Welcome to NAVFAC Overseas Contract Requirements – Part II, UFC/USGS/Host Nation/Fire Protection

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Speakers:
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- Mark McMillin, P.E., Fire Protection Engineer, NAVFAC EURAFSWA
- Greg Lewis, P.E., Senior Construction Manager, NAVFAC EURAFSWA
Contracting Overseas

Presented by
Cherie Mitchell
Contracting Overseas

• CONUS vs. OCONUS
  – SAM & FBO Registration Required
    • System for Award Management (SAM) https://www.sam.gov
    • Federal Business Opportunities (FBO) https://www.fbo.gov
  – Ncage/Cage Code Require
    • Cage Code: US Cage code is obtained at the end of SAM registration.
    • NCage Code: Requested through the NATO Support and Procurement Agency (NSPA). https://eportal.nspa.nato.int

– Understanding the Solicitation in its Entirety
  • Requirement/SPECs/Drawings
  • Evaluation Process
    – Basis for Evaluation
    – Factors
    – Submittal Requirements
    – Amendments
    – Pre-Proposal Inquiries
Contracting Overseas

– Modifications (FAR Part 43)
  • Contracting Officer Direction
  • Changes Clauses (FAR 52.243)
  • Time Extensions (Time Impact Analysis)

– REAs/Claims/Terminations
  • Understanding the solicitation/award
  • Right resources/subcontractors
  • Difficult/Rural locations

– FAR Clauses
  • Foreign Acquisition (FAR Part 25)
    – Trade/Other Agreements
    – Prohibited Sources
  • Taxes – US & Country Agreements (FAR 52.229)
    – Value Added Tax (VAT)
Contracting Overseas

– Large Diversity of Cultures and Countries
  • Availability of Materials, Skilled Labor
    – Poland, Romania, Africa

– Different Laws & International Agreements
  • SOFA
  • Host Nation Laws

– Licenses & Certifications
  • SOA Certificates
  • Work Classifications
  • Professional Licenses

– Language Barriers
  • Increased risk due to miscommunication
Contracting Overseas

• OCOUNUS
  – Base Access & Security Requirements
    • Local Nationals (LNs)
    • Foreign Nationals (FNs)
    • U.S. Citizens
    • Base Requirements
    • Customer Requirements

– Vendor Vetting
  • Formalized (CENTCOM) – Bahrain
  • Country/Government Established - Rota Spain, Africa First
Take Aways....

Understand the Requirement

Understand the Location

Utilize PPI/RFI Processes
UFC & UFGS Requirements

Josh Tomblin, PE
Capital Improvements
Design and Engineering Product Line Coordinator (Cl4), Acting
Design Requirements

Summary: Design to both, with the most stringent controlling.

Issues:
Most stringent – Good with similar requirements, but different levels
Conflicts – Ex. One code prohibits a material, the other requires it.
Differing Approach – US prefers sprinklers, HN prefers smoke detection

Approach: Need a common framework to understand how differences will be evaluated.
Product Requirements

- We define quality using US standards.
  - HN Products are expected to be used, but must be at least equivalent to US quality requirements.
  - Some specialty products may require US materials, and contracts call out where these specific products are required (rare).
Fire Protection Requirements

• Fire Protection Requirements in contract – multiple locations
• Qualified Fire Protection Engineer (QFPE) scope of work - Part 3 D40
• Design-Build RFP FP in Part 2, Part 3 D40, Part 4 D40 and UFC 3-600-01:
  • Recommend QFPE involvement prior to bid. QFPE is knowledgeable on code/requirements
  • QFPEs must complete a flow test per Part 3 D40 for most projects.
  • QFPE to attend the PAK meeting (Part 2 - 01_31_19.05_20 – 1.3.3).
  • The NAVFAC lead in coordinating the flow test with the base.
  • Recommend flow test performed during the PAK meeting
  • QFPE approval required for 35%, 65%, 100% and Final Designs.
  • Designs rejected if QFPE approval stamp or letter missing
  • QFPE is required to perform the following minimum site inspections:
    • Underground water main flushing.
    • Pressure testing of above ground piping
    • Bracing rough-in inspection BEFORE ceilings are installed.
      • 2-3 trips on large project
    • Pre-final inspection with 0 punch list items.
      • No back-to-back or same week final inspections.
  • NAVFAC FPEs require a 3 week notice for final inspection per most RFPs.
Fire Protection Issues

• Most QFPEs hired from the United States and this creates many issues.

