Written Statement of

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On behalf of

The Associated General Contractors of America

to the

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Committee on Small Business

Subcommittee on Contracting and Infrastructure

For a hearing on

"Challenges Facing Small Business Contracting"

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The Associated General Contractors of America (AGC) is the leading association in the construction industry representing more than 27,000 firms, including America's leading general contractors and specialty-contracting firms. Many of the nation's service providers and suppliers are associated with AGC 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, levees, locks, dams, water conservation projects, defense facilities, multi-family housing projects, and more.

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I. Introduction

Chairman LaLota, Ranking Member Scholten, and members of the Committee on Small Business' Subcommittee on Contracting and Infrastructure, thank you for inviting me to testify on this vitally important topic. My name is Joel Lipsky, and I am the President of Lipsky Construction, an active member of the Associated General Contractors of America (AGC) and the Associated General Contractors of New York State.

AGC is the leading association in the construction industry, representing more than 27,000 firms, including America's leading general contractors and specialty-contracting firms, many of which are small businesses. Many of the nation's service providers and suppliers are also associated with AGC through a nationwide network of chapters. AGC contractors are both union and open shop and are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, levees, locks, dams, water conservation projects, defense facilities, multi-family housing projects, and more. In 2020, 91% of firms within the construction industry had 20 or fewer employees.[1]

Lipsky Construction is a third generation Construction Company located on Long Island, New York. My grandfather started the company as a residential home improvement contractor in Levittown after he served in World War II. My father and my uncle were his helpers and apprentices passing the trade down. My father and my uncle are largely credited for growing the business to where it is today, moving away from the residential sector and more into the commercial sector. Within the last few years, the business was again handed down from father to son and is now run by my brother Alex and myself. Today we have over 12 construction management professionals who work within the organization. We work in collaboration with some of the region's most respected design professionals in the New York area and includes both the private and public sector. Currently I sit on the New York State Associated General Contractors Building Board committee and find myself to be an advocate for practical construction solutions in a complex industry.

In my testimony today, I will discuss the challenges and opportunities facing small businesses like ours. In particular, I will discuss the difficulty in adequate cashflow, the regulatory burden facing small businesses, and workforce shortages.

II. Construction Project Cashflow

One of the greatest challenges contractors face with federal agencies' is the disruption of cashflow on the project. Cashflow is critical, and in my business, we view it as more important than profitability. Profitability lies at the end of the project. However, without sufficient cashflow, a construction project will never start and a company will never reach the finish line where profitability resides.

The critical role of cashflow in construction projects cannot be overstated, and it is imperative to address the challenges faced by contractors, especially when working on government projects. The government's fiduciary responsibility to not release funds until work is performed places a

[1] United States Census. ECNSVY Business Patterns County Business (2022). Available at: https://data.census.gov/table?q=CB2000CBP:+All+Sectors:+County+Business+Patterns,+including+ZIP+Code+Business+Patterns,+by+Legal+Form+of+Organization+and+Employment+Size+Class+for+the+U.S.,+States,+and+Selected+Geographies:+2020

significant burden on contractors. Government projects rarely provide any deposit to initiate services and largely do not release funds for long lead time material procurement, leaving the onus on the Prime Contractor to manage these expenses. This financial strain often leads to cashflow crises for both small and large companies. Compounding the issue, the short timeframe for bid proposal compilation leaves minimal room for cashflow management considerations. Prime contractors are compelled to secure lines of credit or alternative financing at unforeseen interest rates, exacerbating the financial pressure. Even after successful project initiation, the invoice review process and subsequent payment delays extend the waiting period for contractors, who may find themselves receiving compensation two to three months after the installation of work on a construction project. Addressing these challenges is crucial to ensuring the sustainability and success of construction projects in the public sector.
Often, to keep the project moving, small businesses self-finance government projects and work that needs to be done to complete the project, to avoid unnecessary Miller Act or payment bond claims filed by subcontractors and suppliers. It should come as no surprise that this adversely impacts our overall bonding capacity, which is necessary to pursue additional work and bid on other federal projects. Thus, begins a common sequence of events where untimely processing and payment of invoices on one project, prevents a small business from competing for additional federal projects. My company has been unable to bid on many projects, public or private, because our equity was tied up while waiting on invoices to be processed and paid. The result is a decrease in competition for federal projects, an inefficient use of taxpayers' dollars, and fewer opportunities for small business. Additionally, these barriers prevent prospective construction companies from wanting to enter the federal market.

