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Sent via electronic mail

RE: AGC of America Comments on FAR Part 36 – Construction and Architect-Engineer Contracts

Members of the FAR Council:

The Associated General Contractors of America (AGC) commends the Federal Acquisition Regulations (FAR) Council, agency acquisition professionals, and other stakeholders for their considerable work in reorganizing and clarifying FAR, especially FAR Part 36. AGC is the leading association in the construction industry, representing more than 28,000 firms, from small family-run businesses to America's leading general contractors and specialty-contracting firms. AGC is unique. Through a nationwide network of 87 chapters, AGC proudly represents both union- and open-shop contractors 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 much more.

I. Appreciation for the FAR Council and Stakeholders

The introduction of distinct subparts for Pre-Solicitation, Evaluation and Award, and Post-Award creates a logical framework that is easier to navigate and more closely aligned with the practical realities of federal construction contracting. This restructuring reduces redundancies, eliminates outdated provisions, and provides clearer points of reference for contractors and contracting officers alike. By modernizing the scope language to explicitly define coverage and ensuring that retained requirements

are expressed in plain language, the FAR Council has taken a meaningful step toward improving efficiency and transparency in construction procurement.

At the same time, AGC believes it is important to recognize the extent of this effort and the careful balance it reflects between statutory obligations and practical industry considerations. Our members have long noted the challenges of interpreting scattered or outdated provisions within FAR Part 36. Bringing these requirements together in a modernized structure will improve day-to-day compliance and help ensure greater consistency across federal agencies. This outcome is particularly important given the scale and diversity of the federal construction portfolio, ranging from small facility repairs to major defense installations.

AGC encourages the FAR Council to continue this collaborative approach as additional FAR parts are updated. Maintaining a regular dialogue with industry will help ensure that regulatory reforms remain grounded in real-world practice, minimize unintended burdens, and strengthen confidence in the procurement system. The FAR Council should view this effort not as a one-time update, but as part of an ongoing process of improvement that will yield lasting benefits for both the government and its contracting partners.

II. Request for a Subsequent Comment Period

While AGC supports the stated objectives of the revisions, we urge the FAR Council to commit to a follow-up public comment opportunity within the coming months. The changes affect clause placement, procedural timing, and long-standing solicitation practices. Contractors and contracting agencies will only be able to fully assess their operational effects after using them in live procurements. Providing an additional round of public comment will allow industry to identify any unintended consequences of the revisions. For example, the relocation of provisions on liquidated damages and government estimates may create confusion during the transition period. Only after contractors, subcontractors, and agency staff work under the new framework will the practical challenges be clear. A subsequent opportunity for comment would provide the FAR Council with valuable insight and ensure the regulatory text is meeting its intended goals.

AGC also acknowledges the role of the FAR Companion Guide in supporting the federal acquisition workforce. The Guide is designed to help agencies quickly understand and implement the streamlined FAR, and we support its use where it promotes consistency and transparency across procurements. To be effective, the Guide should provide clarification without adding new complexity, ensuring that it is a practical reference that enhances the uniform application of the FAR rather than a source of additional confusion.

AGC therefore recommends that the FAR Council announce, in advance, its intent to reopen the rule for comment within one year of implementation. Such a commitment would demonstrate the Council's responsiveness to stakeholder feedback and foster greater confidence in the durability of these reforms. This type of iterative process is consistent with best practices in regulatory policymaking and will ensure the FAR remains a tool for efficiency rather than an obstacle to it.

III. Support for Reorganization into Three Phases

The division of FAR Part 36 into three logical phases mirrors established industry project management frameworks and will aid compliance for both seasoned federal contractors and newer market entrants. Grouping requirements by acquisition stage helps prevent procedural errors. AGC recommends that

agencies integrate this three-phase structure into their training and guidance materials for contracting staff. Doing so will help ensure that the benefits of the reorganization are fully realized in practice. This reform also provides clarity for small and emerging businesses that may not have the same compliance infrastructure as larger firms. By aligning the regulations with the natural flow of construction procurement, these contractors will be able to better navigate solicitations, submit accurate bids, and manage projects effectively. The resulting improvements in clarity will also reduce the administrative burden on contracting officers who must enforce the rules.

IV. Concerns with Government-mandated Project Labor Agreements

AGC does not support or oppose contractors' voluntary use of PLAs. However, we strongly oppose any government mandate or prohibition of contractors' use of PLAs. AGC has long maintained a commitment to free and open competition for publicly funded work and believes that the government should not compel any firm to change its lawful labor policies or practices to compete for or perform public work, as PLAs effectively do. If a PLA would benefit the construction of a project, the contractors otherwise qualified to perform the work would be the first to recognize that fact and to adopt a PLA voluntarily. Accordingly, AGC maintains that President Biden's Executive Order 14063 (the "Biden EO") and the Biden implementing revisions to the Federal Acquisition Regulation (the "Biden FAR Rule") should be revoked in their entirety.

