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



August 11, 2008

Ms. Laurieann Duarte  
General Services Administration  
Regulatory Secretariat (VIR)  
1800 F Street, NW, Room 4035  
Washington, DC 20405

**Re: FAR Case 2007-013, Employment Eligibility Verification**

Dear Ms. Duarte:

On behalf of the Associated General Contractors of America (hereinafter “AGC”), let me thank you for the opportunity to submit the following comments on the proposed rule that the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (hereinafter the “FAR Councils”) proposed on June 12, 2008. In short, that proposed rule would require certain contractors and subcontractors to use the U.S. Citizenship and Immigration Services’ (USCIS) E-Verify system as the means of verifying that certain of their employees are eligible to work in the United States.

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.

AGC has strongly supported the passage of comprehensive immigration reform as a means of strengthening our national security. We believe a comprehensive approach to immigration reform would create better control over our borders for national security and provide for better interior enforcement against unscrupulous employers. Such efforts should be undertaken simultaneously as efforts to address both current and future labor needs. Comprehensive immigration reform would also address the shortage of construction workers needed to meet future construction needs. The construction industry employs more than 7 million people today,

and is projected to have 225,000 job openings due to growth and replacement needs each year for the next eight years. The industry added more than 200,000 new workers in 2006.

AGC has advocated for an employee verification process that is simple, proven and accurate. An employment verification system should include several basic tenets:

- **Simplicity.** The verification process should be simple and easily accessible to employers and should apply to new hires only.
- **Accuracy.** System accuracy is paramount to a reliable electronic employment verification system.
- **Capacity.** Participation should be phased in so that the system is not overloaded and that problems with the system can be fixed.
- **Safe Harbor.** Employers should enjoy a safe harbor for following the required procedures and should not be held liable if an employee is given a non-confirmation by the government system and the employer has to terminate employment.
- **Subcontracting.** Prime contractors should not be liable if their subcontractors employ unauthorized immigrants (provided that the prime contractor did not know the employee was unauthorized).

At this time, AGC is greatly concerned the proposed rule does not meet these tenets. We are concerned that the proposed rule further complicates the current employment verification system by imposing additional requirements, terms and conditions that conflict with the current E-Verify Memorandum of Understanding (MOU) and does not realistically consider the vast multitude of considerations employers encounter on a daily basis. We are also concerned that, the proposed rule may impose new liabilities on federal contractors and subcontractors without adequate protections. Finally, the rule expands the current electronic employment verification system without addressing the underlying inefficiencies with that system.

### **The Several Components of the Proposed Rule**

Before making further comments on the proposed rule, AGC will take a moment to summarize our understanding of its major components. The rule calls on contracting officials to include, as an element of performance under the contract, the following requirements:

- Insertion of a clause into Government prime contracts that include work in the United States, other than those that do not exceed the micropurchase threshold (generally \$3,000), or that are for commercially available off-the-shelf (COTS) items or items that would be COTS items but for minor modifications (the rule adopts the statutory definition of COTS).
- Contractors and subcontractors to use E-Verify to confirm the employment eligibility of all existing employees who are directly engaged in the performance of work under the covered contract.
- Utilization of the E-Verify program by contractors and subcontractors within 30 days of the date a contract is awarded, and within 30 days of that date use E-Verify to verify the employment eligibility of all employees “assigned to the contract.” If the contractor is

already enrolled in E-Verify, it must use E-Verify for these employees assigned to the contract within thirty days.

- That the contractor will use E-Verify for all new hires within three days of the date of hire for all new employees hired after the contract is awarded as well as for all existing employees who later are “assigned” to the contract.
- That the contractor will require all subcontractors performing work under the contract that exceeds \$3000 for services or for construction to adhere to the E-Verify requirement.

The rule states it will not apply to existing federal contracts, only to new solicitations and contracts awarded after the effective date of the final rule. However, there is inconsistency with that directive since the rule directs contracting officers to seek to amend existing indefinite-delivery/indefinite-quantity contracts to include the clause for future orders if the remaining period of performance extends at least six months after the effective date of the final rule and the amount of work or number of orders expected under the remaining performance period is substantial.