1. EU standards are not well understood or implemented by US QFPEs
   • Coordination across 6-9 time zones has not proven to be successful.
2. Construction methods and materials differ
3. Travel costs for KTRs will average significantly more
   • An example – 30 hours of travel X 5 trips = 150 travel hours
     150 travel hours X $200/hour = $30,000 in added costs
4. Travel coordination issues with US based QFPEs.
5. Requests for QFPE to skip required meetings and inspections will not be approved

• EU and ME based FPEs working in the AOR.

• Our goal is to link the two communities together to help reduce costs and increase quality for NAVFAC and the contracting community.
Construction Contractor Training for Multiple Award Order Construction Contract (MACC) Design-Build (DB) Task Orders
Key Personnel - Contractor

• Where required by the contract, you must notify the KO and COR for the basic contract if there is a:
  – Proposed substitution of key personnel
  – Proposed substitution of key subs that differ from those identified in the accepted proposal
  – Change in KTR address
  – Change in KTR name

• Substitution of key personnel or subs, from those submitted in the accepted proposal, must be approved by the government with good rationale. (Cheaper is not an acceptable rationale)
  – e.g.: KTR submits ABC AE firm in proposal. KTR was selected based upon design and construction team. If KTR later wants to use XYZ AE Firm due to lower price only, the Government will probably not approve the substitution.
RFP Part 2 - General Requirements

Legend (Font Color)

- **All** Requirements Apply to Both Standard and Small Project Templates
- **SPT** Requirements Apply to Standard Project Templates
- **SmPT** Requirements Apply to Small Project Templates
Order of Precedence Clauses

• Order of Precedence
  – NFAS Clause 5252.236-9312. In the event of conflict or inconsistency between any of the below described portions of the conformed contract, precedence shall be given in the following order:
    • Any portions of the proposal or final design that exceed the requirements of the solicitation.
      – Any portion of the proposal that exceeds the final design.
      – Any portion of the final design that exceeds the proposal.
      – Where portions within either the proposal or the final design conflict, the portion that most exceeds the requirements of the solicitation has precedence.
    • The requirements of the solicitation, in descending order of precedence
      – Standard Form 1442, Price Schedule, and Davis Bacon Wage Rates.
      – Part 1 - Contract Clauses.
      – Part 2 - General Requirements.
      – Part 3 - Project Program Requirements, including Engineering System Requirements (ESRs).
      – Part 6 - Attachments (excluding Concept Design Drawings included in the RFP).
      – Part 5 - Prescriptive Specifications exclusive of performance specifications.
      – Part 4 - Performance Specifications exclusive of prescriptive specifications.
      – Part 6 - Attachments (Concept Design Drawings included in the RFP).
Meetings

• Kick-off Meetings
  – The Post Award Kickoff (PAK) meeting is made up of Contract Administration, Concept Design Presentation, Partnering, and Scheduling. If mutually beneficial to the Contractor and the Government, these elements may be addressed in a single multi-day meeting, but multiple separate scheduled meetings may be required.
  – KTR shall propose and gain acceptance for any “critical-path” work activities requiring advance submittal and approval.

• Partnering (see additional slide)
  – To most effectively accomplish this contract, the Government requires the formation of a cohesive partnership within the Project Team whose members are from the Government, Contractor and its Subcontractors.

• Facility Turnover Meetings
  – Key personnel will meet to identify strategies to ensure the project is carried to expeditious closure and turnover to the Client. Start the turnover process at the PAK Meeting utilizing the NAVFAC Red Zone (NRZ) Checklist and convene the Facility Turnover Meetings once the project has reached approximately 75% completion or 3 to 6 months prior to Beneficial Occupancy Date.
Meetings

• **Design Presentation/Development or Concept Design Workshop (CDW)**
  – May be required for large, complex projects. Schedule a separate meeting or a separate day of the multiday PAK, to accomplish the Design Presentation/Design Development Meeting or Concept Design Workshop (CDW).

• **Schedule**
  – The Contractor and Contracting Officer shall participate in a preliminary meeting(s) to discuss the proposed schedule.

