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**AGC of America**  
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA  
**Quality People. Quality Projects.**



July 25, 2016

Ms. Hada Flowers  
General Services Administration  
Regulatory Secretariat  
1800 F Street NW, 2<sup>nd</sup> Floor  
Washington, D.C. 20405

**RE: FAR Case 2015—024: Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation**

Dear Ms. Flowers,

On behalf of the Associated General Contractors of America (AGC), thank you for soliciting comments on this Federal Acquisition Regulation (FAR) Council proposed rule on public disclosure of federal contractor greenhouse gas (GHG) emissions. AGC has a number of concerns with this proposal and the end-use for the information sought therein.

AGC is the leading association for the construction industry, representing both union and non-union prime and subcontractor/specialty commercial construction companies. AGC represents more than 26,000 firms including over 6,500 of America's leading general contractors and over 9,000 specialty-contracting firms. More than 10,500 service providers and suppliers are also associated with AGC, all through a nationwide network of chapters. AGC contractors are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects, site preparation/utilities installation for housing development, and more.

AGC holds that the best approach to mitigating greenhouse gas emissions is a market-based approach. By offering carrots rather than sticks through various regulatory reforms, pragmatic tax incentives, and reasonable construction owner and developer initiatives, the federal government is more likely to reduce its GHG emissions in a cost effective and productive manner than simply by adding layer upon layer of regulation upon construction contractors.

It is with that sentiment in mind that AGC puts forth in these comments the role its contractors have in reducing GHG emissions, the limited, direct impact construction contractor operations have on GHG emissions, and the association's concerns with the proposed rule.

## **I. The Construction Industry is a Vital Partner in the Effort to Reduce GHG Emissions**

Construction contractors, and our partners in the building professions, have responded to the call to utilize the latest innovations in construction methods to reduce the impact of our built environment on our national environment. AGC members build environmentally efficient, green buildings; incorporate recycled materials into roadways, bridges and buildings; create more efficient transportation systems that cut congestion and reduce wasted fuel; upgrade water treatment facilities; repair waterways; restore wetlands; clean polluted sites; and revitalize blighted areas.

The construction contracting industry has met the environmental building requirements owners—public and private—have put forth for decades. AGC members remain interested and integral partners in working with federal agency owners to build upon the successes of the past to continue to improve environmental initiatives for the future. As partners, AGC expresses its sincere hope that the federal government will not place barriers to constructing such environmentally conscious facilities and infrastructure on its members, as the construction industry itself is responsible for a diminutive portion of total GHG emissions in the U.S.

## **II. The Construction Industry Itself has a Limited, Direct Impact on Greenhouse Gas Emissions**

The operation of the existing U.S. residential and nonresidential building stock accounts for approximately 12 percent of GHG emissions generated.<sup>1</sup> Non-residential, commercial buildings represent less than half of energy consumption that generates GHG emissions.<sup>2</sup> Meanwhile, the construction industry—across all sectors, including building, transportation and so forth—accounts for slightly over one percent of all U.S. manmade greenhouse gas (GHG) emissions according to the latest analysis of federal environmental data from the U.S. Environmental Protection Agency (EPA).<sup>3</sup> The data show the relative efficiency of today's more than 650,000 construction firms that currently employ more than 6 million workers and create nearly \$1 trillion worth of structures each year.

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<sup>1</sup> U.S. ENVIRONMENTAL PROTECTION AGENCY, SOURCES OF GREENHOUSE GAS EMISSIONS: INVENTORY OF U.S. GREENHOUSE GAS EMISSIONS AND SINKS 1990-2014 (2016) *available at*:

<https://www3.epa.gov/climatechange/ghgemissions/sources/commercialresidential.html>

<sup>2</sup> U.S. DEPARTMENT OF ENERGY, 2011 BUILDINGS ENERGY DATA BOOK (2012) *available at*

<http://buildingsdatabook.eren.doe.gov/>

<sup>3</sup> U.S. EPA recently released its Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2014 that provides an assessment of GHG emissions for 2014 – the most recent year for which data are available. EPA's estimates put total U.S. GHG emissions for 2014 at 6,870 million metric tons of carbon dioxide equivalents, while emissions from construction and mining equipment amount to only 1.2 percent of the total emissions for that year. Notably, construction equipment emissions are often combined with those from the mining industry, so it is difficult to identify and quantify those GHG emissions attributed solely to construction equipment.

a. Participation of Construction Contractors in a Building's Lifecycle is Limited

