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July 18, 2023

The Honorable Jack Reed
United States Senate
Washington, DC 20510

The Honorable Roger Wicker
United States Senate
Washington, DC 20510

RE: Amendments to S. 2226– National Defense Authorization Act for FY 2024

Dear Chairman Reed and Ranking Member Wicker:

On behalf of the Associated General Contractors of America (AGC), I would like to thank you for your leadership in developing S. 2226 - *National Defense Authorization Act for Fiscal Year 2024*. As the U.S. Senate votes on amendments to S. 2226, AGC urges you to consider the impacts of these amendments on the construction industry and reserves the right to record votes on these amendments as “Key Votes” for the education of its membership. 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).

AGC is the nation’s leading association for the construction industry, representing more than 27,500 firms, including more than 6,500 of America’s leading general contractors and more than 9,000 specialty contractors. More than 10,500 service providers and suppliers are also associated with AGC, all through a nationwide network of 89 chapters in all fifty states, the District of Columbia, and Puerto Rico. AGC contractors build the nation’s factories, warehouses, schools, hospitals, retail centers, offices, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects, utility infrastructure, and more.

AGC Supports the inclusion of the following provisions:

- **Senate Amendment 140** – This amendment would prohibit requiring defense contractors from providing information relating to greenhouse gas emissions (GHG). Currently, there are multiple proposed federal regulations that will soon dramatically increase reporting and compliance with GHG standards. The technology and expertise currently do not exist to support this amendment on a large scale.
- **Senate Amendment 313** – This amendment incorporates the *Guidance Out of Darkness Act* (GOOD Act) which would reduce the regulatory burden on small businesses and bring transparency to rules, regulations, and agency guidance documents. The construction industry must be an integral part of the policymaking processes to help ensure that construction firms and its workforce can continue to grow and prosper. It is important that any rule that will have a significant impact on the construction industry—especially small businesses—be clearly defined and easily accessible. Likewise, it is critical for Congress to be made aware of any onerous rules that add regulatory and other roadblocks to improving the efficiency of our infrastructure and increased costs to small businesses.

- **Senate Amendment 336** – This amendment would expedite the permitting process to improve international bridges responsible for billions of dollars’ worth of trade and millions of people by—among other things—waiving the National Environmental Policy Act (NEPA) review process.
- **Senate Amendment 385** – This amendment would simply require federal agencies to provide a 100-word, plain-language summary for each new federal regulation. As stated above, the growing complexity of federal regulations puts American jobs and business at risk of difficult to understand and onerous rules. It also makes it difficult for Congress to easily track activities of federal agencies.
- **Senate Amendment 505** – This amendment would bring increase transparency and accuracy of U.S. Small Business Administration’s (SBA) Procurement Scorecard and the overall participation of small business participation in the federal market. Currently, SBA provides each agency with one rating for small business participation despite the fact that there are numerous small business types of small businesses. Among other things, it would require reporting of small business prime contracts and subcontracts during the fiscal year compared to the prior fiscal year, including a breakdown by North American Industry Classification System code, if available. This amendment will also require reporting of the top 10 industries and the bottom 10 industries small business participation.
- **Senate Amendment 576** – 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.
- **Senate Amendment 583** – Similar to the above amendment, this amendment would expedite the NEPA environmental review process for infrastructure supporting communications equipment, including, including any transmitting device, tower, or support structure.
- **Senate Amendment 771** – This amendment would require a report of all water utilities owned by the DoD, its state of repair, and require annual inspection of critical water utility infrastructure.

AGC Opposes the inclusion of the following provisions:

- **Senate Amendment 632** – This strikes Section 820 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.

- **Senate Amendment 700** – This amendment would increase the goals for procurement contracts awarded to small businesses from 23 percent to 25 percent. According to a recent report by the Congressional Research Services, federal agencies and prime contractors consistently have difficulty meeting the small business goals, especially Women-Owned Small Business (WOSBs) and Historically Under-utilized Business Zones Small Business (HUBZone). Arbitrarily increasing the small business goals will not increase small business awards.
- **Senate Amendment 727** – 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.
- **Senate Amendment 676** – This amendment would require duplicative and onerous procedures prohibiting federal contractors from inquiring on applicant’s criminal history. Federal contractors are already prohibited from inquiring about a potential applicant’s criminal history prior to extending a conditional job offer as per the enacted NDAA FY 2020.

Thank you for your consideration and for your work to produce a bipartisan, procurement reform-oriented authorization of our national defense in the FY 2024 NDAA.

Sincerely,



James V. Christianson
Vice President, Government Relations

cc: Members of the U.S. Senate