

MILITARY CONSTRUCTION

Resulting from

BRAC

Offers
Opportunity
For Savvy
Contractors

BY BILL HENSON

Many military communities are drastically changing to reduce Department of Defense (DOD) expenditures through the Base Realignment and Closure (BRAC) process. While some communities have been torn apart by base closures and the realignment of facilities, others have flourished by the massive reshuffling to compensate for the influx of personnel and equipment. This process, which began in 1988, has been particularly beneficial to contractors.

These inflows create the opportunity for new construction, as well as renovations of facilities and infrastructure. However, firms must be sophisticated in their approach. Full situational understanding is paramount to success, as the bidding and performance environment for these contracts is ferocious.

Contractors must know their exact direct costs and fully understand all obligations they incur when performing a DOD contract. All contracts fall under the Davis-Bacon Act; full compliance is integral to successful operation, profitability and future opportunities.

The DOD currently is implementing the fourth round of BRAC, with the fifth round expected to begin in 2015. Fort Bragg, N.C., and surrounding communities will be one of the geographical areas that is positively affected by the latest round of the base realignment strategy. By 2013, Fort Bragg is projected to have an influx of 40,000 new military and civilian personnel and 6,300 new students requiring the construction of 11 new schools throughout the region. Currently, more than \$2 billion in construction is under way on base—much of it due to the relocation of the U.S. Army Forces Command from Fort McPherson, Ga.



Another community benefiting significantly from BRAC is Fort Sam Houston in San Antonio, Texas, which is expecting a sharp increase in jobs along with \$2.8 billion in construction projects. These projects include converting the post into a premier medical complex and a global medical training center. This type of transformation not only alters and expands the post, but also materially impacts the local communities providing goods and services to these installations.

Increased construction operations are a byproduct of these expansions and can invigorate a community's contractors, material suppliers and workforce. However, this creates a fiercely competitive atmosphere for prime construction contracts and subcontracts with local, regional, national and even international players. Opportunity is present even in areas where military organizations or formations are departing and the installation is drawing down or closing because many of the buildings and infrastructure may be converted to other public or private uses.

Construction operations have been deeply shaken in recent years and unemployment in the industry still hovers nationally around 16 percent. This has produced an unqualified buyer's market in the federal sector, where BRAC opportunities lie. Relentless pricing pressure has compressed contractor margins and revenues, resulting in bids tendered with small or non-existent contingencies and little room for error. National and international contractors are bidding projects of a smaller scale than in previous years, further deflating pricing and increasing competition.

FRINGE BENEFIT OBLIGATIONS

The question for regional and local contractors is: How can they successfully compete for BRAC projects, which may represent the majority of commercial construction opportunities in a given market? The answer: through the effective application of the Davis-Bacon Act, which was originally intended to balance volatility in labor pricing and stifle competitive advantages gained in this manner.

Today, the majority of contractors still discharge fringe benefit obligations through

payroll, simply adding the fringe amount required to the base rate and paying the total as a cash wage to their hourly workers. By doing so, they incur all the additional payroll liabilities associated with the increased wage, FICA, FUTA, SUTA, workers' compensation premiums and general liability premiums.

In Bexar County, Texas, where Fort Sam Houston is located, the base wage for plumbers and pipefitters is \$28.78 per hour, with an additional \$9.10 per hour in fringe benefits. If the \$9.10 per hour fringe is added to the base rate of \$28.78 and the total \$37.88 is paid as a cash wage, it significantly increases bid costs and effectively prices the contractor out of the project.

If fringe benefit obligations are discharged as intended, through benefit structures that meet the "bona fide" definition found in number 29 of the Occupational Safety and Health Administration's Code of Federal Regulations (CFR), they stream outside of payroll and do not incur the additional wage burden. They must, however, be tracked down to the individual employee per hour worked. The benefits in lieu of cash wages approach can reduce a bid by as much as 5 percent or 6 percent, which frequently equates to winning or losing a project.

In addition, on federal projects, the base rate on the wage determination may be mitigated by flowing a portion of it into fringes and eliminating additional payroll burden. The base rate, however, may not be lowered beyond the federal minimum wage standard. Typically, base wage rates on public work are higher than the private scale. A byproduct of this rearrangement of base and fringe is a leveling of pay scales across both types of work and reducing employee angst over who does or doesn't work on federal prevailing wage projects.

It is imperative that contractors discharging fringe obligations through benefits keep accurate records showing how fringes flowed into benefits on an hourly basis for every employee working on the project. This can be burdensome, but third-party administrators (TPAs) that specialize in the sophisticated recordkeeping can make it much easier. The cost of these TPAs may be borne within the fringes, although if a contractor is attempting to track costs

internally, the fringes may not be utilized to offset the contractor's increased indirect costs. Due to energized enforcement by the U.S. Department of Labor (DOL), it is vital for these records to be accurate and current. Violations could result in an immediate cash disbursement of fringe benefit shortfalls to employees without regard to any other cash flow pressures; debarment from contracting with the federal government; and even prosecution in federal court.

While the benefits may seem on par with the risks, the TPAs that specialize in prevailing wage benefit plans will have the required reports at their fingertips and can help contractors through audits, as well as assist with benefit design as it pertains to the "bona fide" criterion stated in 29 CFR. They also can assist generally with compliance in other areas of prevailing wage operations and bid preparation.

RESOURCES

The DOD has a website, www.brac.gov, with specific information on BRAC initiatives. Additionally, most military installations affected by BRAC have websites addressing their unique needs. A full understanding of the bid and operational process as it relates to engagement with the federal government is critical. The DOL regularly holds seminars throughout the country to assist contractors in complying with 29 CFR and the Davis-Bacon Act. Further, the TPAs that specialize in this line of business can be invaluable resources as contractors attempt to navigate the maze of fringe benefit compliance.

Cash disbursement of fringe benefit obligations does not correlate to successful bidding or the profitable execution of federal construction contracts. Positive bidding outcomes are much more difficult to achieve with fringes inside of payroll rather than outside. The bidding environment is difficult—filled with tough competition and regulatory and legislative oversight. Contractors that learn to maneuver inside this environment stand the greatest chance of success.

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