As the statistics reflect, there is a stark dichotomy between the construction phase and the operations phase of a building's lifecycle when it comes to energy use. According to Massachusetts Institute of Technology Professor John Ochsendorf, the real opportunities for reducing total life-cycle energy use—and in turn, emissions from energy generation—are in operation of buildings, rather than in their initial construction.<sup>4</sup> Actual construction of a typical office building, for example, may take as short as several months and as long as several years. However, the occupancy and operation of that facility could last for several decades.<sup>5</sup> During those decades, the users and owners of those facilities—not the construction contractors—are controlling the heating, cooling and electrical systems, which expend the greatest amounts of energy during the building's lifetime. Ultimately, the building owners, not the construction contractors, have the final say as to the specific brands and types—energy efficient or not—of systems installed in the buildings.

The greatest opportunity for mitigating energy and emissions during a building's lifetime comes before actual construction, during the development and design phase. Building owners generally specify the requirements they need met before ultimately taking the keys to the facility. Those requirements can include sustainable building systems—i.e., energy saving appliances, green roofs, etc—or the use of more environmentally friendly materials or products, all of which manufacturers—not construction contractors—produce. The contractor's role is simply to install those systems and follow those requirements in a safe and efficient manner. Owners, in this case federal agencies, can specify which systems they would like contractors to install. The federal agencies, however, should include those requirements for consideration during design, rather than after actual construction has commenced, as a means to ensure that those systems are properly accounted for in consideration with the overall design of the building.

b. Marine Sources of Emissions Account for a Miniscule Portion of Emissions

According to the EPA, the transportation sector represents approximately 26 percent of total U.S. GHG emissions.<sup>6</sup> Within the transportation sector, marine emissions represents merely two percent transportation emissions, among the lowest percentage of any transportation means. Cumulatively, water transportation has a relatively minor effect on air quality, consumes much less energy (and as a result, produces less air pollution) per ton-mile of freight carried than either rail or truck.<sup>7</sup>

Marine contractors working on locks, dams, levees as well as dredging our nation's ports and harbors and inland waterway transportation system use marine construction equipment—dredges, barges, boats, etc.—in their daily work. As noted above, marine sources of emissions

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<sup>4</sup> David L. Chandler, *Improved buildings could make a big dent in climate change*, MIT NEWS (Aug. 31, 2011) available at: <http://news.mit.edu/2011/concrete-buildings-0831>

<sup>5</sup> The average age of commercial buildings in the U.S. is 41.7 years. Institute for Market Transformation, *Existing Buildings*, <http://www.imt.org/codes/existing-buildings> (last visited July 25, 2016).

<sup>6</sup> U.S. Environmental Protection Agency, *Fast Facts: U.S. Transportation Sector Greenhouse Gas Emissions 1990-2014*, (2016) available at <http://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100ONBL.pdf>

<sup>7</sup> Inland Rivers Ports and Terminals, Inc., *Environmental Advantages of Inland Barge Transportation*, <http://www.irpt.net/information/environmental-advantages/> (last visited July 25, 2016).

produce extremely low amounts of GHG relative to the transportation sector. And, the work of marine contractors to ensure the safe, efficient and reliable transportation of goods on the waterways allows for a more environmentally friendly alternative form of transportation than other modes.

c. Construction Contractors Comply with Federal & State Emissions Regulations and Utilize Programs to Cut Emissions

Construction contractors use equipment—i.e., off-road vehicles, like cranes and excavators—that generate emissions. As it stands, there are a host of federal and state regulations that govern emissions from off-road construction equipment. For example, the EPA has set stringent emissions standards (Tier IV) to significantly reduce emissions from new off-road equipment that will reduce emissions by more than 90 percent.<sup>8</sup> Construction contractors continue to take advantage of the EPA’s Diesel Emission Reduction Program, which helps fund the purchase or retrofitting of diesel-powered vehicles and pieces of equipment. California, for instance, also regulates diesel emissions from in-use construction equipment and has regulations that will result in a 74 percent reduction of particulate matter and a 32 percent reduction of NOx by 2020.<sup>9</sup>

In addition, programs to replace existing construction equipment have made inroads. Take the federal Diesel Emission Reduction Program as an example. More than 50,000 older diesel powered engines were upgraded or replaced between 2008 and 2010 because of this program.<sup>10</sup> Increasing funding and expanding programs like these could further help the industry cut emissions, as costs of “retrofitting”<sup>11</sup> or replacing equipment are high and prohibitive, especially for the many small businesses that make up the construction industry.

