March 2, 2016

The Honorable Charlie Dent
Chairman
Subcommittee on Military Construction
Veterans Affairs and Related Agencies
2211 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Sanford Bishop, Jr.
Ranking Member
Subcommittee on Military Construction,
Veterans Affairs and Related Agencies
2407 Rayburn House Office Building
Washington, D.C. 20515

RE: Military Construction FY 2017 Appropriations Hearing and Request; Please Conduct Change Order Oversight to Prevent USACE/NAVFAC from Reaching VA Aurora Hospital Levels of Dysfunction

Dear Chairman Dent and Ranking Member Bishop:

On behalf of the Associated General Contractors of America (AGC) and its 26,000 commercial construction company members, we urge you to conduct greater oversight into and gather more data on the Department of Defense (DOD) construction agencies’ execution of change orders on construction projects. Delays in executing change orders on construction projects can and have led to substantial project delivery delays, further cost-overruns, and strained relationships between contractor and owner ending in litigation. This problem is widespread within DOD construction agencies and jeopardizes the safe, efficient and timely delivery of construction projects as well as the financial stability of many construction companies, especially small businesses.

Construction projects are subject to a wide array of variables that may require a federal agency to alter their initial plans. Consequently, reasonable delays and changes may be required to meet conditions on the ground. Our concern is not with reasonable delays and changes to the initial contract. Rather, our concern rests with the U.S. Army Corps of Engineers (USACE) and Naval Facilities Engineering Command failing to execute change orders and make payment to contractors for many months—and even years—at a time on average. In these instances, general contractors and subcontractors are, in fact, financing the federal government’s construction project. When agreement on payment cannot be reached, the contractors file legal claims against the agency, which pays for these claims out of a judgment fund and not the project fund itself. This situation makes it extremely difficult for Congress to track how much a project actually costs.

There are a host of bureaucratic and budgetary reasons for the proliferation of and delays in issuing change orders. But before Congress delves into the reasons for the delays, it is prudent to conduct oversight and collect data to determine the state of this problem, which AGC contends is epidemic. As such, we strongly encourage you and members of your committee to question the military construction leaders of the Army, Navy and Air Force on:
1. The dollar amount and number of change orders issued on military construction projects for each of the last five fiscal years;
2. The number and value of the claims filed on military construction projects in each of the last five fiscal years;
3. The average length of time it takes to settle claims between the parties and the average length of time before a court issues a judgment on claims over the last five fiscal years.
4. The total number and dollar amount of pending change orders that have not been either executed or paid;
5. The total amount paid out of the judgment fund to pay claims in each of the last five fiscal years;
6. If and how DOD construction agencies account for payments made on claims to help Congress have a better understanding of true project costs; and
7. The types of projects that see a significant number of change orders and what DOD is trying to do to (1) reduce the need for change orders; and (2) execute and pay change orders in a timely and effective manner.

The inability to account for and execute change orders can have disastrous impacts on a construction project and the companies performing on it. As this Subcommittee knows all too well, the Department of Veterans Affairs major hospital project in Aurora, Colorado faced a myriad of problems. The inability to execute and pay contractors for change orders was among the most problematic, and not only led to the general contractor walking off that project, but also many small business subcontractors, some of which closed their doors as a result.

Like the VA, USACE and NAVFAC have significant problems executing and paying for change orders. The swift resolution of change orders is common practice in the private sector and the hallmark of successful projects. Although these DOD agencies may not yet face the same degree of trouble as the VA did in Aurora, they appear to be quickly headed in that direction. AGC strongly encourages this Subcommittee to begin conducting oversight on the DOD agencies in an effort to avert disaster later.

Sincerely,

Jeffrey D. Shoaf
Senior Executive Director, Government Affairs

CC: Members of the House Appropriations Committee