

Statement of

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Associated General Contractors of Colorado

A Chapter of The Associated General Contractors of America

to the

Subcommittee on Oversight and Investigations

Committee on Veteran's Affairs

U.S. House of Representatives

For a hearing on

**“Construction Conundrums, A Review of Continued Delays
and Cost Overruns at the Replacement Aurora, Colorado
VAMC”**

April 22, 2014



The Associated General Contractors of Colorado is the largest and oldest commercial building construction trade association in Colorado. AGC Colorado represents 400 firms, including Colorado's leading general contractors and specialty contractor firms.

The Associated General Contractors of Colorado

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The Associated General Contractors of America (AGC) is the largest and oldest national construction trade association in the United States. AGC represents more than 25,000 firms, including America's leading general contractors and specialty-contracting firms.

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**Statement of Michael Gifford, President/CEO
Associated General Contractors of Colorado
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Chairman Coffman and Committee Members, thank you for inviting the Associated General Contractors of Colorado (AGC) to testify before the Subcommittee on Oversight and Investigations on the Replacement Aurora, Colorado VAMC. My name is Michael Gifford and I am the President and CEO of AGC Colorado.

AGC Colorado is the largest and oldest commercial building construction association in Colorado, with 400 member firms who are the state's leading general contractors and specialty contractors. All of our members are also members of AGC America, the country's largest and oldest construction trade association with more than 25,000 members.

AGC and the construction industry have a deep commitment to veterans. Our members include many veterans, AGC Colorado members hire veterans as employees, and sub-contract with veteran owned and or service disabled veteran-owned firms. AGC and the construction industry have a deep respect for the VA and its mission.

Replacement Aurora, Colorado VAMC

A number of the members of AGC Colorado are performing construction work for the VA on the Replacement Aurora VAMC. So AGC has an interest in the success of the project and its impact on industry members.

AGC Colorado would like to make the following observations about the project based on conversations and discussions with construction firms working on the project:

1. The project design and schedule were not complete when the general contractor and sub-contractors were directed to proceed and/or submit bids;
2. Design changes occurred after this point;
3. Schedules were delayed and lengthened;
4. These changes in design and schedule caused many contractors on the project to incur additional costs;
5. The system to deal with changes in design and the resulting increase in cost and schedule is a "change order" which is the modification of a contract to incorporate a change in design, schedule, scope, or key terms;
6. Change are being ordered but the formal "change order" paperwork are being approved slowly or in some cases not at all;
7. The result is that businesses are paying for increased labor and/or materials costs without compensation, and some are even at risk of failure if the situation continues. This is a cash flow crisis for businesses on the project, and quite frankly not a risk that contractors working for a federal agency should have to worry about so they do not have to price anticipated late payments into their initial bids.

GAO Report

The GAO Report “VA CONSTRUCTION - Additional Actions Needed to Decrease Delays and Lower Costs of Major Medical-Facility Projects” April 2013 covers many of the same issues on multiple VA projects, that AGC members have experienced on the Replacement Aurora, Colorado VAMC project. Specifically:

- Delays in schedule
- Implementing the Integrated Design and Construction project delivery method midstream (losing the opportunity for contractor input on design and causing late changes in design)
- Problems with the Change Order Process
- Delays in processing change orders

AGC agrees with several other points that are outlined in the report:

- Rapid changes in medical technology make planning difficult
- Unanticipated events can add to schedule delays and cost overruns

However, these conditions are not the fault of the contractors on the project and should not cause the VA to delay change orders or payments to contractors for work performed.

AGC Request for Action

AGC Colorado is in SUPPORT of H.R. 3593 “The VA Construction Assistance Act of 2013” because a special project manager from the Army Corps of Engineers would:

- (1) conduct oversight of all construction-related operations at the project, including with respect to -
 - (A) the performance of the Department of Veterans Affairs involving the prime contractors; and
 - (B) the compliance of the Department with the Federal Acquisition Regulation, including the VA Acquisition Regulation;
- (2) advise and assist the Department in any construction-related activity at the project, including the approval of change-order requests for the purpose of achieving a timely completion of the project; and
- (3) recommend to the Department best construction practices to improve operations for the project.

H.R. 3593 will also allow the Army Corps of Engineers (an experienced construction management agency) to make an independent assessment of the effect of design changes to cost and schedule. Then the change order and cash flow problems reported by our members can be addressed in an orderly fashion.

While the VA may feel that they are making progress on the findings in the GAO report, the pace of improvement is not fast enough to help the contractors on the Replacement Aurora VAMC project. They are providing labor and materials over and above the plans that were available at time of bid, submitting their formal change order requests, getting little to no timely response from the VA, and the resulting cash flow crisis is not fair to business nor is it proper public policy. Some of these contractors have to wait a year or more for compensation on change orders and the dollar amounts are in the millions of dollars.

Best Practices

H.R. 3593 addresses the issue of best practices at other agencies. AGC Colorado has collaborated with other owners including the State of Colorado and City and County of Denver on Project Delivery Methods and Payment Processes/Change Orders. Most of the projects delivered by Colorado state universities and other state agencies now use the Integrated Project Delivery statute supported by AGC and approved by the state legislature in 2007. The delivery method most often chosen by the state universities and other state agencies is either CM/GC (also called CM at Risk) or Design-Build GMP and we do not have our members report the same problems that are contained in the GAO report (schedule delays and change order delays). There were some sporadic reports of change order delays, but in 2010

AGC and worked with public owners and the legislature to approve SB10-116, which requires periodic payments on change directives until a formal change order is completed. This statute change ensures that contractors receive some cash flow for extra work while an agency is processing a change order.

AGC also worked with the City and County of Denver to reduce their payment approval process from a linear 21-step process to a concurrent 2-step process, reducing the time it takes to process a pay application. However, there were also industry complaints about the change order process with this owner agency. SB10-116 also requires the City and County of Denver to make periodic payments on change directives until a change order is processed. So the contractor cash flow issue is addressed with this agency as well.

The purpose of including this discussion on best practices is to show how contracting conditions can be improved by working with an experienced trade association like AGC and an experienced agency like the Army Corps of Engineers, or the State of Colorado or the City and County of Denver.

Conclusion

In conclusion, AGC Colorado would like to reiterate its commitment to veterans and veteran owned businesses, and to working with the VA on our shared goal of service to our nation's veterans.

AGC SUPPORTS H.R. 3593 as a way to help contractors in the near term on the Aurora Replacement VAMC project, and AGC commits to continuing discussion and dialogue with the VA on process improvements for future hospital and medical facility projects.

Thank you for this opportunity to provide the views of the Colorado construction industry on this important matter.