



**AGC**  
THE CONSTRUCTION  
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September 22, 2021

The Honorable Nancy Pelosi  
United States House of Representatives  
Washington, DC 20515

The Honorable Kevin McCarthy  
United States House of Representatives  
Washington, DC 20515

**RE: Amendments to H.R. 4350 - National Defense Authorization Act for Fiscal Year 2022**

Dear Speaker Pelosi and Minority Leader McCarthy:

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 H.R. 4350 - *National Defense Authorization Act for Fiscal Year 2022*. As the House of Representatives votes on amendments to H.R. 4350, the AGC urges you to consider construction contracting industry’s input for a final bill. 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. As such, AGC puts forth the industry’s thoughts on certain amendments to H.R. 4350 that will help you in your efforts to ensure these projects are delivered on time and on budget.

In short, AGC urges you and members of the House of Representatives to:

- **Oppose Amendment 26 / #138** – This amendment will increase the governmentwide goals for small business participation in federal contracts and for certain small business concerns. While AGC supports small businesses, according to the *Congressional Research Service* federal agencies currently struggle to meet their goals for groups such as Historically Underutilized Business Zone (HUBZone) small businesses and women-owned small businesses (WOSBs). Moreover, regulations, such as *Credit for Lower-Tier Small Business Subcontracting* (FAR 2018-003), that would provide a more accurate account of small business participation have yet to be issued despite being enacted into law during FY2014 NDAA. Therefore, it is an improper time to increase the governmentwide goals for small business participation in federal contracts.
- **Oppose Amendment 205 / #184** – This amendment 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.
- **Oppose Amendment 18 / #439** – This amendment 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 amendment 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 amendment will severely restrict military construction contractors to perform work, leading to an exodus from the industry and jeopardizing critical military infrastructure projects.

- **Support Amendment 337 / #451** – This amendment 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.
- **Oppose Amendment 311 / #736** – The amendment alters language to Section 2806 of the bill to require DoD to exceed a new 20 percent apprenticeship goal for military construction contractors, including incentives for military construction contractors that implement qualified training programs that exceed apprenticeship goals. Section 2806 was repealed in the final FY 2021 NDA. AGC opposes this section and the amendment that seeks to exceed the already rejected 20 percent apprenticeship goal for military construction contractors. Most of the construction industry training is performed outside of the registered apprenticeship model and the lack of registered apprenticeship programs in entire regions of the country will impose a disproportionate mandate on contractors based on where they perform work. The unilateral implementation of apprenticeship goals will eliminate large swaths of the construction industry from being able to compete for DoD projects.

As the House of Representatives considers amendments to H.R. 4350, AGC respectfully urges you to avoid adopting any controversial amendments that could jeopardize bipartisan support for H.R. 4350. AGC looks forward to working with you as the legislative process continues.

Sincerely,



James V. Christianson  
Vice President, Government Relations

**Cc: Members of the U.S. House of Representatives**