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Via <https://www.regulations.gov>

Re: Proposed Rule, Federal Acquisition Regulatory Council; Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk (87 Fed. Reg. 68,312, Nov. 14, 2022)

Dear Federal Acquisition Regulatory Council:

The undersigned organizations appreciate the opportunity to comment on the Federal Acquisition Regulatory (“FAR”) Council’s proposal (“Proposed Rule”) to require significant and major contractors to disclose certain information concerning greenhouse gas emissions (“GHG”) and make certain climate-related financial risk disclosures, and to require major contractors to set science-based targets to reduce their GHG emissions. Under the proposal, satisfying these new requirements would be a condition of eligibility for federal government contracts. Given the concerns expressed below and others raised in separate comment letters, the FAR Council should abandon and withdraw the proposal entirely.

Combating climate change requires citizens, governments, and businesses to work together. The business community continues to support durable solutions that improve our environment, grow our economy, and leave the world better for generations to come. American companies and investors are already playing a crucial role in spurring the continued evolution of climate-related disclosures. Companies are increasingly reporting more information to the public about their efforts to reduce GHG emissions. Many have also developed plans, commitments, and actions concerning the reduction of emissions over time at the pace of innovation. Such leadership, supported by technological innovations, have helped drive progress that the United States has made to address climate change over the last decade and will help make further progress to address the climate challenge.

The Council’s Proposed Rule is not the proper way to proceed. It is subject to several serious legal and policy defects. The proposal, for example, would impose significant liability risk and cost burdens on federal contractors that is contrary to federal procurement laws’ underlying statutory goals of creating an economic and efficient system of government contracting. Indeed,

as further explained in other comment letters, the Council lacks the legal authority to promulgate the rule. Detailed disclosure of climate-risk assessment processes and inventorying and disclosing scope 1, 2, and 3 GHG emissions, along with developing and implementing science-based emissions reduction targets, would add immense costs. The government's acquisition costs would rise as a consequence, and some contractors, and companies in the supply chain, are likely to drop out of the market entirely. Having fewer bidding contractors would weaken competition and would likely lead to higher contract prices. Relatedly, a decrease in eligible contractors would decrease the procurement options available to the government, leaving them with fewer choices and potentially less efficient products and services.

A disproportionate burden of the Proposed Rule would fall on small businesses, both directly as federal contractors and indirectly as suppliers of major contractors. Over the last decade, the number of small businesses doing business with the federal government has dropped by nearly 40 percent. Adding more administrative burdens on top of the current contracting criteria would only make the challenge of increasing small business participation in federal contracting more difficult. Saddling contractors with billions in added implementation and compliance costs would also build barriers to market entry for service-disabled veteran-owned, woman-owned, and Historically Underutilized Business Zone (HUBZone) small businesses.

In addition, the Proposed Rule also relies heavily on private entities such as the CDP (formerly "Carbon Disclosure Project") and Science Based Targets Initiative ("SBTi") to establish and enforce the requirements, supplanting the role of the FAR Council. Such an arrangement would give rise to major legal and practical problems. These private organizations, for example, have not been formed or administered to improve procurement in particular, drawing into question their suitability for procurement standard setting. Further, the standards that the FAR Council incorporates by reference are not consensus-based and do not appear to have significant industry representation. For setting science-based targets, the SBTi is both the standard setter and the validator. While some companies have voluntarily adopted the SBTi standards, delegating standard setting and compliance to a third party would create conflicts of interest and raise concerns about constant changes to standards that would not be accompanied by the appropriate legal and procedural safeguards. It is also unlikely that these organizations have the necessary resources to handle the surge of thousands of additional submissions that they would receive due to the Proposed Rule.

With two-thirds of the federal government's more than \$600 billion dollars in contract obligations allocated to the Department of Defense, the proposal fails to evaluate the potential impacts of its provisions on military readiness and national-security. The importance of military contracting is even more pronounced now, given the substantial military aid that the United States is currently providing in the European conflict. Defense products, moreover, are designed to government specifications and subject to various national security considerations that would severely limit contractors' ability to comply with emissions disclosure requirements or to implement product emission reductions to achieve science-based targets. And while the Proposed Rule would allow a contractor to request an exemption from certain of the proposal's requirements, the exemption would not be sufficient as it could only be granted for one calendar year.

The undersigned organizations would welcome the opportunity to speak with the FAR Council to discuss these comments and related issues.

Sincerely,

Aerospace Industries Association
The Aluminum Association
American Chemistry Council
American Council for Capital Formation
American Petroleum Institute
American Road & Transportation Builders Association
American Trucking Associations
Associated Builders and Contractors
Associated General Contractors of America
Liquid Energy Pipeline Association
National Association of Convenience Stores
National Association of Truck Stop Owners
National Mining Association
Plumbing-Heating-Cooling Contractors – National Association
Portland Cement Association
Small Business and Entrepreneurship Council
Society of Independent Gasoline Marketers of America
U.S. Chamber of Commerce