### **The Stated Reasons for the Proposed Rule**

The FAR Councils do not dwell on the reasons for the proposed rule. They state that the rule is authorized by an exercise of the President’s authority under the Federal Property and Administrative Services Act of 1949 (FPASA), to “prescribe policies and directives” governing procurement policy “that the President considers necessary to carry out” that Act and that are “consistent” with the Act’s aim of “provid[ing] the Federal Government with an economical and efficient” procurement system. 40 U.S.C. 121, 101.

The “economy and efficiency” benefits to federal contracting that flow from ensuring that the federal government does not do business with contractors that hire or employ unauthorized aliens were first set forth in Executive Order 12989 (see 61 FR 6091, February 15, 1996). That order, which pre-dated Congress’s creation of the Basic Pilot program (now E-Verify), noted that the presence of unauthorized aliens on a contractor’s workforce rendered that contractor’s workforce less stable and reliable than the workforces of contractors who do not employ unauthorized aliens. The executive order entitled “Economy and Efficiency in Government Procurement Through Compliance with Certain Immigration and Nationality Act Provisions and Use of an Electronic Employment Eligibility Verification System” of June 6, 2008, (hereinafter “June 6 Executive Order”) amends Executive Order 12989.

The June 6 Executive Order purports to benefit contractors and the US economy overall by preventing contractors who employ illegal immigrants from contracting with the federal government, a rationale that is both principled and practical. The principled argument is that knowingly employing illegal aliens has been made illegal by various public laws and therefore the U.S. government cannot condone such behavior by paying such wrongdoers with taxpayer money. The practical rationale is that contractors will benefit from this policy because they will no longer be at risk of employing unauthorized workers illegally and will therefore enjoy a more

stable and reliable workforce. Both of these arguments, however, are flawed in their implementation.

The principled argument is flawed because it is placing the burden of policing U.S. borders on employers when Congress and the Administration have failed to pass comprehensive immigration reform. The knowing employment of unauthorized workers is clearly illegal and should not be condoned. However, if unauthorized workers are employed unbeknownst to their private employers, then this reflects failures by federal agencies responsible for enforcing the law, not employers.

The practical justification is specious and will have a predictably opposite effect of that intended. The practical consequences of the proposed rule would create uncertainty and make the hiring process more burdensome and uncertain. Finally, because the proposed rule is based on the issuance of an Executive Order, it reflects the will of the current Administration and could be repealed by the next Administration as soon as January 20, 2009. That said, all of the initial implementation costs will be wasted. The proposed rule is potentially too costly and controversial a measure to pass by fiat.

### **How the Proposed Rule Compares with Congressional Intent and Current Practices**

The mandatory nature of the proposed rule and the expansion of E-Verify to existing employees is inconsistent with federal statute and Congressional intent.

The Immigration Reform and Control Act of 1986 (IRCA) requires all U.S. employers to verify the work authorization of all employees hired on or after November 7, 1986. All employers must comply with this law by completing Form I-9 for each and every new hire. Congress specifically pre-empted state and local laws imposing civil or criminal sanctions upon those who hired undocumented workers. At the same time, IRCA carefully balanced the employer's obligation to verify work authorization with the U.S. workers' rights to work and to be free from discriminatory inquiries into their work authorization status.

In 1996, Congress established three voluntary pilot programs to test alternate methodologies for employment verification. One of those programs, initially known as "Basic Pilot," ultimately became E-Verify. The current E-Verify Memorandum of Understanding (MOU) explicitly prohibits re-verification of current employees. The proposed regulation is in direct conflict with the statutory requirement that E-Verify be a voluntary pilot program and be used solely to verify the employment eligibility of new hires.

The comprehensive national employment verification scheme created by IRCA has been disrupted in the past several years by a variety of state laws requiring some or all employers to participate in E-Verify, to complete additional paperwork, or to otherwise take measures to ensure the legal status of their workforce. Employers with operations in multiple jurisdictions are struggling to keep abreast of these conflicting mandates.

This proposed regulation further degrades Congressional intent. This proposed regulation differs significantly from Executive Order 12989 that prohibited federal contracting agencies from doing business with entities that had not complied with section 274A of the Immigration and Nationality Act. Executive Order 12989 imposed no new obligations on federal contractors; it merely enforced the existing law of the land. This is in stark contrast to the current proposed rule which requires a subset of American employers to apply different standards to U.S. workers depending upon whether they are “assigned” to a federal contract. This regulation will be costly for employers to implement, may lead to increased discrimination and will undermine the goal of an effective electronic employment verification system.