• **Mutual Understanding Meetings**
  – Some contracts may have separate mutual understanding meetings where the purpose is to develop a common grasp of the QC Plans and implementation of the three phases of quality control.
    • E.G. Sequence of Operations
Part 2 Attachment A, ¶3.0 (SmPT) or Section 01 31 19.05 20 (SPT)

Partnering

• Formation of a cohesive partnership within Project Teams whose members are from the Government, Contractor & its Subcontractors
  – The goal is to achieve a project without safety mishaps, conforming to the contract, within budget and on schedule
  – A effective cohesive partnership should also seek to reduce overall project risk

• Type of partnering specified in the RFP:
  – Formal
    • Contractor hosts
    • Facilitated (Facilitator provided by KTR)
    • Follow-on partnering sessions
  – Informal ***
    • Construction Manager organizes
    • Part of the PAK
    • Partners determine frequency of follow-on sessions

• Partnering does not allow or endorse deviations from the contract.
Meetings

• Preconstruction Conference/Meeting
  – Prior to construction or demolition start, meet with representatives of the Contracting Officer to discuss and develop mutual understanding relative to administration of:
    • safety programs
    • environmental issues
    • safety of building occupants and surrounding area
    • hazardous materials,
    • waste disposal,
    • construction QC procedures,
    • construction schedule,
    • labor provisions and other construction phase contract procedures.
  – The Preconstruction Conference shall reinforce partnering philosophy initially established during the PAK.
Design Decisions

• **Design decisions by Project Team**
  – Decisions are within the terms of the contract and awarded price
  – Team needs to work together to reduce overall risk
  – Need to be documented
  – No modification required or warranted

• **Contractor’s Design**
  – Must meet contract requirements
  – No authority to deviate, even if Contractor believes it’s better design
  – Correction of design errors is Contractor’s responsibility

• **Government Design Approval**
  – does not alleviate the KTR’s responsibility for correcting design errors.
Design Decisions

• Contract Modifications

– Only design changes that officially modify the contract requirements, result in a contract modification.

– Desirables/Betterments included in the contractor’s proposal are more complex to assess due to performance based requirements.

– Not all changes to the contractor’s design will result in contract modifications.

– Use Order of Precedence to resolve conflict and determine if change will result in a modification.

– Contract modification must be signed by the ACO before any construction work starts.
Part 2, ¶4.0 (SmPT) or Section 01 33 10.05 20 (SPT)

Design Submittals

• Drawings and specification are “BUILDABLE”, not “BIDDABLE”

– Contractor will include to the fullest extent the product and material selections, and fabrications or proprietary specs in the final design package.

– Construction can begin when the final design is signed and stamped by the DB KTR’s AE DOR and Government acceptance of the submittal is obtained. NOT BEFORE ACCEPTANCE!

– Per NFAS Cause 5252.236-9313, upon approval of the final design, the Government must issue a unilateral no-cost contract modification to incorporate the final design into the contract. (contract price, performance period, and terms and conditions of the contract remain unchanged)

– Construction at the “contractor’s own risk” will not be allowed. If the Contractor elects to start construction without written acceptance or direction, the Government will issue a stop work order. Additionally, non-compliance with the contract can result in “Marginal” or “Unsatisfactory” CPARS evaluation.
Design Submittals

• Government Submittals
  – Provide to the Government submittals as listed.
  – See RFP Part 2 for specific design submittal format, approval, and surveillance requirements.
  – A "G" following a submittal, identified in the contract, indicates that Government approval action is required.
  – Resolution of government comments must be addressed in the Communication Plan of the approved QC Plan.
  – Government review or approval of any portion of the proposal or final design shall not relieve the Contractor from responsibility for errors or omissions with respect thereto. Government approval or acceptance does not change the terms of the contract.

• Design drawings
  – may be prepared more like shop drawings to minimize construction submittals after final designs are approved.
  – KTR should prepare and submit with the design drawings, appropriate connection, fabrication, layout, and product specific drawings.

KTR is responsible to design to the contract. Authority to deviate must be formally requested and approved.
Design Submittal Procedures

- **CONTRACTOR'S RESOLUTION OF COMMENTS**
  - Period of review for a resubmittal is the same as the initial submittal. Review time for resubmittal caused by nonconformance, do not result in a change in contract duration or cost per ¶2.2.5.

  - Contractor is required immediately to notify the Government of all potential design changes or variations via a Request for Information (RFI) to the Contracting Officer. This includes any design review comments that exceed the requirements of the RFP and/or accepted proposal and will result in budget (contract price) overrun or schedule delay.

