



## AGC: Top Priorities & Other Comments FY 2023 NDAA (S.4543/H.R.7900)

### Top Priorities

- **Oppose House Section 868 (Rep. Jones) and House Section 5817 (Rep. Jayapal)** – These sections create new *Blacklisting* requirements for contractors, similar to *Fair Pay and Safe Workplaces* (E.O. 13673) that Congress stopped from being implemented. These sections would usurp long established existing rules for debarment and suspension, and blunt bureaucratic solutions 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 House Section 809 (Rep. Schakowsky)** – This section 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 House Section 2809 (Rep. Kim) and House Section 2809B (Rep. Garamendi)** – These sections require 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 section 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 section will severely restrict military construction contractors’ ability to perform work. Consequently, the section will lead many contractors to leave the market, reduce competition and jeopardize the delivery of critical military infrastructure projects.
- **Oppose House Section 2825 (Rep. Garamendi)** – This section attempts to correct a significant issue of non-standardized base access that causes inefficiencies leading to loss of taxpayer dollars, but the section has key deficiencies that risks making the issue worse. For example, one of the many challenges with military construction projects located on a base is getting large delivery trucks access to drop off construction materials. Under this section if a delivery driver traveled across the country to deliver materials to a base that driver would be unable to make such a delivery 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 section seems to codify new authorities for union representatives to enter military construction jobsites to advocate for expansion.
- **Oppose Senate Section 827 (Sen. Warren)** – This section would dramatically change the long-established system for progress payments, and proposes an unworkable formula that will harm federal procurement, needlessly draw out project close times, and seriously risks harming flow-down payments to subcontractors and small businesses.

## Comments on Additional Sections

- **Oppose House Section 319 (Rep. Horsford)** – This section 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 section on a large scale.
- **Oppose House Section 5883 (Rep. Pappas)** – This section 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 section 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.
- **Oppose House Section 2882 (Rep. Smith)** – This section 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 section requires the Army Corps to investigate worker and third-party complaints, certify payrolls, and make such payroll information publicly available.
- **Oppose House Section 5851 (Rep. Speier)** – This section would impose 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 House Section 870 (Rep. Stauber)** – This section 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 section 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.
- **Support House Section 5899 (Rep. Escobar)** – This section 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 House Section 5905 (Rep. Brown)** – This section 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 section be expanded to cover more types of contracts for Construction, Architect, and Engineering services.



- **Support House Section 5326 (Rep. Guest)** – Removes barriers preventing rural communities from using Economic Development Authority grants to expand access to high-speed broadband internet. This section allows modern approaches to economic development and creates new opportunities for individuals to work, attend school, socialize, and access healthcare.
- **Support Senate Section 823 (Sen. Inhofe)** – This section would provide flexibility when requesting qualification for architectural and engineering services on a task or delivery order.