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RE: Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors

Dear Members of the Safer Federal Workforce Task Force and FAR Council

As the Safer Federal Workforce Task Force (Task Force) drafts guidance and the Federal Acquisition Regulations Council (FAR Council) writes regulations to implement the Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors (Order), the Associated General Contractors of America (AGC) respectfully puts forth the construction industry's deep concerns with and sensible recommendations for carrying out this Order.

For background, AGC is the leading association in the construction industry representing more than 27,000 firms, including America's leading union and open general contractors and specialty contracting firms. Many of the nation's service providers and suppliers are associated with AGC through a nationwide network of chapters. AGC contractors are engaged in the construction of the nation's schools, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, levees, locks, dams, water conservation projects, defense facilities, housing projects, and more.

Since the onset of the pandemic, AGC and its members have strived to ensure the safety and health of the greatest construction industry asset: its more than 10 million employees. As COVID-19 vaccines became available, AGC provided resources to its members about the vaccines, their safety and effectiveness. In addition, the association created an industry

AGC wants to underscore that this scenario and risk is very real and could lead to serious consequences for federal construction contractors to meet contractual obligations and deliver projects that help ensure our national security and federal governmental functions. It must be added that this risk is to be without any thought towards mitigating its impact in any reasonable way, placing all the risk on the federal contractor. Below, AGC recommends some actions the Task Force and FAR Council can take to sensibly mitigate these risks again, assuming the Order withstands legal challenge.

II. The Task Force and FAR Council Should Mitigate the Unintended Consequences of the Vaccine Mandate on Federal Construction Contractors and their Capacity to Build the Nation's Defense and Civil Infrastructure

- a. Define "Workplace Locations" Based on the Federal Construction Industry Record of Safety and Health and Low Risk Transmission Status throughout the Pandemic

The construction industry is the delivery tool for building and maintaining critical infrastructure and facilities used to deliver clean water and electricity, protection of national security, and transport essential goods and services like medical supplies, groceries, and recently COVID-19 vaccines. Equally important, the construction industry has a long history of working to ensure the safety and health of their employees before the COVID-19 pandemic. Given the many precautions already in place on construction jobsites, the uniqueness of construction projects and their environment—which is completely different from office workplace—AGC holds that applying the vaccination mandate universally to all types of construction does not make sense.

Most construction operations are low risk with respect to the transmission and spread of COVID-19. Early in the pandemic, OSHA explained that the level of risk of occupational exposure to COVID depends in part on the industry type, need for contact within 6 feet of people known to be, or suspected of being, infected with SARS-CoV-2, or requirement for repeated or extended contact with persons known to be, or suspected of being, infected with SARS-CoV-2.⁴ According to OSHA's own assessment, most construction work poses "low exposure risk"; construction work only crosses into "high exposure risk" when it takes place at indoor work sites occupied by people such as other workers, customers, or suspects of having or known to have COVID-19, including when an occupant of the site reports signs or symptoms consistent with COVID-19. Therefore, construction work is unlikely ever to pose high exposure risk.

