

October 4, 2017

Chairman John McCain
Senate Armed Services Committee
228 Russell Senate Building
Washington, D.C. 20510

Chairman Mac Thornberry
House Armed Services Committee
2216 Rayburn House Building
Washington, D.C. 20515

Ranking Member Jack Reed
Senate Armed Services Committee
228 Russell Senate Building
Washington, D.C. 20510

Ranking Member Adam Smith
House Armed Services Committee
2216 Rayburn House Building
Washington, D.C. 20515

Re: Conference Committee Priorities for National Defense Authorization Act for FY 2018

Dear Chairmen McCain and Thornberry and Ranking Members Reed and Smith:

We, the undersigned construction industry trade and professional organizations representing 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 urge you to pass a final procurement reform-oriented National Defense Authorization (NDAA) bill.

The Construction Industry Procurement Coalition (CIPC) sets forth the following, detailed recommendations for consideration in the final NDAA bill:

- **Include Senate Bill Section 801** (Repeal of temporary suspension of public-private competitions for conversion of Department of Defense functions to performance by contractors);
 - This section repeals Section 325 of the FY 2010 National Defense Authorization Act (P.L. 111-84), which imposed a temporary prohibition on the Department of Defense's (DoD) authority to consider using public-private competitions for other than inherently governmental functions. The CIPC urges support of Section 801 as it would give the DoD the flexibility to evaluate using public-private competitions as a viable procurement option.
- **Include Senate Bill Section 811** (Waiver authority for purposes of expanding competition);
 - This section gives DOD greater flexibility in the event of the application of any provision of law results in only one responsible bidder for a contract. The CIPC supports this section as it would for expand competition for federal contracts and allow for more effective use of taxpayer dollars.
- **Include Senate Bill Section 813** (Increased threshold for cost or pricing data and truth in negotiations requirements);
 - Currently under USC 10 contractors and subcontractors can be required to submit pricing data before the award of a contract, given certain criteria, and if that contract is expected to exceed \$500,000. This proposal would adjust that number to \$1,000,000, thereby granting contractors and subcontractors the ability to maintain their competitiveness when bidding on work. CIPC urges this section to be included in a final NDAA bill.
- **Exclude Senate Bill Section 821** (Government Accountability Office Bid Protest Reforms);
 - This section will require a contractor that has revenue over \$100 million and who files a protest with the Government Accountability Office (GAO) to allow that agency to withhold costs incurred processing 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 where GAO would make money for its own operations if it rules against a contractor. The CIPC urges you to reject any provision that requires contractors to pay for what amounts to *due process* in the federal construction market.

- **Include Senate Bill Section 822** (Enhanced Post-Award Debriefing Rights)
 - This section requires the DoD's Supplement to the Federal Acquisition Regulation to require that all post-award debriefings must provide detailed and comprehensive statements of the agency's rating for each evaluation criteria and of the agency's overall award decision. The CIPC believes enhancing post-award debriefings will encourage effective bidding and discourage bid protests that have the effect of delaying projects that cost all parties their valuable time and money.
- **Exclude Senate Bill Section 830** (Department of Defense contractor workplace safety and accountability);
 - This section requires that Contracting Officers specifically consider offeror violations of the Occupational Safety and Health Act (OSHA) as part of the responsibility determination process prior to contract award, under Federal Acquisition Regulation (FAR) Part 9, for all DoD contracts in excess of \$1,000,000, including reporting of violations by proposed subcontractors. The CIPC recommends that proposed Section 830 be removed as inconsistent with the CRA and Public Law No: 115-11 to remove burdensome Fair Pay and Safe Workplaces regulations from being implemented.
- **Exclude Senate Bill Section 831** (Department of Defense promotion of contractor compliance with existing law);
 - This section requires the DoD to ensure contractors with the Federal Government abide by existing law, including worker protection laws, improve compliance of contractors' worker protection violations, and requires the Secretary of Defense establish a goal to work with responsible contractors who are in compliance with worker protection laws. Considering the extensive tools that already exist to ensure contract compliance with existing laws and the lack of evidence that federal contractors are violating worker protection laws in any significant rate that would warrant further regulation, the CIPC sees no reason to for yet another regulatory scheme that is created by this section.
- **Include House Bill Section 802** (Performance of incurred cost audits);
 - This section promotes the ability of contractors of the DoD to submit a summary of audit findings on indirect costs of the contractor that were prepared by a commercial auditor. This important reform would assist the federal government in dealing with the enormous backlog of thousands of audits waiting to be processed. It has been proven commercial auditing firms will be held to the same rigorous standards the DoD requires. The CIPC supports this effort in help relieve the backlog of DoD audits and increase efficiency for the DoD and federal contractors.
- **Include House Bill Section 822** (Improvements to the hiring and training of the acquisition workforce)
 - This section improves the hiring, training, and efficiency of federal acquisition personnel and organizations and initiates important steps to improve training for agency personnel. The CIPC supports this section as an educated acquisition workforce is essential for effective federal procurement decisions.
- **Include House Bill Section 851** (Limitation on unilateral definitization);
 - This section put parameters on contracting officer's ability to unilaterally definitize action with a value greater than \$1,000,000,000, if an agreement is not reached between the contracting officer and federal contractor. In the federal construction industry, unilateral definitizations have become the bane of all federal construction contractors, and have created significant financial impact to businesses. The CIPC supports this section as an important first step in reigning in the use of unilateral definitizations by contracting officers.

- **Include House Bill Section 860A** (Exemption of certain contracts from inflation adjustments)
 - This section exempts the Federal Miller Act from threshold increases due to indexing for inflation. The Miller Act bond threshold should be exempted from the required indexing in Title 41. Periodically increasing the thresholds means that subcontractors and suppliers on federal projects will have no payment protection on increasingly larger projects. Many subcontractors and suppliers on federal construction projects are small contractors for whom not getting paid could be catastrophic to their businesses. The CIPC supports the inclusion of this section in the final NDAA bill.

- **Exclude House Bill Section 861** (Exemption from design-build selection procedures);
 - The CIPC opposes this language as it undermines Best Value selection procedures in design-build construction contracts by removing short-listing for certain contracts, creates inefficient additional reviews by the government and is inconsistent with reforms that were implemented in the 2015 NDAA.

Thank you for your consideration and for your work to produce a bipartisan, procurement reform-oriented authorization of our national defense programs.

Sincerely,
The Below Signed Associations:

American Council of Engineering Companies
American Institute of Architects
American Society of Civil Engineers
American Subcontractors Association
Associated General Contractors of America
Construction Management Association of America
Design-Build Institute of America
Independent Electrical Contractors
MAPPS
National Association of Surety Bond Producers
National Electrical Contractors Association
National Society of Professional Surveyors
Sheet Metal & Air Conditioning Contractors National Association
Surety & Fidelity Association of America

CC: House & Senate Armed Services Committees