

November 23, 2021

The Honorable Adam Smith
Chairman
U.S. House Committee on Armed Services
Washington, DC 20515

The Honorable Mike Rogers
Ranking Member
U.S. House Committee on Armed Services
Washington, DC 20515

The Honorable Jack Reed
Chairman
U.S. Senate Committee on Armed Services
Washington, DC 20510

The Honorable James Inhofe
Ranking Member
U.S. Senate Committee on Armed Services
Washington, DC 20510

Re: Construction Industry Procurement Coalition — National Defense Authorization Act for FY 2022

Dear Chairman Smith, Ranking Member Rogers, Chairman Reed, and Ranking Member Inhofe:

We, the undersigned construction industry trade and professional organizations represents tens of thousands of firms and individuals engaged in architecture, engineering, surveying and mapping, prime contracting, subcontracting, specialty trade contracting, supplying, construction and program management and surety bond production. We write to share our suggestions and proposals for the National Defense Authorization Act for Fiscal Year 2022.

We respectfully request your and your committees' consideration of the views from the Construction Industry Procurement Coalition (CIPC) as you draft legislation.

Include

House Sec. 848 – This section would require the DoD to submit a report on the effects of the Cybersecurity Maturity Model Certification (CMMC) on small businesses. CMMC is one of the most ambitious cybersecurity compliance requirements ever undertaken by DoD. The program is designed to be a mandatory requirement on all defense contracts. The potential of excluding a significant portion of small business defense contractors and the ability for agencies and prime contractors to meet small business goals should be evaluated and reported to Congress and the public.

House Sec. 877 – This section would exempt the Miller Act from the periodic indexing required under Title 41. The Miller Act currently requires all general contractors on federal construction projects over \$150,000 to furnish surety bonds to protect the government's use of taxpayer funds and to ensure payments to subcontractors, and suppliers. Any increase in the contract price threshold through indexing exposes workers, suppliers, and taxpayer dollars to unnecessary risk.

House Sec. 1540 – This section would evaluate the use of Controlled Unclassified Information (CUI) program. Prior to CUI being designated for all Architecture-Engineering-Construction (AEC) documents, most AEC documents had no designation at all. We appreciate the department's

attention to this matter in its recent review of CMMC, however, as CUI and CMMC-like requirements extend to additional agencies, it is imperative that CUI is closely monitored. The time and costs of implementing NIST 800-171 and CMMC will limit the industrial base's ability to support the services, including small business participation. The Department and the services must uniformly define what constitutes CUI as clearly as possible, as the term "CUI" applies to AEC industry information in support of DoD contracts. By establishing a clear definition and standards for CUI, it will help maximize participation by the industrial base, while saving time and money for the government, industry, and the American taxpayer.

Exclude

House Sec. 865 – This section provides a blunt bureaucratic solution for which there is a lack of statistically significant evidence of a systemic problem and usurps long established existing rules. 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, not just Fair Labor Standard Act violations.

House Sec. 2808 – This section 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 issuing local hiring preferences. Local hire policies, such as This section proposes, rarely result in long-term placements, lets local elected officials off the hook for having failed to make the necessary investments in career and technical education programs, do nothing to attract people into construction, and rarely lead to construction careers. The state licensing requirement represent 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 to perform work, leading to an exodus from the industry and jeopardizing critical military infrastructure projects.

House Sec. 2806 – This section would put in place requirements for the use of qualified apprentices in military construction contracts. It is important to note that Section 2806 was repealed in the final FY 2021 NDAA. While we support apprenticeships and encouraging new talent to enter the workforce, we have concerns with the industry's ability to fulfill the requirements. This could have a negative effect on delivering quality military construction projects and thus we cannot support it.

House Section 818/Senate Section 801 – This provision repeals section 829 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328), which states that a contracting officer shall first consider the use of fixed-price contracts in the determination of contract type. For architect/engineering services contracts, with well-defined scopes of work and clear deliverables identified, fair and reasonable costs of services can be negotiated. This makes fixed-price contracts more efficient for all parties. When the contractor and agency know and agree on a bottom-line cost

and deliverables schedule for a well-defined scope of work, contract administration, accounting, and billing are simplified. This reduces associated overhead costs and time impacts. Agency flexibility to use the most effective and efficient contract type should be preserved.

Thank you for your consideration of the construction industry.

Sincerely,

The Below Signed Associations:

American Council of Engineering Companies
American Subcontractors Association
Associated General Contractors of America
Construction Management Association of America
Design-Build Institute of America
Independent Electrical Contractors
International Institute of Building Enclosure Consultants
National Association of Surety Bond Producers
Surety & Fidelity Association of America

CC: Members of the House of Representatives and Senate Committees on Armed Services