Duration of Government review is noted in ¶2.2.2
Section 01 33 10 05 20 (SPT)
Design Submittal Procedures

• Government Review or Approval
  – 01 33 10 05 20, ¶3.3.2.1, Government review or approval of any portion of the proposal or final design shall not relieve the Contractor from responsibility for errors or omissions with respect thereto.

• Contractor must guarantee that the approved design can be built within budget (contract award amount).
  – 01 31 10.05 20, “Post Award Meetings” requires the contractors estimator to attend the design presentation or concept design workshop meeting(s).
1.4.1 Contractor Reviewing, Certifying, Approving Authority

- The QC organization is responsible for reviewing and certifying that submittals are in compliance with the contract requirements.

AE DOR shall approve construction submittals that are incorporated in the design submittal prior to being submitted to the Government for design submittal approval.

- Indicate approval of these construction submittals on the accompanying submittal transmittal forms.
- The DOR professional stamp on the final design submittal indicates approval of construction submittals combined with the design submittal.

Submittals are either:

- Reviewed and certified by the QC organization
- Reviewed by the QC organization and approved by the AE DOR
- Reviewed by the QC organization and approved by the Government as designated with a “G” in the submittal paragraph of the specification sections.
1.4.5 Design Change and Variation

- The Contractor must limit change and variation to items that will be advantageous to the Government. Submit proof that the change or variation is needed and provide the same or better level of quality as the design that the Government originally reviewed or approved. Design change is considered prior to Government approval of the final design and variation is considered after Government approval of final design.

1.4.5.1 Design Change

- Design change must meet the minimum requirements of the solicitation and the accepted proposal. Change from what was reviewed by the Government during design must be approved by the DB KTR’s AE Designer of Record and brought to the attention of the Government before the design change is incorporated into the design documents.

1.4.5.2 Variations

- Variations from contract requirements including the solicitation, the accepted proposal, and the final design, requires Government approval. Variations to the contract requirements must be approved by the DB KTR’s AE Designer of Record prior to resubmitting the design to the Government for approval of the variation.
• **Design and Construction Schedule**
  
  – Provide Design (if required in Part 2, Attachment A) and Construction Schedule adequate for Contractor to efficiently manage project and for Government to efficiently manage QA and scheduling interfaces.
  
  – Typically, a time-scaled bar chart using a spreadsheet
  
  – Include construction phasing and any work restrictions (such as occupied spaces, special hours, potential work disruptions).
  
  – Schedule shall contain DFOWs and dates for completion of each task, including material procurement, and construction activities.
  
  – If fast-tracked, the design project schedule should include all fast-tracked design phases including all critical path submittals. All Part 2 General Requirements must be met before the start of any construction. Also, a no-cost unilateral modification shall be issued by the Government before the portion of the work can proceed.

• **Monthly Updates**
  
  – At monthly intervals or when the schedule has been revised

• **Three-Week Look Ahead Schedules**
  
  – Provide 3-week look-ahead schedule for each QC meeting
Network Analysis Schedule for DB

• Meet prior to submission to discuss the proposed schedule and contract requirements

• Design Baseline NAS
  – Submit and present at the PAK Meeting
  – Acceptance is precedent to processing the Contractor’s invoices
  – Include Government Activities such as:
    • Submittal review, inspections, permits, outages, GFE… (¶1.6.2.1.3)
    – Include Cost Loading, if required
    – Must be approved by the Government prior to the start of work.

• Only 1 Design Baseline – Fixed after approved

• Submit scheduler resume for acceptance

• Monthly Updates
  – KTR and gov’t reps to meet, review, and agree on updates prior to submission.
THANK YOU

QUESTIONS?
• BACKUP
Order of Precedence

• **RFP**
  – Must meet minimum requirements, except where the proposal exceeds the RFP.

• **Proposal**
  – Must meet or exceed RFP. Cannot waive minimum RFP requirements.

• **Final Design (For SmPT Task Orders, only if required in Part 2, Attachment A)**
  – Must reflect the RFP and Proposal requirements which ever is greater. Cannot waive minimum RFP requirements.
  – Some final design elements may exceed both RFP and Proposal requirements, but must not increase scope, schedule or cost, unless modified into contract
  – No-cost, unilateral (or preferably bilateral) contract modification at Final Design required to fully implement Order of Precedence Clause

*Note: References to paragraph (¶) numbers in the current NAVFAC Design Build Small Project Template (SmPT) or Standard Project Template (SPT) UFGS Specs. Sections. The ¶ numbers in specific T.O.s may vary due to editing of the RFP.*
Lessons Learned

• **Section 01 14 00.05 20 Work Restrictions**
  – 1.3.6.1 Location of UG Utilities: Obtain permits prior to start of excavation by contacting the KO at least 15 days in advance.

