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THE CONSTRUCTION
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July 13, 2022

The Honorable Nancy Pelosi
United States House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
United States House of Representatives
Washington, DC 20515

RE: Amendments to H.R. 7900 - National Defense Authorization Act for Fiscal Year 2023

Dear Speaker Pelosi and Minority Leader McCarthy:

On behalf of the Associated General Contractors of America (AGC) – the leading association in the construction industry representing more than 27,500 firms, including America’s leading general contractors and specialty-contracting firms – thank you for your leadership in developing H.R. 7900 - *National Defense Authorization Act for Fiscal Year 2023*.

As the House of Representatives votes on amendments to H.R. 7900, AGC urges you to consider the impacts of these amendments on the construction industry. The Department of Defense (DoD) construction agencies preform tens of billions of dollars in military construction projects each year, as authorized under the National Defense Authorization Act (NDAA). As such, AGC puts forth the positions on certain amendments to H.R. 7900 that will help you in your efforts to ensure these projects are delivered on time and on budget.

In short, AGC urges you and members of the House of Representatives to:

- **Oppose Amendment No. 2/#443 (Rep. Jones) and Amendment No. 413/#403 (Rep. Jayapal)** – These amendments usurp long established existing rules for debarment and suspension, and is a blunt bureaucratic solution for which there is a lack of statistically significant evidence of a systemic problem. The Federal Acquisition Regulation (FAR) already provides a number of avenues – like suspension or debarment – for federal agencies to deal with “bad actors” that willfully or repeatedly violate the law. Federal agencies already have broad discretion to suspend or debar contractors for a wide range of improper conduct indicating a lack of business integrity.
- **Oppose Amendment No. 3/#809 (Rep. Schakowsky)** – This amendment establishes a preference for DoD to contract only with firms that enter into union organizing neutrality agreements. These agreements typically can restrict employer communications with its employees, eliminate employee privacy, and eliminate access to secret ballot elections during union representation elections.
- **Oppose Amendment No. 4/#13 (Rep. Kim)** – This amendment requires new and onerous requirements for military construction contractors which goes against decades of federal contracting policies and precedent, including requiring all contractors and subcontractors performing a military construction contract be licensed in the state where the work will be performed and mandating local hiring preferences. Local hire policies, such as this amendment proposes: (1) rarely result in long-term placements; (2) let local elected officials off the hook for having failed to make the necessary investments in career and technical education programs; and (3) do nothing to attract people into

construction and rarely lead to construction careers. The state licensing requirement represents a momentous shift in the way both the DoD and defense contractors perform work. There has never been a state licensing requirement for federal construction contractors, let alone military construction contractors, to perform work. Such state regulations are contrary to the federal procurement statutes and regulations that provide standards for judging the responsibility of competitive bidders for federal contracting. Most military construction contractors perform work across many states and territories. This amendment will severely restrict military construction contractors' ability to perform work. Consequently, the amendment will lead many contractors to leave the market, reduce competition and jeopardize the delivery of critical military infrastructure projects.

- **Oppose Amendment No. 45/#89 (Rep. Horsford)** – This amendment would require the tracking and reduction of greenhouse gas emissions from third-party, non-public sources such as vendors, contractors, and manufacturers—having a major impact on the supply chain and small businesses seeking to work on DoD projects. The technology and expertise currently do not exist to support this amendment on a large scale.
- **Oppose Amendment No. 159/#786 (Rep. Garamendi)** – This amendment attempts to correct a significant issue of non-standardized base access that causes inefficiencies leading to loss of taxpayer dollars, but the amendment has key deficiencies that risks making the issue worse. For example, a major challenge for military construction projects on a base is getting large delivery trucks access to drop off construction materials. Under this amendment if a delivery driver across the country to deliver materials to a base that driver would be unable to make such a delivery without unless the driver is deemed fit to enter after a screening not less than 24 hours and not more than 14 days. In addition, this amendment seems to codify new authorities for union representatives to enter military construction jobsites to advocate for expansion.
- **Oppose Amendment No. 405/#78 (Rep. Pappas)** – This amendment takes a one-size-fits-all approach to PFAS that predetermines outcomes ahead of EPA's review of the science and engagement in the regulatory process. The amendment would redirect resources away from EPA's prioritized efforts to address specific types of PFAS and risks diluting current EPA efforts to set consistent, scientific, risk-based standards to address potential impacts related to those PFAS.
- **Support Amendment No. 460/#556 (Rep. Escobar)** – This amendment reauthorizes the Wastewater Assistance to Colonias program and increases program funding to \$100,000,000 for the planning, design, and construction or improvement of sewers, treatment works, and appropriate connections for wastewater treatment to eligible communities for each of the fiscal years 2023 through 2027. Increases amount of grants awarded to not less than 80 percent of the costs of carrying out the projects that is subject to the grants.
- **Support Amendment No. 475/#598 (Rep. Brown)** – This amendment attempts to correct a detrimental and complicated effect of the FAR Credits Clause on the Paycheck Protection Program (PPP) for highway and public transportation projects under cost-reimbursement contracts. Since the PPP loan forgiveness can be counted as a credit, if the Government deems the credit is related to the contractor's allocable costs, then the contractor is required to pay the Government any credits received by the contractor to the extent the credit is properly allocable to costs. The consequence being many small businesses that have taken a PPP loan will have to pay back the Government depending on the contract vehicle. AGC is unaware of any other situation where a program – such as PPP– that was intended to save small businesses is requires recipients to pay back the government

depending on the type of contract vehicle used on a particular project. This detrimental approach to PPP recipients also occurs in direct contracts with federal agencies that use these types of contract vehicles. AGC suggests this amendment be expanded to cover more types of contracts for Construction, Architect, and Engineering services.

- **Support Amendment No. 531/#1135 (Rep. Guest)** – Removes barriers preventing rural communities from using Economic Development Authority grants to expand access to high-speed broadband internet. This amendment allows modern approaches to economic development and creates new opportunities for individuals to work, attend school, socialize, and access healthcare.
- **Oppose Amendment No. 625/#1072 (Rep. Smith)** – This amendment is largely duplicative of established law and U.S. Army Corps of Engineers policy, but also adds the risk of publishing federal contractors’ proprietary information. The amendment requires the Army Corps to investigate worker and third-party complaints, certify payrolls, and make such payroll information publicly available.
- **Oppose Amendment No. 628/#183 (Rep. Speier)** – This amendment would impose burdensome, unnecessary reporting burdens on many American businesses and threatens the privacy of law-abiding, legitimate small business owners. It would also create significant liability risk for federal contractors for violating minor paperwork requirements related to “beneficial ownership” that can be challenging for business owners to comply.
- **Support Amendment No. 632/#596 (Rep. Stauber)** – This amendment will help ensure small business construction contractors receive timely payment for change orders. Construction firms of all sizes, but especially small businesses, have had to weather the effects of the pandemic and soaring construction materials costs. This commonsense and bipartisan amendment will help ensure that our nation's small business construction contractors do not go broke waiting to be paid for work the federal government ordered them to perform.

Sincerely,



James V. Christianson
Vice President, Government Relations

cc: Members of the U.S. House of Representatives