Contractors, especially small businesses like mine, can only self-finance these projects for so long. Slow payment impacts not only the prime awardee, but all lower-tier subcontractors. As Prime Contractors we often times put the burden on the second and third tier Subcontractors to self-finance their work. This puts tremendous burden and strain on a wider magnitude of small businesses who are not set up for this type of work. Often times the material supplier which they are procuring materials from have zero tolerance for any delayed invoices, and we are seeing material suppliers now more than ever require payment in full prior to material leaving factories. On one project for example, Lipsky Construction had the obligation to finance one million dollars in custom aluminum window systems to a manufacturer who required the majority of the payment prior to it leaving the factory for delivery.

III. Supply Chain Disruption Continues

Businesses are still feeling the impacts from supply chain disruptions, including volatile pricing and long lead times for materials. The federal government's procurement process is often longer than the private sector. While we must ensure that federal taxpayer dollars are being spent wisely. The delay between when companies bid on federal work and the when the contract is actually awarded may be several months or more. During that time lag, point prices may change or materials become unavailable or face longer lead times to procure.

Given the fact that firm-fixed price contracts are the most common in federal construction, meaning that contractors are on the hook if the cost of materials increase or if the material procurement becomes longer than reasonably expected at the time of the bid. If a federal owner or contract specifications are inflexible, a project completion date can be significantly extended resulting in great costs to businesses like mine. These supply chain issues and disruptions are shared both by small and large businesses. Using the same aluminum window example stated earlier, it did not come to Lipsky Construction's attention until after the project was awarded that the availability of raw aluminum was unstable and had tripled in procurement durations, resulting in unforeseen project delays.

IV. Burdensome and Vague Regulations Hurts Small Businesses

Transparency and clear requirements are important to providing for free and open competition to our nation's businesses and accountability to the American people. However, unpredictability and onerous reporting requirements undermine infrastructure investments and will preclude small businesses from benefiting. Construction has long been a well-regulated industry, ensuring that workers are safe, and the environment is protected. Construction projects typically involve large numbers of workers, heavy equipment, procurement of supplies, strict schedules, and many other factors that require the construction industry needing more predictability than many other industries. U.S. taxpayers deserve to know that their tax dollars are spent wisely and for their intended purposes. Reporting requirements are important to meeting that need but must be balanced with meeting the need for swiftly completing projects and fulfilling the missions of federal agencies.

President Joe Biden issued 131 executive orders between 2021 and 2024.[2] Federal agencies collectively finalized 236 rules in 2023 alone. The net regulatory cost of these rules is a $129.2 billion, eclipsing 2022 that was the fifth-most expensive year since 2005.[3] Since the COVID-19 pandemic, businesses of all types—especially small businesses—are confronted with uncertainty on many different fronts. These businesses should not be burden or distracted with new and onerous regulations. The sheer quantity of ever-changing requirements and new regulations hurts small businesses and is a barrier to participation in the federal market. The regulatory environment, while aiming to ensure ethical business practices and protect various stakeholders, imposes a significant burden on small businesses. The government's preoccupation with extensive regulation oversight has raised concerns about finding a delicate balance between fiduciary responsibility and avoiding excessive bureaucratic intervention. This issue becomes particularly pronounced for small businesses with fewer than 15 employees, where the strain is higher. As the owner of such a business, I frequently navigate the challenges by deploying my support staff in diverse roles, exemplifying the adaptability required to cope with the regulatory demands. One day, my secretary may be handling front office reception, and the next, she is engaged in tasks like Minority or Women-owned Businesses Enterprise Utilization plans or Section 8 Labor outreach. This creative workaround is necessitated by the fact that, unlike larger construction companies with a constant supply of new work and the ability to hire dedicated support staff for specific roles, I must find resourceful solutions to meet regulatory requirements and maintain economic viability in the face of limited resources and fluctuating workloads. The perpetual juggling act underscores the need for a nuanced approach that considers both oversight objectives and the unique challenges faced by small enterprises.

[2] Federal Register. *Executive Orders* (2024). Available at: https://www.federalregister.gov/presidential-documents/executive-orders

[3] Goldbeck, Dan. American Action Forum: *2023: The Year in Regulations.* (2024). Available at: https://www.americanactionforum.org/insight/2023-the-year-in-regulation/#ixzz8R8nquap2

a. Government-Mandated Project Labor Agreements

On January 2024, the Federal Acquisition Regulation Council issued a final rule implementing President Biden's regulation which now mandates federal agencies to require project labor agreements (PLAs) on federal construction projects valued at $35 million or more. AGC neither supports nor opposes contractors' voluntary use of PLAs, but is opposed to any government mandate for contractors' use of PLAs. AGC strongly supports free and open competition for publicly funded work, and believes that the lawful labor relations policies and practices of private construction contractors should not be a factor in a government agency's selection process. AGC believes that neither a public project owner nor its representative should compel any firm to change its lawful labor policies or practices to compete for or perform public work, as PLAs effectively do. Government mandates for PLAs can restrain competition, drive up costs, cause delays, lead to jobsite disputes, and disrupt local collective bargaining. If a PLA would benefit the construction of a particular project, the construction contractors otherwise qualified to perform the work would be the first to recognize that fact, and they would be the most qualified to negotiate such an agreement.

