March 16, 2016

The Honorable Paul Ryan
U.S. House of Representatives
Washington, DC 20515

Re: Sign On to Rigell Letter Prohibiting Implementation of Blacklisting Executive Order

Dear Representative Ryan:

Please sign onto Representative Scott Rigell’s letter requesting the inclusion of language in the FY 2017 Financial Services and General Government Appropriations Bill that would require the Administration to conduct a thorough analysis and impact assessment of Executive Order 13673 (“Blacklisting EO”) before implementation or enforcement of it is permitted to continue.

The Blacklisting EO is destined to malfunction, causing considerable problems not only for federal contractors, but also the government and will waste taxpayer money. The EO would needlessly create a new, complicated and unmanageable bureaucracy to address problems that are already covered by numerous federal laws, regulations and bureaucracies. It will unfairly exclude and discourage well-intentioned, ethical contractors from working for the federal government. Furthermore, it will lead to crippling delays in federal contracting, encourage unnecessary litigation, and increase procurement costs to the government and taxpayers.

The Blacklisting EO is unnecessary and it violates the constitutionally protected principles of the separation of powers between the branches of the federal government. The Federal Acquisition Regulation (FAR) allows contracting officers to make responsibility determinations and take into account an offeror’s having a “satisfactory record of integrity and business ethics.” The president proposes an arbitrary definition to determine an offer’s satisfactory record that grossly overemphasizes past compliance with labor and employment laws. In the process, the president comes in direct conflict with the congressional directive that the president shall only use the federal procurement system to advance the government’s proprietary interests and not to punish past wrongdoing. Acting in this manner through the EO, the president has legislated where Congress has not. Congress must check this overreach by the Executive Branch.

The Blacklisting EO is unnecessary because current federal labor and procurement statutes and regulations already include clear penalties for violating their terms, well-established reporting systems through which contractors disclose their violations, and a proven suspension and debarment process for contractors that endanger the public interest. This EO is unworkable because it will require contractors to disclose sensitive information to their competition, which will increase bid protests; it sets forth highly subjective guidelines for enforcement that will lead to contradictory rulings from contracting officers not only in different agencies, but within the same office; and place higher barriers of entry to the federal construction marketplace for small businesses, who would need significant legal assistance in order to comply.
The Blacklisting EO will make the federal procurement process less efficient and penalize the compliant – along with non-compliant – federal contractors. It is a clear example of unnecessary, unconstitutional overreach by the Executive Branch that, if left unchecked, will diminish the authority of the Legislative Branch. As such, AGC strongly urges you to sign onto Rep. Scott Rigell’s letter on the Blacklisting EO.

Sincerely,

Jeffrey D. Shoaf
Senior Executive Director, Government Affairs