### **III. AGC’s Concerns with this FAR Council Proposal**

AGC appreciates the FAR Council providing it with the opportunity to comment on this proposed rule. The association also thanks FAR Council for not requiring the disclosure of non-public, proprietary data concerning federal contractor GHG emissions data.

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<sup>8</sup> U.S. Environmental Protection Agency, Nonroad Diesel Engines, <https://www3.epa.gov/otaq/nonroad-diesel.htm> (last visited July 25, 2016).

<sup>9</sup> Union of Concerned Scientists, *California’s Clean Construction Regulation: California Cleans Up Dirty Diesel Construction Equipment*, [http://www.ucsusa.org/clean-vehicles/california-and-western-states/californias-clean-construction-regulation#.V5DPe\\_mANBc](http://www.ucsusa.org/clean-vehicles/california-and-western-states/californias-clean-construction-regulation#.V5DPe_mANBc) (last visited July 25, 2016).

<sup>10</sup> Steve Hansen, *New EPA Report to Congress Highlights National Success in Clean Air Benefits and Fuel Savings of Diesel Emissions Reduction Program*, DIESEL TECHNOLOGY FORUM, April 29, 2013 available at <http://www.dieselforum.org/news/new-epa-report-to-congress-highlights-national-success-in-clean-air-benefits-and-fuel-savings-of-diesel-emissions-reduction-program>

<sup>11</sup> There is a misconception that construction equipment can *always* be retrofitted with new, more fuel efficient engines. That is not the case. Older, existing construction vehicles and equipment, like cranes and excavators, were not made with retrofitting in mind and often have limited space and flexibility for the installation of new engines. Not all engines necessarily fit the same way into the equipment. In addition to environmental concerns, construction contractors must take into account the relative safety of the equipment their employees or others operate. How an old engine fits into old equipment is a considerable safety concern, especially if the engine is exposed in any manner.

While the proposal on its face appears innocuous, AGC puts forth several concerns it hopes that the FAR Council and administration will consider: (1) prior to issuing a final rule; and (2) as it analyzes the data generated through this information request for the purposes of devising future policies and requirements for federal construction contractors.

a. Limit the Reporting Requirement to only the Entity Acting as the Offeror

The proposed rule would require many federal contractors to represent whether they as offerors, or their immediate owners or highest level owners do or do not disclose GHG emissions and quantitative GHG emissions reduction goals. If such items are disclosed, then the offeror must provide the addresses of publicly accessible websites where the information is available. AGC firmly holds that the rule should limit its inquiry and reporting requirement to only the offeror, not to its immediate owner or highest level owners.

Today's construction firm marketplace continues to consolidate and change.<sup>12</sup> That consolidation activity includes complex business deals across varying business entities, many of which may not be traditional construction companies. Many holding companies and private equity firms are buying construction companies to diversify their portfolios. While these larger entities may have some form of corporate policy on GHG emissions, that policy may not be indicative of what is possible for a construction company or the work it performs. AGC fears that this data could be misused and misapplied in the context of the greater construction industry and new requirements in federal construction contracts.

That stated, the data from construction company offerors may be limited and may not reflect the practices of the industry or the GHG emission reduction possibilities industry-wide. AGC cautions the administration in its use of such data if and when it seeks to develop policies and requirements concerning GHG emissions. GHG policies and requirements should be based on sound and robust scientific, industry, and economic data.

b. The Data Collected May Provide an Incomplete Picture as to Industry-Wide GHG Emissions Initiatives, Policies, and Possibilities, which could Negatively Impact Policies Formed Using Only that Data

AGC appreciates that the FAR Council is attempting to gather data from industry to better formulate federal procurement policies and requirements regarding GHG emission reduction efforts. We strongly hold that government regulations based on a sound understanding of and feedback from the construction industry are better than those formed without construction industry input, data or review. With that in mind, AGC is deeply concerned that the information generated under the FAR Council's proposal will provide a skewed analysis of the construction industry's efforts and ability to reduce GHG emissions.

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<sup>12</sup> Building Design and Construction, Megadeals drive mergers and acquisitions in engineering and construction industry: FMI report, <http://www.bdcnetwork.com/megadeals-drive-mergers-and-acquisitions-engineering-and-construction-industry-fmi-report> (last visited July 25, 2016).

