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



January 31, 2012

The Honorable Hilda L. Solis
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

RE: Denial of Request to Extend the Comment Period for OFCCP's Proposed Rule Regarding Individuals with Disabilities; Disregard of Comments to OFCCP's Proposed Rule Regarding Veterans (RIN 1250-AA02)

Dear Secretary Solis:

The Associated General Contractors of America (AGC) would like to express concern and deep disappointment regarding the disregard of the comments submitted in response to the Office of Federal Contract Compliance Program's (OFCCP) Notice of Proposed Rulemaking (NPRM) regarding the affirmative action and nondiscrimination obligations of contractors and subcontractors regarding Veterans that was published on April 26, 2011, as it relates to the timing of the NPRM regarding individuals with disabilities published on December 9, 2011. AGC would also like to express concern regarding the denial of the request to extend the public comment period with regard to the NPRM regarding individuals with disabilities.

AGC is among the oldest and largest of the nationwide trade associations in the construction industry representing 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, both union and open shop, 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 perform construction services for government agencies under contracts covered by the laws administered by the OFCCP. Most are small and closely held businesses.

As mentioned above, the proposed rule regarding Veterans was published in the federal register on April 26, 2011, and the public comment period ended on July 11, 2011. The proposed rule asked for comments from the contractor community regarding several newly proposed requirements that would require major changes to the way contractors currently operate.

At OFCCP's request, AGC submitted comments explaining why these proposed requirements would be difficult for construction contractors to comply with, if at all, and asked OFCCP to exempt the construction industry from the requirements of the proposed rule, or at minimum,

simplify the requirements for compliance. Several construction companies also submitted comments requesting the same due to the unique seasonal and often transitory nature of the construction industry. Yet, before the issuance of a final rule, OFCCP published another NPRM regarding individuals with disabilities, which is almost identical to the proposed requirements in the NPRM regarding Veterans. According to the most recent regulatory agenda, a final rule regarding the Veterans' NPRM is not expected until July 2012.

Furthermore, the NPRM regarding individuals with disabilities states throughout that OFCCP concludes that "no additional contractor burden exists" for compliance with most of the proposed requirements because OFCCP has "counted these hours in its NPRM revising regulations implementing the Vietnam Era Veterans' Readjustment Assistance Act." This conclusion is premature and demonstrates a lack of regard for the purposes of the public comment period. OFCCP appears to be relying on its own preliminary findings without consideration of the comments submitted on the impact that the proposed Veterans rule would have on the contractor community and without deference for the full regulatory process. AGC would like to believe that the OFCCP cares about contractor burdens and the regulatory process more than this.

Again, OFCCP published the NPRM regarding individuals with disabilities on December 9, 2011. This came at a time when many in the contractor community were not adequately available to properly respond for a variety of reasons, including holiday vacations and closings. Human resources professionals, those most likely to be responsible for compliance with a rule of this nature, were focused heavily on coordinating health insurance benefits for employees, as many employers were in the midst of open-enrollment season, while preparing for the recruiting season for spring construction work. In light of the many important issues addressed by the proposal and the economic interests at stake, AGC requested a 60-day extension of the comment deadline, which was denied.

While waiting for a decision from OFCCP on the extension request, AGC scheduled a conference call with some of its federal contracting members and also distributed a survey to members in order to share with OFCCP actual and anticipated time and costs data associated with complying with the proposed rule. While AGC has received some valuable feedback during the conference call, AGC believes it is necessary to allow interested parties more time to respond to the survey. As a result, AGC will need additional time to analyze the results and prepare comments for OFCCP's review.

If OFCCP is indeed interested in receiving meaningful feedback and data regarding the proposed rule regarding the affirmative action and non-discrimination obligations of contractors, then AGC, again, respectfully requests that the OFCCP extend the public comment period for a minimum of 60 days. Please find AGC's original request for extension attached.

Sincerely,



Tamika C. Carter
Director, Construction HR

Cc: Patricia A. Shiu
Debra A. Carr

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December 22, 2011

Ms. Debra A. Carr
Director
Division of Policy, Planning and Program Development
Office of Federal Contract Compliance Programs
Room C-3325
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Request for extension of comment period on proposed rule pertaining to Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities (RIN 1250-AA02)

Dear Ms. Carr:

The Associated General Contractors of America (AGC) requests an extension of the public comment period, for an additional 60 days, on the Office of Federal Contract Compliance Program's (OFCCP) proposed rule pertaining to the affirmative action and nondiscrimination obligations of contractors and subcontractors regarding individuals with disabilities as published in the *Federal Register* on December 9, 2011.

AGC is among the oldest and largest of the nationwide trade associations in the construction industry representing 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, both union and open shop, 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 perform construction services for government agencies under contracts covered by the laws administered by the OFCCP. Most are small and closely held businesses.

The proposed rule would be used by OFCCP to increase the affirmative action obligations of covered federal contractors and their subcontractors by detailing specific actions a contractor must take to satisfy its obligations regarding individuals with disabilities. The proposed rule will also increase the contractor's data collection obligations, and establish a utilization goal for individuals

with disabilities. The changes are significant and complex, and as a result, if implemented, the proposed rule will impact all stages of federal contracting for construction employers and will have a substantial impact on the construction industry as a whole.

Of particular importance to the construction industry is the proposal that contractors will be required to meet a national utilization goal of 7% for each job category; collect and maintain additional data regarding referrals, applicants and hires; offer applicants to self-identify as having a disability both pre- and post-offer; perform and document annual reviews listing physical and mental job qualifications for all job openings; and provide an explanation as to why each requirement is related to the job to which it corresponds. These are just a few of the areas in the proposal that pose a significant importance to the construction industry, yet these changes alone are complicated enough to warrant an extension of the comment period.

OFCCP is requesting comments on the proposed rule from the contractor community; however, this regulatory initiative is being introduced at a time when many in the contractor community are not available. While we appreciate OFCCP's efforts to calculate the time and expense associated with complying with the requirements of this proposed rule, AGC would like the opportunity to reach out to its members regarding the actual time it takes to perform such tasks and the costs associated with performance. Many companies are short-staffed due to vacations and travel plans, and/or closed for the holidays through the end of the year. Those who are most likely to be responsible for compliance with a rule of this nature are focused heavily on coordinating health insurance benefits for employees as we are in the midst of open-enrollment season, and immediately after the first of the year, the construction recruiting season jumps into full swing. As a result, it will be extremely difficult for AGC to get meaningful feedback from its members before the February 7 deadline.

In light of the many important issues addressed by the proposal and the economic interests at stake, and if OFCCP is sincerely interested in receiving meaningful comments and data regarding this proposed rule, it is imperative that OFCCP allow all interested parties time to provide thoughtful comments. AGC therefore requests that the comment period be extended by 60 days.

Sincerely,

A handwritten signature in black ink that reads "Tamika C. Carter". The signature is written in a cursive, flowing style with a decorative flourish at the end.

Tamika C. Carter
Director, Construction HR