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February 17, 2023

Roman Ivey  
Liaison  
Small Business Administration  
409 Third St SW  
Washington, DC 20405  
Sent *via electronic mail* to *Regulation.gov*

**RE: AGC of America Comments on RIN 3245-AH28 – National Defense Authorization Act of 2020, Credit for Lower Tier Subcontracting and Other Amendments**

Dear Mr. Ivey,

Thank you for the opportunity to comment on RIN 3245-AH28 – *National Defense Authorization Act of 2020, Credit for Lower Tier Subcontracting and Other Amendments* (“Proposed Lower-Tier Rule”). For years, the Associated General Contractors of America (“AGC”) has worked with the Small Business Administration (“SBA”) and other federal entities to ensure that our nation has the high-quality infrastructure it needs now and in the future. Federal investment in infrastructure plays an essential role in building our economy and creating well-paying jobs for the American people.

AGC is the leading association in the construction industry representing more than 27,000 firms, including union and open-shop general contractors and specialty-contracting firms. Many of the nation’s service providers and suppliers are associated with AGC through a nationwide network of 89 chapters in every state, the District of Columbia and Puerto Rico. AGC contractors are engaged in the construction of the nation’s defense facilities, federal facilities, commercial buildings, factories, warehouses, highways, bridges, tunnels, airports, water infrastructure facilities, locks, dams, multi-family housing projects, and more.

While SBA cites the Proposed Lower-Tier Rule as being part of the 2020 NDAA, it has in fact been more than a decade since Congress has asked SBA to publish a rule to count lower-tier subcontractors towards a prime contractor’s small business goals. On **December 7, 2015**, AGC submitted its [first set of comments](#)<sup>1</sup> on SBA’s proposed rule for prime contractors to receive credit for lower-tier small business subcontracting goals. On **August 26, 2019**, AGC submitted its [second set of comments](#)<sup>2</sup> to SBA’s notice of proposed rulemaking for prime contractors to receive credit for lower-tier small business subcontracting goals. On **February 17, 2023**, AGC is now submitting this third set of comments. While hardly any questions are asked in the Proposed Lower-Tier Rule, AGC believes that these and other answers are found in AGC’s two previous comment letters to SBA.

In 2013, Congress included Section 1614 of the National Defense Authorization Act for Fiscal Year 2014, which directed federal agencies to allow non-small prime contractors with individual prime contracts to take credit for small business subcontracts at all tiers towards small business subcontracting goals. Consequently, the SBA incorrectly interpreted Sec. 1614 of 2014 NDAA and the existing provisions within the Small

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<sup>1</sup> RIN: 3245-AG71

<sup>2</sup> RIN: 9000-AN61

Business Act by effectively establishing two small business subcontracting goals—one at the first tier and one at lower-tiers. Congress, in plain language, directed SBA to abolish two different counting schemes and by enacting section 870 of the FY2020 NDAA. Nearly three years later SBA released the Proposed Lower-Tier Rule.

For these reasons henceforth, AGC respectfully requests the SBA finalize the Proposed Lower-Tier Rule this year, ensure the final rule matches the legislative language and congressional intent, and refrain from watering down the law. If you would like to discuss this matter with us further, please do not hesitate to contact AGC.

Sincerely,

A handwritten signature in black ink that reads "Jordan Howard". The signature is written in a cursive, flowing style.

Jordan F. Howard  
Counsel, Federal Construction & Regulatory Affairs  
Associated General Contractors of America