than it should be. All too often contractors are simply given satisfactory scores, where more robust useful reports are needed. This generally makes the system not valuable as a real source of contractor information.

Proposed Solutions:

- *Reform CPARS: The Naval Sea Systems Command (NAVSEA) developed and administers the CPARS system. Specific ideas for CPARS improvement should be developed and subsequently submitted to NAVSEA.*
- *Improve CPARS Education: Efforts to educate project delivery teams, senior leadership and the acquisition team on the importance and nuances of CPARS should be stressed. It needs to be impressed on the officials that accurate, timely and useful reports be made utilizing data from the entire team. Further leadership must understand the importance of CPARS and prioritize its usage.*
- *Balance Pre-Award and Post-Award Focus: Future Owners' forums and other platforms should discuss the issue of balancing officials' focus on all aspects of a project from pre-award through to completion. To assist in this, training for federal agency officials could be considered.*

Finally, procurement professionals are well suited to share their many ideas that would ease administrative burdens, allow for greater flexibility, and potentially improve project delivery. Some of these are administrative tasks for leadership while others would require Congressional action.

- The concept of a two-year or biennial Congressional appropriations/budgeting schedule is not new and would require Congress to change its long-held practice of an annual appropriations/budget schedule. A two-year process would give federal agencies increased certainty over funding levels and therefore allow for better long-term planning. Further, it would relieve agencies from the administrative burden of developing budgets as often.
- Where they are not already, agencies should consider leasing facilities from a contractor as opposed to buying them outright. This is an extra layer of insurance that the contractor will be invested in producing a project that can work since they will own and maintain it for some period of time.
- The “Acquisition 360” program was discussed as a tool to help Federal agencies enhance processes and increase productivity. It was developed by the White House Office of Management and Budget in 2015 and is designed to improve the acquisition process through feedback from both federal agency stakeholders and vendors and contractors. When used properly it gives all sides a clear understanding of capabilities and dynamics.
- For federal agencies, buying American goods, materials and services is important. The Federal government must be the lead in assuring American tax dollars put Americans to work. However, this must be balanced against also getting the best price for goods or services to assure American tax dollars are used wisely. These two imperatives sometimes appear to be in conflict and navigating, interpreting and implementing the various applicable provisions and clauses and their term definitions; their applicability under the Trade Agreements Act provisions and clauses; and the application of the Prohibitions provisions and clauses can be a daunting decision tree analysis when staffing capacity is already at issue. There needs to be consideration of clearer interpretation guidance, in order to understand the appropriate application, and when to consider and implement the flexibilities available when necessity requires that there be exemptions from *Buy American* provisions for key assets and materials.

CONCLUSIONS

There are consistent themes which emerged from the 2017 Federal Owners' Forum among procurement and contracting attendees which mirrored our 2016 discussion with their counterparts in the design and construction realm. Simply put, an agency needs the right tools, the right people and the right processes to deliver high-quality innovative and successful projects. But that's not enough. They also need a culture of collaboration that spreads across the agency and outside the walls to the contracting community. Leadership (in all forms) has an important duty in empowering and enabling agency officials to focus on what requires their greatest attention while providing the tools and procedures that work.



DBIA and SAME welcome ongoing input from industry — both owners and practitioners. Please let us know your thoughts on the topics and ideas in this summary, as well as your input on other issues, concerns and priorities not addressed here. It is only through our combined efforts that we can improve the industry as well as our nation.

To provide feedback please email Bestpractices@dbia.org. All comments received will be used as we continue to shape and evolve our partnership for the greater good.



About DBIA: The Design-Build Institute of America (DBIA) promotes the value of design-build project delivery and teaches the effective integration of design and construction services to ensure success for owners and design and construction practitioners. DBIA is the only organization that defines, teaches and promotes best practices in design-build project delivery.



About SAME: The Society of American Military Engineers offers professional and personal development, networking and community involvement to individuals of all ages committed to contributing to our national security, by leading a collaborative and focused coalition of organizations that creates opportunities to address and resolve issues that enhance our national security posture.

DBIA and SAME extend special thanks to our discussion leaders who used their extensive knowledge as prior federal owners to help stimulate thought:

Thomas (Thom) D. Kurlmel, DDes, AIA, DBIA — Colonel, U.S. Army (Retired)

While on active duty, Col. Kurlmel served from May 2004 to June of 2009 as the Senior Military Advisor and Chief of Staff to the Assistant Secretary for Health Affairs in the Office of the Secretary of Defense at the Pentagon. From May 2002 he led planning, budgeting and acquisition of all DoD medical facilities as Director, Facility Life Cycle Management Operations, in the Office of the Assistant Secretary of Defense for Health Affairs. Col. Kurlmel is currently president of TDK Consulting, LLC, a VA Certified Service Disabled Veteran Owned Small Business, specializing in health systems, infrastructure strategies, and team performance for both the public and private sector.

Craig H. Unger, DBIA

Craig Unger was appointed by the Attorney General of the United States in August 2001 to serve as the Justice Department's Federal Detention Trustee. As a career civil servant with over 26 years of service, he achieved the highest leadership role (Senior Executive Service) before retiring as a Federal Law Enforcement Officer with the Justice Department. Prior to 2001, Mr. Unger served as the Procurement Executive and Competition Advocate for the Federal Bureau of Prisons for over a decade. Additionally, Mr. Unger served as President of the Design-Build Institute of America from 2003 to 2004 and is regarded as a leader of the integrated project delivery design-build movement in the public sector. He is currently Principal and CEO of Unger Security Solutions, LLC, providing consulting services for acquisition management, project delivery, and advisory services for the security and detention environment.



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