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May 13, 2022

The Honorable Polly E. Trottenberg
Deputy Secretary
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, D.C. 20590

RE: Docket No.: DOT-OST-2022-0047- *Notice of Proposed Temporary Waiver of Buy America Requirements for Construction Materials*

Deputy Secretary Trottenberg:

On behalf of the Associated General Contractors of America (AGC), the leading association in the construction industry representing more than 27,000 firms, including America's leading general contractors, specialty-contracting firms, and suppliers, we appreciate the opportunity to comment on the U.S. Department of Transportation ("USDOT" or "the Department")'s *Notice of Proposed Temporary Waiver of Buy America Requirements for Construction Materials*.

As you know, AGC members who perform work on federal-aid surface transportation projects have complied with Buy America requirements as part of the construction procurement process since the *Buy America Act* was passed into law in 1982. Since the program's inception, AGC members have worked closely with our industry partners, including state departments of transportation and USDOT, to meet these requirements and produce high quality transportation projects for the American public.

While we support President Biden and Congress' goal of promoting American manufacturing and growing the domestic workforce through the Build America, Buy America provisions included in the *Infrastructure Investment and Jobs Act (IIJA)*, we are concerned that, with historic uncertainty in the construction supply chain and lack of clarity on the specifics of this measure, the implementation of these provisions by the law's May 14 deadline would present immense challenges that would ultimately lead to significant delays in the delivery of important transportation construction projects. As such, **we are very appreciative of the Department's consideration of a 180-day temporary waiver and support its expedient adoption.**

We understand that it is no shock to the Department that the price and availability of construction materials are currently extremely volatile. According to a recent AGC analysis of government economic data, the prices of materials and services used in new, nonresidential construction leaped nearly 21 percent in April from year-ago levels¹. This may be explained through surveys of our memberships that AGC and our industry partners have conducted in recent months which indicate the lead times for procurement and delivery of many construction materials have dramatically increased over the last year. From manufactured steel, steel and plastic piping, and paint to glass beads, lumber, and much more, every region of the country is facing extreme difficulty in procuring any number of crucial project materials. Unfortunately, through these surveys and continued conversations with our members, leaders across the industry have expressed

¹ <https://www.agc.org/news/2022/05/12/nonresidential-construction-input-prices-soar-21-percent-april-2021-last-month-association-urges-0>

continued pessimism that this unprecedented disruption in the construction supply chain will get better in the near future. As such, it is extremely difficult to determine at this time whether U.S. production for these newly covered materials can support the demand the IIJA's increased funding levels will place on these markets, or whether there is sufficient or existing U.S. production at all for some of these goods.

In addition to sourcing and supply chain concerns, there is mass uncertainty among all facets of our industry on the specifics of this new measure. The scope and specifications of the definition of newly covered materials, what contractual language will be required for compliance, and enforcement mechanisms and processes, among other matters, will take significant time for contractor and owner partners to work through and understand once USDOT issues guidance as directed and informed by the Office of Management and Budget.

As these concerns represent a serious threat to the historic opportunity to rebuild our nation's infrastructure that the IIJA provided for, it is imperative that all transportation construction partners are allowed as much time as necessary to collaborate and work with the Department on compliance with the new Build America, Buy America requirements. **If, at the end of 180 days, contractor, owner, and other partners still have strong concerns about the clarity of these requirements and the impact they may have on project delivery, we support the Department's evaluation of a further extension of this proposed waiver.** At this time, AGC strongly believes a further extension will be merited.

AGC is committed to helping deliver on the President's promise that the quality of our nation's infrastructure will soon be drastically improved. Paramount to that is the timely, efficient delivery of construction projects so Americans can begin to realize these improvements in their communities. Further disruptions than already present in contractors' ability to procure necessary project materials would put that goal in jeopardy. A lack of preparedness of the federal government to help industry partners properly meet these new requirements could spur uncertainty in the transportation construction economy and the millions of well-paying jobs it supports— something the IIJA's long-term funding intended to solve.

Over the duration of this proposed waiver, AGC welcomes the opportunity to work with the Department to provide feedback and insight into readying for compliance with these new requirements. AGC's Chief Economist, Ken Simonson, along with other AGC staff, our members, and state chapters, stands at ready to keep USDOT up to date on the pricing, availability, and markets of construction materials and contractors' ability to source them.

We thank you again for the opportunity to comment on this important matter. We look forward to collaborating with the Department to ensure that, in a realistic timeframe, the President and Congress' intention to source more American manufactured material in our transportation improvement projects is met while not exacerbating current material procurement problems, delaying the delivery of projects, or harming the transportation construction economy.

Sincerely,



Cory Gattie
Director, Highway and Transportation Division