*i. Variations between the Sizes of Firms in the Construction Industry Must Be Considered when the Administration Conducts its Analysis*

The U.S. construction industry includes more than 650,000 construction firms, of which the vast majority—98 percent—are small businesses with fewer than 20 employees. And, even more than 98 percent of construction companies are not public companies, but rather closely held. Of the several thousand federal construction contractor companies that are AGC members, only a handful—at best—are public companies. While the proposed rule notes that public companies are already subject requirements to disclose risks associated with climate change, the fact remains that a substantial number of federal construction companies are not public companies. Consequently, few construction companies are required to document such risks or have climate change plans and few do. In a search for publically available sustainability reports/documentation that detail contractor GHG emissions data and/or goals from the *Engineering News Record* top 400 contractors list of 2015<sup>13</sup>—which includes contractors in the top 100 with gross annual revenues from \$672 million to \$28 billion—AGC found that the majority of the top 100 contractors do not disclose internal corporate efforts or operational goals regarding greenhouse gas emissions.

The vast majority of federal construction contractors have gross annual revenues well below \$672 million, as they are very often small construction contracting businesses. Under U.S. Small Business Administration (SBA) regulations, a general construction contractor is a small business if it has gross annual revenues of \$36.5 million or less—generally speaking—and a specialty contractor is a small business if those revenues of \$15 million or less—some of which would have to report under this requirement in accordance with the \$7.5 million threshold. While federal government-wide small business prime contractor and subcontractor contract award goals are set at 23 percent and 34 percent, respectively, federal agencies emphasize and expand these goals for construction procurement. Federal agencies often exceed these small business goals in their construction contracts. With a heavy federal interest in hiring small businesses, the creation of policies that act as barriers to market entry must be considered in any and all federal regulatory initiatives. Consequently, AGC reviewed several websites of small construction company businesses to determine what the administration may learn from small businesses that must comply with this request. AGC found no small business contractors with publically disclosed information regarding GHG emissions.

Based on the information above, AGC believes that the data gathered through the System for Awards Management (SAM) and analyzed by the FAR Council and the Council on Environmental Quality will not sufficiently inform the government's likely end goal of mandating contractor greenhouse gas requirements in federal contraction contracts. The association fears that federal government will use the limited information generated by the most sophisticated and financially well-off companies to draw up requirements for the entire federal construction contracting industry. The impact of such an approach could significantly inhibit open and fair competition that benefits federal agencies and taxpayers as well as provide steep barriers to small businesses seeking participation in the federal marketplace.

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<sup>13</sup> Engineering News-Record, ENR 2015 Top 400 Contractors 1-100, [http://www.enr.com/toplists/2015\\_Top\\_400\\_Contractors1](http://www.enr.com/toplists/2015_Top_400_Contractors1) (last visited July 25, 2016).

*ii. The Construction Industry is Diverse, like its Market*

Unlike manufactured goods and commodities—i.e., pens, paper, so forth—construction services are project-specific and inherently variable. Each construction services contract is subject to the unique demands of the project, including: the geography—including but not limited to site conditions, the seasonality of certain construction activities, project proximity to major suppliers, and site ingress and egress in conjunction with other landowners, the unique local energy sources available—the needs, requirements, personnel and budgetary criteria of the owner, specific and unique design features, construction requirements and parameters, and the composition of the project team.

The construction industry builds vertical buildings and facilities, roads and bridges, sewer systems and power facilities, locks, dams and flood control infrastructure and dredges the nation's ports, harbors and inland waterways to name only a few construction project types. The needs of the project will often dictate the materials and equipment necessary to build the facility or infrastructure in a safe and efficient manner. As such, any data or information the administration collects and analyzes must be considered in the context of not only the construction company, but also the construction project. The administration must not and should not attempt to apply a one-size fits all GHG emissions requirements to an industry that is as diverse as the projects on which it works, let alone any additional requirements to the ones already imposed at the state and federal levels.

**IV. Conclusion**

Again, AGC thanks the FAR Council for providing an opportunity to comment on this proposal. AGC and its construction contracting industry members perform much of the work necessary to meet GHG emissions goals throughout the nation on various types of projects. As the FAR Council and the administration review these comments, AGC requests that they: (1) limit this information request to only offerors; and (2) understand the limitations of the data collected if and when considering future GHG emissions policies and regulations. Thank you for your consideration of AGC, its members and the construction industry.

Sincerely,

/S/

Jimmy Christianson  
Regulatory Council  
Associated General Contractors of America