The Administration cannot get around the express intentions of Congress by tacking this requirement onto the Federal Property and Administrative Services Act. As noted above, the proposed regulation is in direct conflict with the statutory requirement that E-Verify be a voluntary pilot program to verify the employment eligibility of new hires. The mandatory nature of this regulation and the requirement to re-verify existing employees directly contravenes Congressional intent.

### **General Comments**

While these changes have enormous implications, the FAR Councils neither acknowledge nor explain them. Indeed, in the preamble to the proposed rule, the FAR Councils give the public the distinct impression that the proposed rule is a mere implementation of existing policy, modified to only the minor extent necessary to ensure consistency and cooperation with the June 6 Executive Order.

AGC believes that the public is entitled to a more complete presentation of the changes that the rule would make. And again, for that reason, AGC urges the FAR Councils to provide the following:

- A more complete analysis of the many ways in which the rule would depart from current practice; and
- The FAR Councils’ reasons for concluding that such departures are warranted, including any data that may support its position.

The public needs that additional information to adequately evaluate the proposed rule. Among the many questions that the FAR Councils have, thus far, left unanswered, are the following:

- What is the rationale for mandating a verification program that was strictly voluntary in the past?
- How exactly does the proposed rule diverge from the requirements that the voluntary program currently recommends?
- How would the flow-down provision actually work?

- What is meant by the term “subcontract?” Is it a contract for on-site labor, or does it include all purchase orders?
- How would prime contractors be expected to distinguish subcontracts for commercial items from subcontracts for other goods or services?
- Would the requirements flow from service or supply contractors down to construction contractors? And if so, when?
- What would be a prime contractor’s responsibility for ensuring subcontractor compliance? What would be a prime contractor’s liability for subcontractor noncompliance?
- How will implementation of the rule be applied to ID/IQ contracts?
- How long must employers keep E-Verify-related records? Is it for the total employment of the employee? Would it be for the duration of the covered federal contract or longer?

### **Specific Issues**

AGC also has comments on several of the specific issues that the proposal raises. If given additional time, AGC will continue to solicit additional information and insights from its members, and will be pleased to share the results with the FAR Councils. If not, AGC hopes that the FAR Councils at least take the time to explore these issues on their own.

As mentioned previously, a major tenet of AGC’s principles is that any mandatory electronic employment verification system that is simple, proven and accurate. Although E-Verify has been operational since 1997, and despite the best efforts of the men and women who administer this program in the USCIS, the system may not have the resources to adequately meet the needs of mandated use by the estimated 169,000 federal contractors and subcontractors.

### Implementation

First, according to the Department of Homeland Security (DHS), only 69,000 employers are now using the E-Verify system, representing a fraction of the over six million employers in the United States. It would take the system several years to scale to support mandatory E-Verify for all employers. Requiring all covered contractors and subcontractors to confirm all new hires via E-Verify could overwhelm the system and could lead to increased workforce disruption. In addition, AGC is concerned that neither the SSA nor USCIS have adequate staff to handle the tens of thousands of employee contests of tentative non-confirmation. Reliable estimates show that seven percent of queries to the SSA database result in tentative non-confirmations. It has been estimated by the GAO that this could result in over four million employees per year being sent to the SSA to verify their work authorization.

In addition, as of January 1 of this year, Arizona mandated that all 140,000 employers in the state participate in the system, yet as of mid-May, less than 25,000 were actually enrolled. While no survey has been conducted to determine why the employer participation rate is so low, there have been numerous complaints from Arizona

businesses and employer groups that the E-Verify enrollment process is cumbersome and difficult, and that support from USCIS for employers trying to enroll has been inconsistent and ineffective. Expanding this system to cover all employers – absent federal certification that the USCIS is adequately staffed, trained, and otherwise prepared to handle the increased workload – will undoubtedly cause confusion, harm productivity, and deny eligible workers employment opportunities.

#### Accuracy Rate

E-Verify has been shown to questionable reliability as it depends principally on the Social Security Administration (SSA) database. According to testimony before Congress by the SSA's own Office of the Inspector General in June 2007, there is a 4.1 percent error rate in the 145 million Social Security records. If all U.S. employers were to use the system, millions of U.S. citizens and legal residents could potentially be denied employment due to bureaucratic errors. Moreover, the error rate for work-authorized foreign nationals is estimated to be as high as ten percent, thereby opening the door to increased discrimination based on national origin.

