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AGC of America
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
Quality People. Quality Projects.



June 1, 2009

FAR Secretariat (VPR)
1800 F Street, NW
Room 4041
Attn: Hada Flowers
Washington, DC 20405

Re: FAR Case 2009–011, American Recovery and Reinvestment Act of 2009 (the Recovery Act) – GAO/IG Access

On behalf of the Associated General Contractors of America (hereinafter “AGC”), thank you for the opportunity to submit the following comments on the interim rule that the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (hereinafter the “Councils”) issued on March 31, 2009. In short, that interim rule would implement sections 902, 1514, and 1515 of Division A of the American Recovery and Reinvestment Act of 2009, which implements the Recovery Act to “prevent the fraud, waste, and abuse” of Recovery Act funds through the review and audit of contracts using such funds.

AGC is among the oldest and largest of the nationwide trade associations in the construction industry. It is a non-profit corporation founded in 1918 at the express request of President Woodrow Wilson, and it now represents more than 32,000 firms in nearly 100 chapters throughout the United States. Among the association’s members are approximately 7,000 of the nation’s leading general contractors, more than 12,000 specialty contractors, and more than 13,000 material suppliers and service providers to the construction industry. These firms engage in the construction of buildings, shopping centers, factories, industrial facilities, warehouses, highways, bridges, tunnels, airports, water works facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects, municipal utilities and other improvements to real property. Many of these firms regularly work for the U.S. Army Corps of Engineers, the Naval Facilities Engineering Command, the General Services Administration and other federal departments and agencies. Most are small and closely held businesses.

The American Recovery and Reinvestment Act of 2009 (hereinafter referred to as the “Recovery Act”), contains several key provision to foster greater transparency. Section 1514 provides for agency inspector general review of concerns raised by the public regarding investments of funds under the Recovery Act. Sections 902 and 1515 provide for respectively, Comptroller General and agency inspector general reviews of any records of the contractor or subcontractor regarding transactions using Recovery Act funds, and the interview of contractor officers or employees concerning such transactions. Section 902 also provides for the Comptroller General to interview subcontractor employees, while nowhere in the Recovery Act is corresponding authority provided to the agency inspectors general.

Letter to FAR Secretariat (VPR)

June 1, 2009

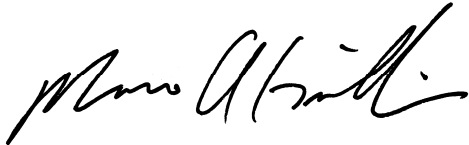
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AGC believes it is necessary to clarify in the final rulemaking that an Inspector General must provide reasonable advance notice to contractors and their employees before a review of contractor transactions. In setting the balance between protecting the government as well as contractors and their employees equally, the Councils should clarify in the final rulemaking that there be established a reasonable advance notice standard with which an Inspector General could easily comply.

In the interest of full and open transparency, we believe that this advance notice should include information such as: (1) when and where the impending review and/or interviews will occur; (2) the topics to be covered; (3) the employees affected; and (4) the total amount of time required to conduct the interviews.

AGC appreciates the opportunity to comment on the rule that the Councils proposed on March 31, 2009. Thank you again for considering AGC's views. The association would welcome the opportunity to provide additional information or support for the rulemaking process.

Sincerely,

A handwritten signature in black ink, appearing to read "Marco A. Giamberardino". The signature is fluid and cursive, with a large initial "M" and "A".

Marco A. Giamberardino, MPA
Senior Director
Federal and Heavy Construction Division