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THE CONSTRUCTION
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July 12, 2023

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

The Honorable Hakeem Jeffries
United States House of Representatives
Washington, DC 20515

RE: Key Vote on Amendments to H.R. 2670 – National Defense Authorization Act for FY 2024

Dear Speaker McCarthy and Minority Leader Jeffries:

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. 2670 - *National Defense Authorization Act for Fiscal Year 2024*. As the House of Representatives votes on amendments to H.R. 2670, AGC urges you to consider the impacts of these amendments on the construction industry. The Department of Defense (DoD) construction agencies perform tens of billions of dollars in military construction projects each year, as authorized under the National Defense Authorization Act (NDAA). **Because of the impact these amendments will have on the construction industry, AGC reserves the right to record your votes on them as KEY VOTES for the education of its members.** A more detailed explanation is provided below this list.

AGC reserves the right to record your votes on the below amendments as KEY VOTES:

- **Oppose #227** ([Rep. Garamendi](#))
- **Oppose #229** ([Rep. Garamendi](#))
- **Oppose #230** ([Rep. Norcross](#))
- **Oppose #329** ([Rep. Espailat](#))
- **Oppose #440** ([Rep. Jayapal](#))
- **Support #453** ([Rep. Stauber](#))
- **Oppose #587** ([Rep. Schakowsky](#))
- **Oppose #619** ([Rep. Cleaver](#))
- **Support #806** ([Rep. Kiggans](#))
- **Oppose #1168** ([Rep. Ocasio-Cortez](#))
- **Oppose #1177** ([Rep. Lee](#))

While no key votes on the below amendments, AGC urges you and your colleagues to:

- **Support #65** ([Rep. Molinaro](#))
- **Oppose #302** ([Rep. Garamendi](#))
- **Oppose #311** ([Rep. Deluzio](#))
- **Support #521** ([Rep. Moylan](#))
- **Support #548** ([Rep. James](#))
- **Oppose #605** ([Rep. Garamendi](#))
- **Support #784** ([Rep. McCollum](#))
- **Support #918** ([Rep. Neguse](#))
- **Oppose #925** ([Rep. Lee](#))

AGC reserves the right to record your votes on the below amendments as KEY VOTES:

- **Oppose #227 (Rep. Garamendi)** – 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. 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 #229 (Rep. Garamendi)** – This amendment would mandate local hiring preferences on military construction projects. 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.
- **Oppose #230 (Rep. Norcross)** – This amendment would require the DoD to create duplicative safety performance rating system for prospective contractors based on their record of worker health and safety violations. Safety is already an important evaluation factor for both federal contractors and federal personnel via Contractor Performance Assessment Reporting System (CPARS). The DoD and the construction industry have a long history of ensuring the safety of its employees. For example, Department of the Army’s EM 385-1-1, Safety and Health Requirements Manual, was developed many years ago and is undergoing an update with industry feedback.
- **Oppose #329 (Rep. Espailat)** – This strikes Section 1822 in order to fund regulations requiring contractors to disclose their greenhouse gas emissions levels, climate-related financial risk, greenhouse gas emissions reductions targets, and other climate metrics. Currently, there are multiple proposed federal regulations that will soon dramatically increase reporting and compliance with greenhouse gas emissions standards. The technology and expertise currently do not exist to support this amendment on a large scale.
- **Oppose #440 (Rep. Jayapal)** – This amendment usurps 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 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.
- **Support #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.

- **Oppose #587 (Rep. Schakowsky)** – This amendment arbitrarily establishes a preference for DoD contractors to meet certain labor requirements in order to perform work on a defense contract. As stated above, the Federal Acquisition Regulation already provides numerous avenues for federal agencies to deal with “bad actors” that willfully or repeatedly violate the law. Likewise, federal agencies have broad discretion to suspend or debar contractors for labor violations.
- **Oppose #619 (Rep. Cleaver)** – This amendment will require DoD to implement duplicative and onerous reviews related to climate change when selecting remedial actions for the environmental cleanup of Base Realignment and Closure Sites (BRAC sites) and Formerly Used Defense Sites (FUDS). Congress created BRAC and FUDS to expediate disposal of federal real property and assets. Requiring further environmental reviews defeats the intended purpose of these programs.
- **Support #806 (Rep. Kiggans)** – This amendment would allow for semiconductor manufacturing facilities that are already under construction and receiving CHIPS Act grant funding, to continue construction while the NEPA environmental review process is carried out. Congress has recognized CHIPS Act funded projects as critical to national security. In the same vein, Congress has recognized the potential for NEPA reviews to needlessly slow critical infrastructure projects and enacted laws to streamline NEPA reviews. This commonsense amendment is in line with recent bipartisan Congressional actions.
- **Oppose #1168 (Rep. Ocasio-Cortez)** – This amendment would allow the Office of Federal Contractor Compliance Programs at the Department of Labor to establish new and onerous compliance procedures for the existing prohibition on criminal history inquiries by Federal contractors. The Federal Acquisition Regulation 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 #1177 (Rep. Lee)** – This amendment would require the incorrect federal agency, Equal Employment Opportunity Commission, to establish new and onerous requirements for potential private bidders to submit a bid or proposal for a DoD contract. It would also redundantly require contractors and subcontractors to remain in compliance with Equal Employment Opportunity requirements during the performance of a contract, which they are already required to do and policed under existing law.

