



February 13, 2023

Ms. Jennifer Hawes
Procurement Analyst
General Services Administration
1800 F Street, NW
Washington, DC 20405

RE: FAR Case 2021-015, Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk.

Dear Ms. Hawes,

The American Council of Engineering Companies (ACEC) submits comments below on the proposed Federal Supplier Climate Risks and Resilience Rule, FAR Case 2021-015, Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk. ACEC represents the nation's engineering industry, including a significant number of companies of all sizes that support the federal government. We support the broader goal of reducing greenhouse gas emissions, but the industry has concerns over the implementation of the proposed rule.

ACEC represents 5,500 engineering firms that play an essential role in designing the nation's energy, water, transportation, buildings and other critical elements of the built environment. ACEC supports integrated climate adaptation and mitigation policies aligned with a general commitment to global sustainability, competitiveness, and security. Central to the success of a climate agenda are policies that advance innovation, iterative risk management, and employ tools such as life cycle and risk-cost-benefit analysis.

ACEC understands and supports many of the objectives inherent in the proposed rule. America's engineering industry is playing a lead role in designing solutions to the challenges posed by climate change. The industry is committed to sustainability and decarbonization policies that support net zero goals and plays a leadership role in clean energy development. While the goals of the proposed rule are sound, we are concerned that the cost and compliance implications for large companies are significant, wide-ranging, and may yet be fully undefined.

The greenhouse gas emissions by AEC contractors are largely determined by the size and scope of the facilities being constructed. While construction means and methods can be influenced to reduce emissions, the overall emissions are largely due to the type and scale of the project. Having an ability to comply with reduction targets is dependent on workload and the nature of the construction contracts/projects let and awarded by the federal government.

COST TO SMALL BUSINESSES

FAR Case 2021-015 proposes the measuring of emissions output and data gathering that requires extensive knowledge, experience, and expertise that is often beyond the scope of many small and medium-sized businesses.

This would result in many small businesses having to hire outside consultants or staff to meet the proposed FAR changes requiring federal contractors to achieve compliance. This additional

investment would divert these small businesses from their business focus and dramatically increase the cost of doing business with the federal government. These actions, in turn, reduce the competitiveness of small business federal contractors, which directly conflicts with Executive Order 14030's goal "to enhance U.S. competitiveness and economic growth".

The rule also proposes cascading reporting requirements for first and second tier subconsultants, many of whom are the small firms described above that are ill-equipped to absorb those additional costs. Partnerships between large, medium and small firms is common in the engineering industry and essential to our public agency clients working to achieve small business contracting goals, so the impact of the proposed rule will be wide-ranging. Additionally, professional services -- such as engineering -- are not among the industries which contribute significantly to greenhouse gas emissions, which further calls into question the benefits of reporting what are comparatively minimal emissions compared to the compliance burden.

Reporting for this rule will be costly, and will vary significantly depending on the contractor's size, industry, business model, corporate structure, level of experience with climate disclosures. As indicated in the guidance, the total estimated cost of compliance with this proposed rule is \$604,702,840 in the initial year of implementation and \$442,826,866 annually thereafter. While direct costs are of concern, indirect costs are of potentially greater concern.

The burden on "major federal contractors" will also be significant. In addition to the firm's own emissions reporting, the rule requires larger firms to gather compliance information for subcontractors or 3rd parties. Provided they would be successful in obtaining this data in a timely fashion, it remains an unknown how would it be accurately interpreted for a professional services company.

CLARITY OF TERMS AND DEFINITIONS

Scope 2 requirements include reporting of energy sources that a firm would purchase from an outside source, such as their heating and cooling. Many in the professional services sector rent office space in buildings with a potentially large number of tenants. Having to account for energy usage in a shared facility raises a number of challenges.

Control over building equipment, including boilers, A/C operations, and other heating and cooling systems remains with the building owners. The ability to affect change to building equipment operations is outside the control of tenants. Control is further diminished when multiple tenants occupy a leased building. Each tenant may have differing positions on how building equipment operations should be run. In addition, not all tenants may be federal government contractors, requiring some, but not all, to follow the mandates under the changes in this proposed rule. It would be impractical, if not impossible to do so.