This error rate puts human resource professionals and their employers in a precarious situation by subjecting them to penalties if they mistakenly hire an unauthorized worker while exposing them to potential lawsuits if they deny employment to a legal worker due to faulty government data and processes provided by E-Verify.

#### Coverage of Assigned Employees

AGC has strong concerns regarding the treatment of existing employees (i.e., current employees as opposed to new hires) under the proposed rule. First, subpart 22.1802(b) of the proposed rule would require covered federal contractors and subcontractors to use E-Verify to confirm the employment eligibility of all existing employees who are "assigned to work" on a covered contract within 30 days of enrollment in E-Verify or, if the contractor is already enrolled, within 30 days of contract award. Following this initial period, the contractor must also use E-Verify to confirm the employment eligibility of existing employees who are "newly assigned to the contract." Because employers are currently prohibited from using E-Verify to confirm the employment eligibility of existing employees, this new requirement poses potential problems for firms that hold both public and private contracts.

In the construction industry, it may become necessary to move employees from one project to another with extremely short notice, possibly moving an employee working on a job under a contract with a non-federal owner (private or non-federal government entity) to one under a federal with a federal owner. Imposing two different rules for the treatment of existing employees depending on whether they are assigned to a federal contract prevents the employer from preparing for such instances. Even if an employer foresees a need to re-assign a particular employee or crew of employees to a job under

federal contract from one under a non-federal contract, the employer is prevented from running the employee(s) through the E-Verify system in advance of the re-assignment so that the employee(s) may be re-assigned as soon as the staffing need arises. This could lead to costly delays on the federal project.

**Accordingly, AGC recommends a consistent rule regarding the treatment of existing employees, regardless of whether they are working on a federal contract. AGC urges the FAR Councils to withdraw all requirements mandating the use of E-Verify to confirm the employment eligibility of existing employees and to limit the requirement only to newly hired employees, consistent with the Memorandum of Understanding that must be executed by employers enrolling in E-Verify today. If the FAR Councils insist on requiring federal contractors to use E-Verify on existing employees assigned to the covered contract, then DHS should allow *all* enrolled employers to confirm existing employees through E-verify on a voluntary basis, regardless of the type of contract to which the employees are assigned.**

Second, subpart 22.1801 defines “assigned employee” as an employee who is “directly performing work” under a covered contract. The scope of this coverage is unclear. Which employees are considered to be “directly performing work” under the contract? Certainly, a construction worker performing craft work at the site of construction under a federal contract would be covered, but what about the administrative assistant working in the jobsite trailer? What about the accountant working at that construction contractor’s off-site headquarters? Does it matter if only a small portion of the accountant’s time is spent on tasks related to the federal contract while the remainder is spent on tasks related to private contracts? What about employees working at the construction contractor’s off-site tool yard, fabrication plant, batch plant, or other facility that serves and supplies both federal and non-federal projects?

In short, the definition of “assigned employee” under the proposed rule is too vague. The vagueness raises critical complications for employer compliance. Again, the problem is exacerbated for employers that perform both federal and nonfederal work, given the different rules concerning existing employees.

**For this reason too, AGC urges the FAR Councils to limit the proposed rule to newly hired employees consistent with the current rule for employers enrolled in E-Verify. If the FAR Councils insist on requiring federal contractors to use E-Verify on existing employees assigned to the covered contract, then we urge the Councils to clarify the definition of “assigned employee.”**

#### Timeframes and Deadlines

The rule imposes unreasonable timeframes on employers. The proposed rule requires that a federal contractor enroll in the E-Verify program within 30 days of the date a contract is awarded, and, within 30 days of that date, use E-Verify to verify the employment

eligibility of all employees “assigned to the contract.” If the contractor is already enrolled in E-Verify, it must use E-Verify for these employees assigned to the contract within 30 days. We recommend that the final rule should have at least a 90-day period between publication and the effective date, and should provide employers with a minimum of 90 days to verify existing employees.

The agency grossly underestimates the time required by an employer to fully understand and comply with their obligations under E-Verify. Any final rule should have at least a 90 day period between publication and the effective date and should provide a minimum of 90 days to verify existing employees.