According to an AGC analysis[4] of data—obtained via a Construction Advocacy Fund-financed lawsuit under the Freedom of Information Act—the Department of Defense federal construction agencies declined to impose a PLA mandate 99.4%[5] of the time even when encouraged to do so under the Obama-Biden Administration. According to data collected by the Office of Management and Budget (OMB), between the years of 2009 to 2021, there were a total of approximately 2,000 eligible contracts and the requirement for a PLA was used 12 times. Based on the information, on average there are approximately 167 eligible awards annually and approximately one award that includes the PLA requirement."[6] AGC's analysis of DoD decisions is consistent with the PLA Rule's analysis of government data, showing government-mandated PLAs do not advance economy and efficiency in the procurement of federal construction. Nevertheless, PLAs are now mandated on many federal construction projects. The requirement to work exclusively with unionized subcontractors limits the competitive landscape, leading to potentially increased prices. Additionally, the mandatory use of a unionized workforce may exclude open-shop contractors, limiting options for project owners. The intricate regulations and data recording associated with PLAs can necessitate the creation of full-time positions within construction projects, adding an administrative burden. For smaller companies like Lipsky Construction, the complexities of PLAs deter us from bidding on such projects, as we lack the resources to navigate the associated challenges effectively.

b. Greenhouse Gas Emissions Reporting Requirements

The construction industry is the project delivery system for building a safer, healthier, and environmentally sustainable future. Our nation cannot simply wish for a greener future; it

[4] Associated General Contractors of America (February 9, 2022). *New Data Weighs on Debate Over Project Labor Agreements*. Retrieved from: www.agc.org/sites/default/files/Files/communications/New_Data_Weighs_on_Debate_Over_Project_Labor_Agreements.pdf

[5] *Id.* at 3.

[6] 87 FR 51046

must build it. Likewise, the construction industry must be an integral part of the policymaking processes to help ensure that construction firms and the construction workforce can continue to grow and prosper. Broadly summarized, the Proposed Greenhouse Gass (GHG) Rule introduces two new categories for federal contractors, "significant contractors" and "major contractors."[7] Significant contractors, $7.5 to $50 million in federal contract obligations—not revenue—in the prior fiscal year to inventory greenhouse gases will be required to report Scope 1 and 2 emissions[8] and complete an annual GHG emissions inventory on a public website, www.SAM.gov.

As stated in our comment letter[9] to regulators, AGC is concerned about the establishment of technically unfeasible measures to address climate change that construction firms of all sizes, especially small businesses, cannot meet. Such measures threaten construction firms' ability to compete in the federal construction marketplace and build the infrastructure. Concerningly, the proposed GHG federal regulation will present a significant cost to small businesses in perpetuity. Regulators estimate the cost to small businesses to be $103,054,261 in the initial year of implementation and $62,514,193 in subsequent years.[10]

According to a survey AGC conducted on sustainability practices, almost 80 percent of respondents have policies in place to encourage recycling.[11] More recently, environmental, social and governance (ESG) considerations are being looked at by construction industry stakeholders—lenders/investors, insurers, public- and private-sector developers of real-estate/infrastructure/industrial projects as well as their customers and clients. AGC expects the demand for, and company disclosure of, information about climate change risks, impacts, and opportunities to continue to grow—even without the GHG reporting requirements.[12]

c. Revised Davis-Bacon and Related Acts

The application of the Davis-Bacon and Related Acts to federal and federally assisted construction projects leave many contractors uncertain about the requirements of federal prevailing wage laws and the consequences of non-compliance. The recent changes to the regulations add to this uncertainty. Failure to comply will place covered contractors at risk of catastrophic consequences, from losing money on contracts due to failure to understand

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[7] 87 FR 68313

[8] Per OMB Memo M-22-06 and as currently defined at FAR 23.001.

[9] Associated General Contractors of America, Comment Letter on Proposed Rule to Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk (Feb. 13, 2023), https://www.agc.org/sites/default/files/Files/Govt%20Regulations%20and%20Executive%20Orders/AGC%20of%20America%20Comments%20on%20FAR%20Case%202021-0015.pdf

[10] 87 Fed. Reg. 68324

[11] Associated General Contractors of America, Recycling Policies Are Widespread and Other Survey Findings (Jun. 13, 2023). Available at: https://agc.org/news/2022/06/29/recycling-policies-are-widespread-and-other-survey-findings

[12] AGC construction firms are being asked how they are preparing for the impact of climate change on their business (including the impact of extreme weather changes, markets, access to human and material resources, and possible government regulations); the level of greenhouse gas emissions related to their direct, indirect, and third-party supply-chain operations; and the associated costs of climate change initiatives. Developing methods to estimate the impact of climate change on construction businesses is significantly challenging, particularly with a highly complex, fragmented, and project-based construction process. Some companies are reporting data on their public filings and annual reports, others are voluntarily publishing sustainability reports accessible to their clients and the public and/or voluntarily complying with third-party standards.

labor costs, to high dollar back pay and related penalties, to debarment from future federal work.