The proposed rule relies on terms such as "acquired energy" and "consumed by the reporting company". This rule does not appear to take in to account the nature of relationship between building owners and their tenants. How would a landlord be expected to accurately report their building's emissions? Are firms now expected to limit their rented office space from only those vendors who can prove "reduced emissions" or "carbon free electricity"? Has there been a real estate inventory or market assessment conducted to determine the range of existing options? This implies significant cost to many firms in order to identify, negotiate, and pay a premium for what may be a very limited office space inventory that meets these strict criteria. This also implies significant disruption to the

clients (Federal Government Agencies, State and Municipal Governments, Industrial and Commercial) of many of these firms.

With respect to disclosure of climate risk assessments pertaining to 1) a transition to a lower carbon economy and 2) the physical risks attributed to climate change, additional definition and boundaries for these assessments are needed for consistency in the evaluation across contractors. Present assumptions are that emissions reporting would be qualitative rather than quantitative in nature, but further clarification is needed.

Engineering firms are uniquely positioned to evaluate the comparable benefits of both mitigation and adaptation and design solutions best suited to achieve specific climate-related goals. We remain concerned over the impact of favoring federal contracting for mitigation over adaptation without consideration of consequences to reliability or resilience of the nation's critical infrastructure. For these reasons we recommend the FAR reevaluate the impact this will have on federal contractors to implement, the investments needed and the use of third-party international standards.

Delegation of Standard Setting

The industry has concerns over the proposed delegation of standard setting to the Science Based Targets initiative (SBTi) and specifically concerns with impact of potential changes to the standard as well as whether this is a permissible delegation of federal rulemaking and oversight authority. SBTi can evolve over time and target emissions requirements may also shift based on latest issued United Nations (IPCC) Reports.

RECOMMENDATIONS

Exempt Professional Services. Applying this rule to intellectual and professional services providers will have marginal impact on reducing emissions. At risk are the many adverse impacts on such firms and their design efforts to reduce emissions for their clients. The time required to track even the Scope 1 and 2 emissions is a burden that would have to be recouped on federal contracts and could negatively impact private contracts. Scope 3 emissions tracking becomes even more challenging, especially considering the ever changing project locations, onsite facilities, and commuting distances. The nature of how the engineering industry operates creates many unique challenges, with larger firms partnering with small businesses to support their public and private clients, there is concern that the proposed reporting requirements will cascade to those non-public partners, creating new regulatory burdens for small firms, ill-equipped to absorb the additional costs. We recommend excluding intellectual and professional services providers from the rule.

Use the Small Business Administration's Size Standards. Federal contracts promote the use of small businesses, which do not have the capacity and capability to take on such reporting requirement nor the investments necessary to reduce GHG emissions. Small businesses should be exempt from this requirement to reduce the negative impact on small businesses. The SBA reviews and adjusts size standards as needed, and as required by law. These metrics are also used in the System for Award Management (SAM.gov). Firms must update their SAM registration in order to have their small business status updated based on the latest size standards. Until the SAM registration is updated, the SAM profiles will continue to display the small business status under the old size standards, the Council recommends using the SBA Size Standard rather than creating new classes of federal contractors as proposed by this rule.

Better Align Science-based Targets. The science based targets within Scope 3 should be aligned with keeping climate scenarios below the 2 degrees Celsius pathway. The science-based targets become significantly more difficult as businesses grow, whether it is through acquisition or organically. Firms have options to do intensity versus absolute, which allows for growth. However, it still should be in line with the 2 degree pathway. As noted in the proposed rule, “*Intensity targets for scope 1 and scope 2 emissions are only eligible when they lead to absolute emission reduction targets in line with climate scenarios for keeping global warming to well-below 2°C or when they are modeled using an approved sector pathway applicable to companies’ business activities. Absolute reductions must be at least as ambitious as the minimum of the range of emissions scenarios consistent with the well-below 2°C goal or aligned with the relevant sector reduction pathway within the Sectoral Decarbonization Approach (SDA).*” The minimum reduction required for targets in line with 1.5°C scenarios is 4.2% in annual linear terms. This requires firms to now take these measures into account prior to making acquisitions or other positive factors affecting their growth.