The proposed rule also requires contractors with covered contracts to use E-Verify for all new hires within three days of hire for all new employees hired after the contract is awarded as well as for all existing employees who later are “assigned” to the contract. Three days may seem reasonable where employees are hired one at a time, but it is unduly burdensome in employment situations – such as a construction contractor staffing a large, new construction project – that require mass hirings at once or within a short time span.

**We strongly believe that the three-day timeframe is inadequate to allow for timely compliance, and we suggest amending the timeframe to ten business days.**

The eight-day timeframe provided to employees for resolving a discrepancy is likewise inadequate. When an employer receives a tentative non-confirmation (TNC), the employer must notify the employee and provide him or her with an opportunity to contest that finding. If the employee contests, he or she then has eight business days to visit an SSA office or call USCIS to try to resolve the discrepancy. Eight business days does not provide enough time for many employees to visit an SSA office, particularly in cases where the employee is working on a remote jobsite potentially hundreds of miles away from the closest SSA office and/or where transportation is not readily available.

**Therefore, we suggest amending the requirement to allow employees thirty business days to try to resolve the discrepancy with SSA or DHS.**

#### Termination of Lawfully Authorized Workers

The disadvantages of E-Verify are that there are significant problems with underlying databases, creating errors that may lead to termination of lawful U.S. workers. Current E-Verify procedures do not allow employees enough time to resolve discrepancies and there is no formal appeal process.

In the economic analysis of the proposed rule, the assumption is made that 3.8 million employees of federal contractors will be required to be run through E-Verify as a result of this rule for the first year the rule is in effect. Based on prior statements by DHS, two

percent of these workers will ultimately be fired because of their inability to resolve a tentative non-confirmation with the SSA or DHS. Thus a conservative estimate is that approximately 70,000 lawfully authorized workers will be fired as a result of this rule.

### Subcontracting

Nearly all government contracts of significant size or complexity involve multiple subcontracts and, frequently, numerous tiers of contract among the various parties that supply goods and services for a project. Frequently, clauses contained in government contracts are repeated or incorporated by reference into subcontracts awarded by the prime contractor. A review of these clauses with flowdown requirements reveals that the FAR does not provide uniform direction to contractors on the method or manner by which a contractor is to flow down the provision.

Addressing flowdown requirements can be a time-consuming process. AGC believes that employers should be held accountable for their own hiring decisions and not those of their subcontractors. This has been an area of great discussion during the debates over comprehensive immigration reform. The proposed rule states that the Contractor “shall flow down the requirement” to use E-Verify to subcontractors. Again, the Administration is seeking to impose policy that it has not been able to accomplish through the normal legislative process. That said, the flowdown provision is potentially one of the most troubling of the various components of the proposed rule.

In 1967 the Court of Claims held that a prime contractor could be held responsible for the delays of its first-tier subcontractors or suppliers. The clause was later amended to include delays caused by subcontractors and suppliers at any level within the scope of the prime contract’s delay responsibility, no longer limiting a prime contractor’s responsibility for all subcontracts and suppliers. Ultimately, AGC’s concerns center on the potential penalties concerning violations of the E-Verify rule and how they will be assumed by the prime contractor.

Notwithstanding the FAR Councils’ contrary claim, AGC believes that the rule would have a significant economic impact on a substantial number of small businesses, and particularly on the small suppliers and subcontractors that dominate the construction industry. These firms do not, themselves, hold government contracts. AGC both believes and fears that many would find the costs and complications of complying with the proposed rule to exceed the benefits of undertaking federal work. They have the option of taking their business elsewhere, and if they did, the federal government could experience significant increases in the cost of its construction projects, and perhaps delays in their completion.

**Accordingly, AGC believes that the flowdown provision would be very costly and difficult to administer. If the FAR Council insists on this requirement, AGC**

**strongly recommends the inclusion of a safe harbor and affirmative defense for violations committed by any subcontracting entity.**

#### Safe Harbor

AGC still has numerous concerns over the mechanics and operability of the E-Verify system. E-Verify is not truly electronic because it requires employers to continue to analyze paper documents and complete the Form I-9. It is only after completing the Form I-9 that an employer enters data information into the system. E-Verify does not verify the authenticity of the identity of the individual presenting the documents, but rather only that the identity presented on the documents matches information in the SSA and DHS databases. Simply stated, should an unauthorized worker use stolen Social Security numbers, fake certificates and fraudulently-obtained but “legitimate” photo IDs to bypass the system and gain employment, even E-Verify can not detect whether the document actually relates to the person presenting it – as a fraudulent photo could already be in the system. This leaves employers vulnerable to sanctions, should an unauthorized worker erroneously verified by E-Verify later be found to have committed identification fraud. Greater attention must be focused in this area.