AGC recognizes that the alternative position the Administration has taken as expressed in Office of Management and Budget Memorandum M-25-29 dated June 12, 2025 ("OMB Memo M-25-29") is the most recent statement of administration policy. We appreciate the clarity that OMB Memo M-25-29 provides in confirming the continuing validity of the Biden EO and the availability of project-specific exceptions from the PLA mandate versus blanket deviations. AGC understands from this memo that the Administration supports the use of PLAs when practicable and cost-effective and that it prohibits agencies from issuing blanket deviations that preclude implementing a PLA requirement.

This letter details numerous ways that the PLA mandate has affected federal contractors and offers specific suggestions for change should you reject our continued appeal for revocation of the Biden EO and Biden FAR Rule. AGC's recommendations include: directing agencies to consider alternative PLA submission timing options; giving contractors more time for negotiating a PLA; accepting certification of good-faith effort to negotiate a PLA; permitting exceptions after offers have been collected; allowing contractors to submit offers with and/or without a PLA; empowering officials responsible for the project with authority to grant exceptions; standardizing market research questionnaires; and publishing market research results for public access. These are common-sense solutions to problems our members have experienced since the Biden EO, Biden FAR Rule, and implementing guidance went into effect.

V. Support for Earlier Delivery of Government Cost Estimates

The new stipulation that the independent government estimate must be delivered before proposals are received aligns with AGC's longstanding position that accurate budget data is essential for sound procurement. Inaccurate or delayed government estimates contribute to bid busts. Earlier delivery of government estimates will also enhance market confidence in the procurement process. When contractors have confidence that the government's budget is based on realistic and timely data, they are more likely to submit competitive bids. This reduces the risk of failed procurements, minimizes the need for re-solicitation, and ensures that projects can move forward on schedule. AGC recommends that agencies be held accountable for preparing estimates that reflect current market conditions, including material price volatility and labor availability. A proactive approach to updating estimates will

help ensure that solicitations are grounded in reality and that both the government and its contractors can avoid costly delays.

VI. Support for Increased Transparency on Change Order Timelines

AGC supports the retention of the statutory requirement for timely processing of change orders. Delayed processing and payment of change orders not only tie up working capital but can also disrupt project schedules and increase costs. Change orders are an inherent part of the construction process and contractors often refer to them as a “necessary evil”. Inevitably, clients have new ideas or there are unforeseen circumstances that emerge during the course of construction. Often times both. Each of these factors can give rise to a change order, modifying the scope, budget, or schedule of a project. While change orders are common and expected, the challenge lies in how they are processed and paid for on federal projects.

In the federal marketplace, unresolved change orders remain a leading cause of payment delays and financial strain, particularly for small business contractors. Untimely approvals force contractors to either self-finance work—straining their cash flow—or slow and stop work, driving up costs through demobilization and remobilization. AGC recommends that the FAR Council consider establishing additional guidance or best practices on target processing times for change orders to ensure consistency across agencies. Doing so would provide greater predictability, strengthen relationships between owners and contractors, and ultimately support timely delivery of federal projects.

VII. Opposition to the Removal of Mandatory Site Visits and Preconstruction Conferences

AGC is concerned that eliminating the mandatory clauses for site visits (former FAR 36.210 and 52.236-27) and preconstruction conferences (former FAR 36.522 and 52.236-26) will erode two proven best practices in federal construction. While the revised FAR Companion Guide may encourage their continued use, absent a requirement, their application may become inconsistent across agencies and contracting offices.

Site visits and preconstruction conferences are not procedural formalities; they are critical opportunities to identify risks and establish communication channels before work begins. Eliminating these requirements increases the likelihood of misunderstandings, delays, and contract disputes. Contractors may be left with insufficient opportunities to evaluate project conditions before submitting bids. AGC recommends that the FAR Council consider reinstating these requirements, or at minimum providing stronger language in the FAR Companion Guide to encourage their consistent use. The modest administrative effort these activities require is far outweighed by their proven benefits in reducing disputes and supporting successful project outcomes.

VIII. Conclusion

AGC appreciates the FAR Council’s commitment to improving clarity, organization, and efficiency in FAR Part 36. We support the reorganization into three phases, earlier delivery of government cost estimates, and retention of transparent change order requirements. At the same time, we urge the Council to provide a follow-up comment period, carefully apply PLA requirements only where they serve the government’s best interest, and reinstate or more strongly encourage site visits and preconstruction conferences as standard practice.

Taken together, these adjustments will ensure that FAR Part 36 remains a tool for efficiency and accountability, enabling the timely, cost-effective, and high-quality delivery of federal construction projects. They will also help sustain competition, support small businesses, and strengthen relationships between contractors and the federal agencies they serve. AGC stands ready to continue working with the FAR Council to advance these shared goals.

Sincerely,

A handwritten signature in black ink that reads "Jordan Howard". The signature is written in a cursive, flowing style.

Jordan F. Howard
Counsel, Federal Construction & Regulatory Affairs