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



March 2, 2017

The Honorable Mitch McConnell
United States Senate
Washington, DC 20510

RE: Vote YES on Joint Resolution Disapproving of Blacklisting Regulations (AGC KEY VOTE)

Dear Majority Leader McConnell:

On behalf of the Associated General Contractors of America (AGC) and its more than 26,000 commercial construction company members, I strongly urge you to vote in favor of the Congressional Review Act (CRA) joint resolution of disapproval to repeal the unnecessary, unworkable, unreasonable and unfounded Federal Acquisition Regulation (FAR) Council regulations implementing the Fair Pay and Safe Work Places Executive Order 13673, collectively known as the “Blacklisting” regulations. AGC will score this vote as a key vote for the education of its members on its congressional candidate scorecards.

The Blacklisting regulations are unnecessary. The FAR already includes suspension and debarment provisions to protect the government from bad actors. These regulations would add an entirely new federal layer of bureaucracy—in the form of labor compliance advisors—on top of an already bloated federal procurement regime. This will only add to the existing delays and cost overruns experienced in federal procurement.

The Blacklisting regulations are unworkable. The regulations set forth ambiguous guidelines for federal contracting officers to follow. Based on such guidelines, it would be difficult to maintain any consistency government-wide, let alone within one federal agency or one office within one federal agency. Such vague guidelines would also allow federal contracting officers to make highly subjective determinations debarring federal contractors without any due process rights afforded to them under the FAR.

The Blacklisting regulations are unreasonable. The regulations require federal prime and subcontractors to report not only their state and federal labor law violations, but also unadjudicated complaints merely alleging violations. As a result, innocent contractors—not just the bad actors—may fall victim to defacto debarment under the Blacklisting regulations.

The Blacklisting regulations are unfounded. By the Obama administration’s own pronouncement, the “vast majority of federal contractors play by the rules.” Yet, the administration justified the regulations, in part, on a GAO study finding federal contractor labor law violations that represented a meager 0.000625 percent of federal contractors according to the Department of Labor’s figures.

The Judicial Branch, through a federal court, has already issued a nationwide injunction halting implementation of the Blacklisting regulations because of its questionable constitutional merits. Now, for all the reasons noted above, the time is ripe for Congress to repeal the Blacklisting regulations through the CRA. Again, AGC urges you to vote in favor of the joint resolution disapproving of the Blacklisting regulations.

Sincerely,

Jeffrey D. Shoaf
Senior Executive Director, Government Affairs