**Accordingly, it is imperative that the requirements of the proposed rule clearly state that any employer that is required to use E-Verify and complies with the requirement have a safe harbor and affirmative defense against a finding that the employer knowingly employed an unauthorized employee in violation of INA §274A(a)(1)(A), similar to the defense provided in INA §274A(a)(3).**

#### Employment Under a Multiemployer Collective Bargaining Agreement

Section 274A(a)(6)(a) of the Immigration and Nationality Act (INA), 18 U.S.C. 1324a, establishes special provisions regarding employment eligibility verification of workers employed under certain multiemployer collective bargaining agreements. The statute effectively provides that an employer that is a member of an association that is a party to a collective bargaining agreement need not verify the eligibility of an employee in the bargaining unit who is hired within three years of verification by another employer in the same association and that such an employer will not be subject to civil penalties for paperwork violations set forth in §274A(e)(5).

The proposed rule does not address this issue, leaving such employers uncertain of their obligations and liabilities. The principles underlying the statutory provision apply equally to the current context: the terms and conditions of employment for workers employed under a multiemployer collective bargaining agreement are uniform across employers, and a worker’s change of employer within the multiemployer association is essentially a nominal change in employment; therefore, the employee should not be subject to re-verification each time such a change occurs. This is particularly relevant in the union sector of the construction industry, where employees often switch from one employer to

the next through a union hiring hall, as projects begin and end and as employers' staffing needs change.

**AGC therefore recommends that the FAR Councils amend the proposed rule to expressly apply the provisions in INA 274A(a)(6)(a) to the E-Verify mandates.**

#### Commercial Acquisitions

While the changes made by this rule appear in Part 12 of the FAR, dealing with "acquisition of Commercial Items," many employers who enter into non-acquisition contracts with the federal government are concerned that the E-verify requirement may apply to them or that officials of contracting entities may mistakenly attempt to impose the requirement on them.

Thus, the rule should provide clear examples of the kind of contracts and transactions for which it does not apply. For example, a contractor will have to purchase wide varieties of construction materials, such as steel and concrete, in order to successfully complete a project. Although the acquisition of these critical materials are the result of the completion of a contract with the federal government in some form, they are clearly not "acquisitions" by the federal government within the meaning of this rule or the FAR.

#### Cost of the Proposed Rule

One major concern we have with the proposed rule is that it will drive up the government's cost of doing business with contractors because many of the costs will be passed right back to the government. In light of the struggling economy and the massive federal deficit, the last thing the Administration should be doing is making it more expensive for the government to do business. Ultimately these costs will be borne by the American taxpayer, who has decidedly not expressed a desire to pay for this.

Another concern we have with the proposed rule is that it would impose an unfunded mandate on employers. The estimated cost of this proposal ranges from \$550,000,000 to \$668,000,000 over ten years. Most of those costs will be borne by private employers and will have two distinct and harmful impacts. First, it will drive up the cost of doing business thereby making federal construction contractors less profitable in a time when rising commodity prices and the weakening dollar are already negatively affecting their rapidly shrinking margins.

#### **Conclusion**

AGC genuinely appreciates the opportunity to comment on the rule that the Councils proposed on June 12, 2008. While AGC supports the goals and objectives of that rule, we believe a comprehensive approach to immigration reform would create better control over our borders and also provide for better interior enforcement against unscrupulous employers. AGC finds that the

Ms. Laurieann Duarte

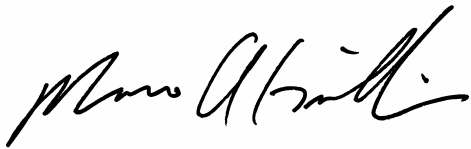
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rule would change far more than the FAR Councils have acknowledged and that its approach in carrying out the directives the June 6, 2008, amendment to Executive Order 12989 would create complications even greater than even the FAR Councils may have contemplated.

Thank you again for entertaining 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 prominent initial "M" and a long, sweeping underline.

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