• **Section 01 30 00.05 20 Administrative Requirements**
  – 1.3 Minimum Insurance: Contractor not maintaining minimum insurance during the entire period of performance.
  – 1.6 Availability of CADD files: Available only after award and upon KTR’s request.

• **Section 01 31 19.05 20 Post Award Meetings**
  – Concept Design Workshop: KTR not always providing an experienced facilitator to conduct the CDW.

• **Section 01 32 17.05 20 Network Analysis Schedules (NAS)**
  – 1.3 Schedule Acceptance Prior to Start of Work: KTRs are not always submitting the NAS early enough for Gov’t review and acceptance prior to start work of construction.
Lessons Learned

• **Section 01 33 10.05 20  Design Submittal Procedures**
  
  – 2.1 Consolidated RFP Documents: If required by the RFP, Contractor need to submit a Task Order specific document by the PAK/Preconstruction meeting.
  
  – 2.2.3 Critical Path Design Submittals: Many KTRs are not familiar with the contract requirements for Critical Path Design Submittals for the fast track approach.
  
  – 3.3.2 Order of Precedence: Many KTRs are not familiar that the clause is found in both the RFP Parts 1 and 2.

• **Part 2, ¶34 or Section 01 35 29.05 20  Safety & Occupational Health Requirements**
  
  – Site Safety Health Officer (SSHO): SSHO is not always allowed be the QC and/or Site Superintendent.

• **Section 01 45 00 05 20 Design and Construction QC**
  
  – The QC Manager must report to an officer of the firm and not subordinate to the Project Superintendent or Project Manager.
Lessons Learned

• **Section 01 45 00.05 20 Design & Construction Quality Control**
  – 1.3.1.n Design and Construction Quality Control Plans: KTR’s DQC documentation does not always include internal QC check sets, QC review comments, etc.
  – 1.4.1.u QC & Alt QC Manager Responsibilities: Performance Assessment Plans are not being accomplish on a regular basis.

• **Section 01 57 19.05 20 Temporary Environmental Controls**
  – Many KTRs are not aware that there are two sections for environmental protection; TEMPORARY ENVIRONMENTAL CONTROLS for standard NAVFAC requirements and SUPPLEMENTAL TEMPORARY ENVIRONMENTAL CONTROLS for regional requirements.
Lessons Learned

• Presentation / Discussion on past contract failures

• Local issues and unique cost drivers

• Project specific issues
ORDER OF PRECEDENCE - Examples

• **Case 1:** RFP Part V identifies “galvanized handrails” and Part III identifies “stainless steel handrail”.
  
  **Question:** Which is required?
  
  **Answer:** Stainless steel required since Part III order of precedence above Part V. This is also the case if Part III refers to Part VI with the requirement.

• **Case 2:** RFP identifies “galvanized handrails”, Proposal provides “stainless steel handrails”. KR’s Final Design shows – “galvanized handrails”. Which is required?
  
  **Question:** Which is required?
  
  **Answer:** Stainless steel required since Proposal exceeds minimum RFP requirements. Regardless if error found during design phase or construction phase with the design approved and incorporated into contract.

*Note: If Government team chooses to increase or reduce requirements, a modification is required regardless of whether the project is in the design or construction phase.*
ORDER OF PRECEDENCE - Examples

• **Case 3:** RFP identifies “galvanized handrails”, Proposal also shows “galvanized handrails”. Final Design shows “stainless steel handrails”.

  **Question:** Is the Final Design correct?
  **Answer:** Galvanized if prior to final design acceptance. Stainless steel if design incorporated into contract.

• **Case 4:** UFC allows “galvanized or stainless steel handrails”. Handrails are not otherwise specified in the criteria or Proposal. KTR’s design shows “galvanized handrails”.

  **Question:** Is that OK?
  **Answer:** It’s the Contractor’s design choice.

**Note:** If Government team chooses to increase or reduce requirements, a modification is required regardless of whether the project is in the design or construction phase. In either case, a modification is required.