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Chairman Jack Reed
Senate Committee on Armed Services
Washington, DC 20515

Ranking Member Roger Wicker
Senate Committee on Armed Services
Washington, DC 20515

Chairman Mike Rogers
House Committee on Armed Services
Washington, DC 20515

Ranking Member Adam Smith
House Committee on Armed Services
Washington, DC 20515

Dear Chairmen Reed & Rogers and Ranking Members Wicker & Smith:

On behalf of the Associated General Contractors of America (AGC) – the leading association in the construction industry representing more than 27,000 firms, including America’s leading general contractors and specialty-contracting firms – thank you for your leadership in developing the *National Defense Authorization Act for Fiscal Year 2025*.

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). As such, AGC urges the House and Senate to continue the annual process and omit policies that could jeopardize bipartisan support for military infrastructure.

As you negotiate the differences between the House and Senate legislative proposals, AGC requests that you address the below provisions of concern to the construction industry:

- **Include House Section [318](#) – Prohibition on implementation of regulation relating to minimizing risk of climate change.** This section will restrict funding proposed regulations requiring contractors to disclose 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 these reporting requirements on a large scale, and as a result could lead to contractors choosing not to bid on projects.
- **Include House Section [818](#) – Extension of temporary authority to modify certain contracts and options based on the effects of inflation.** This section will allow for the extension of a temporary program to provide economic relief to industry until December 2025. However, implementing guidance from DoD has been slow and Congress did not provide sufficient funding for this authority.
- **Exclude House Section [872](#) – Pilot Program on Payment of Costs for Denied Government Accountability Office Bid Protests.** This section will explore making permanent

the current pilot program that requires a contractor that has revenue over \$250 million and who files a protest with the Government Accountability Office (GAO) to allow that agency to withhold costs incurred possessing a protest. Those costs would be released to the contractor if it wins the protest or the solicitation is canceled. Provisions such as this creates a conflict of interest and perverse incentive where GAO will make money for its own operations if it rules against a contractor. Congress should reject any policy that requires contractors to pay for what amounts to due process in the federal construction market.

- **Exclude Senate Amendment [3061](#) – Small Business Subcontracting Improvements.** This section creates novel and unworkable reporting requirements and also skirts the long-established federal procurement process for assessing penalties for federal contractors. It will eliminate due process for prime contractors by allowing contracting officers, whether in consultation with the Office of Small Business Programs or not, to become the judge of whether to issue, ex parte, liquidated damages to prime contractors. Further, this section is silent on the prime contractor's right of review or appeal of the contracting officer's assessment of liquidated damages.

Thank you for your commitment to finding bipartisan solutions to address the nation's military infrastructure needs. We look forward to working with you to get this important legislation signed into law.

Sincerely,



Alex Etchen
Vice President, Government Relations