Align Requirements to Latest GHG Protocol Standardⁱ. In 2016, 92% of Fortune 500 companies responding to the Climate Disclosure Project (CDP)ⁱⁱ used GHG Protocol directly or indirectly through a program based on GHG Protocol. CDP is a not-for-profit charity that runs the global disclosure system for investors, companies, cities, states and regions to manage their environmental impacts. The GHG protocol is currently undergoing revisions and will likely have newer versions of these documents by the time the requirements take effect. The rate of change in this space is also likely to create new versions of requirements as set forth by the Taskforce for Climate-Related Financial Disclosures (TCFD) as well. The rule should require contractors to follow the most recently published TCFD and GHG protocol guidance within 2 years of publication date. This would allow contractors to use the existing guidance but require them to update their documents and inventories on a reasonable timeline to be consistent with updated guidance documents to limit disparities between the data for those that do follow the most updated guidance and those that do not.

Extend Time to Develop SBTi Targets. The number of companies setting and validating their targets by the SBTi because of this rule has the potential to overwhelm the SBTi and could make the process for obtaining targets validated more difficult or require more time. If that occurs, it could create a larger burden on contractors and the government than otherwise anticipated, and have contractors found to be nonresponsible through no fault of their own. Such a finding could also have unintended consequences on contractor’s ability to contract with clients other than the Federal Government. In development of this final rule, the FAR should seek to gain insight from SBTi organization and consider extending the amount of time for compliance.

Readjust five-year SBTi Timeline. Many companies have already validated net zero targets by the SBTi for a period of five years from the date of validation. If this rule is published in 2023 and its full requirements become effective 2 years after the date of final publication (2025), then companies would need to show their targets validated by SBTi within the previous 5 years (2019-2024). The SBTi Corporate Manual requires updating the targets every five years. However, the proposed rule provides no discussion on future requirements for re-validating SBTi’s for annual updates.

There is serious concern regarding binding emission reductions and reporting requirements without clear guidance or process provided on the SBTi website for specific industries to comply. Standards set by private organizations are iterative and change over time, often without input from private US companies or the ability to meaningfully engage or challenge them. Large federal contractors would be liable for a legally binding GHG reduction standard and a Scope 3 reporting mandate with the federal government based on the changeable expectations of an NGO with no actual guidance or standard to follow. Firms would have to make up a compliance strategy and assume it was right and

meet a moving target in the future on a process that they have little control over. We recommend the government publish guidance rather than delegating to SBTi.

Exempt contractors performing more than 80% work on M&O Contracts. At a number of federal facilities such as national laboratories, Management & Operating contracts are used in partnership with federal contractors. For many contractors performing this type of work, their emissions for building federal facilities are addressed in the Government's environmental impact statements for these facilities. In many cases these new facilities will be intended to replace more carbon intensive facilities and the contractors will have little control over their emissions.

ACEC recommends an examination of the larger framework of costs and benefits of climate related disclosure and relative roles and responsibilities of various federal authorities to better inform a more constructive FAR proposal, particularly with respect to physical risks and indirect costs described above. ACEC supports climate mitigation and adaptation policies that are balanced and cost-effective. This proposal could result in reporting costs that provide questionable benefits and potentially cause investment in engineering and other resources that is overweighted to climate mitigation and underweighted to mitigative adaptation and resilience.

Thank you for your consideration of the industry's views on this important issue. If we can provide additional information or assistance, please do not hesitate to contact me at (703) 328-5234 or dhilton@acec.org.

ⁱ GHG Protocol establishes comprehensive global standardized frameworks to measure and manage greenhouse gas (GHG) emissions from private and public sector operations, value chains and mitigation actions. Building on a 20-year partnership between World Resources Institute (WRI) and the World Business Council for Sustainable Development (WBCSD), GHG Protocol works with governments, industry associations, NGOs, businesses and other organizations.

ⁱⁱ CDP is an international non-profit that drives companies and governments to reduce their greenhouse gas emissions, safeguard water resources and protect forests.