For example, the U.S. Department of Labor codifies its current guidance that truck drivers employed by contractors or subcontractors must be paid applicable prevailing wage rates for all onsite driving time unrelated to offsite delivery (e.g., hauling materials from one location on the site of the work to another), for any time spent transporting "significant portions" of public works from secondary construction sites, for any time spent transporting materials to or from adjacent or virtually adjacent dedicated support sites, as well as for any onsite time related to offsite delivery if such time is not de minimis. The final rule clarifies that where workers spend a significant portion of their day or week onsite, short periods of time that in isolation might be considered de minimis may be added together. The total amount of time a driver spends on the site of the work during a typical day or workweek—not just the amount of time that each delivery takes—is relevant to a determination of whether the onsite time is de minimis. The effectiveness of Davis-Bacon and Related Acts becomes evident when regulations and policies are clear and well-defined, providing a solid foundation for implementation. However, vague regulations introduce undue risks and costs to projects, allowing for subjective interpretations. The recent changes to Davis-Bacon and Related Acts, particularly concerning truck drivers, raise substantial concerns, leaving many areas in a gray and subjective state for regulators. To address these issues, a reevaluation of the policy is essential, with input from AGC representatives for example who can contribute to refining and implementing ideas that are feasible for all parties involved.

V. Workforce

The construction industry's labor shortages remain severe with most construction firms expecting labor conditions to remain tight. Despite firms increasing pay and benefits, the workforce shortage continues. A 2023 AGC survey[13] found 93% of construction firms report they have open positions they are trying to fill. Among those firms, 90% are having trouble filling at least some of those positions – particularly among the craft workforce that performs the bulk of onsite construction work. While finding qualified workers remains a challenge, the survey does show that contractors are optimistic, particularly with road, bridge, and transportation construction.

The industry is facing the effects of decades of policies directing students to attend four-year institutions as the only career option. For every dollar the federal government invests in career or workforce education, it spends five encouraging students to go to a traditional four-year college and pursue a "professional" career.[14] That is why AGC supports increased funding for Career and Technical Education (CTE) funding, as laid out in the Carl D. Perkins Vocational and Technical Education (Perkins) Act. Perkins is the primary federal program for developing and supporting CTE programs for secondary and post-secondary students. Exposing younger individuals to construction skills and careers is critical. However, these programs, especially construction focused ones, are expensive to operate and administer for local schools, as they involve purchasing construction

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[13] Associated General Contractors. *AGC & Autodesk Workforce Survey* (2023). Available at: https://www.agc.org/news/2023/09/06/new-survey-shows-significant-flaws-nations-approach-preparing-workers-construction-careers-and-how

[14] Opportunity America. Available at: https://opportunityamericaonline.org/

equipment, simulators, and tools as well as attracting and retaining instructors. And these programs face rising inflationary pressure and lingering pandemic impacts.

Just as the construction industry is experiencing workforce shortages, federal agencies are experiencing the same struggles. Without adequate federal agency staffing, the risks of delayed responses and project awards increase to small businesses. This Congress should continue to provide agencies with flexibility and direct hire authority. A good example can be found in the U.S. Army Corps of Engineers. This agency has initiated a "Talent Acquisition Center of Excellence" which creates an automated recruitment platform for investing inhuman capital. In addition, the Army Corps of Engineers uses "Direct Hire Authority" to be flexible in hiring new talent. These are just some of the ways in which federal agencies, with Congressional approval, can help address its workforce challenges.

As a Building Board Member of the New York State Associated General Contractors of New York State, we annually orchestrate a round table discussion involving New York State agencies to delve into the current status of New York State. Over the past three years, a recurring and pressing concern has emerged from every major New York State Construction Agency—talent acquisition within their ranks is proving to be a formidable challenge. These agencies find themselves locked in fierce competition with the private sector for skilled construction professionals, all vying for a finite pool of available talent. The escalating struggle for recruitment within state agencies has become a focal point, emphasizing the urgency of addressing this issue to sustain and enhance the efficiency of construction projects across the state. It can only be assumed that the federal agencies share this same frustration and are competing for the same pool of limited resources as the state agencies as well as the private sector.

VI. Conclusion

Thank you again for inviting AGC to testify before the subcommittee today. I look forward to answering any questions you may have.