While no key votes on the below amendments, AGC urges you and your colleagues to:

- **Support #65 (Rep. Molinaro)** – 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.

- **Oppose #302 (Rep. Garamendi)** – This amendment needlessly implements duplicative requirements for pricing data when cost or pricing data is required. The federal market is highly regulated and accurate pricing data is required. For decades there has existed extensive reporting requirements regarding the fundamentals of federal contracting, accurate pricing data. This amendment proposes a solution for which there is a lack of statistically significant evidence of systemic problems with the current reporting requirements.
- **Oppose #311 (Rep. Deluzio)** – This amendment would lower the mandatory disclosure threshold for contractors to provide certified cost and pricing information from. As stated immediately above, for decades the federal government has required extensive cost and pricing data reporting requirements on essentially all federal contracts. Absent widespread-or any significant reporting failure there is no need to upend long established and well incorporated cost and pricing reporting requirements.
- **Support #521 (Rep. Moylan)** –This amendment would exempt Guam from the Buy America Act. The recent devastation from of Typhoon Mawar coupled with the immediate need to upgrade Guam’s military infrastructure necessitates allowing full and open competition of building materials. This limited amendment would help expedite the improvement of Guam’s infrastructure and help the citizens recover from a destructive natural disaster.
- **Support #548 (Rep. James)** – This amendment would requires the Department of Veterans Affairs to treat a pre-apprenticeship program as an apprenticeship program for purposes of providing educational assistance, and grants a veteran eligibility for a specified amount of housing assistance if not paid as part of a pre-apprenticeship program. For years, the Department of Labor has taken a narrow definition of registered apprenticeship programs. This amendment will allow for reasonable workforce training certification for our military veterans.
- **Oppose #605 (Rep. Garamendi)** – This amendment would significantly increase regulatory scrutiny of nuclear minor construction by decreasing the threshold from \$30 million to \$10 million. Congress has recognized the energy independence is critical to national security. Increasing the regulatory reviews of the already lengthy and costly process of nuclear construction will be counterproductive.
- **Support #784 (Rep. McCollum)** – This amendment would create a grant program for research and development relating to PFAS-free alternatives for currently unavoidable (i.e. essential) uses of perfluorooctanesulfonic acid (PFOS). There are approximately 5,000 PFAS in use in a wide variety of common commercial products like cosmetics, apparel, carpeting, sealants, and fire-retardants. EPA is focusing most of its efforts on a handful of PFAS, chiefly perfluorooctanoic acid (PFOA) and PFOS that are considered ubiquitous, meaning that trace amounts are found nearly everywhere. This amendment will provide support for efforts to find commonsense solutions for product often considered hazardous.

- **Support #918 (Rep. Neguse)** – This amendment would direct the Department of Labor to carry out a five-year program of grants to nonprofit organizations that assist the transition of service members to civilian life. This commonsense amendment will help ease the burden of members of the military transition to civilian life, including finding employment where their skills can best be utilized.
- **Oppose #925 (Rep. Lee)** – This amendment needlessly increases the number of government contracts that are subject to cost and pricing data reporting requirements and accountability standards. The amendment redefines commercial products, lowers the reporting threshold for pricing data waivers, and requires the DoD to increase their scrutiny of pricing data when awarding defense contracts. As mentioned above, the federal government has longstanding legal obligations to check cost and pricing data. This amendment is duplicative of existing laws and regulations.

Sincerely,



James V. Christianson
Vice President, Government Relations

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