February 10, 2023

The Hon. Lloyd Austin
Secretary
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301

The Hon. Robin Carnahan
Administrator
U.S. General Services Administration
1800 F St. NW
Washington, DC 20405

The Hon. Bill Nelson
Administrator
U.S. National Aeronautics and Space Administration
300 E St. SW
Washington, DC 20546

RE: Notice of proposed rulemaking: Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk (RIN 9000-AO32)

Dear Secretary Austin, Administrator Carnahan, and Administrator Nelson:

We at the America First Policy Institute (AFPI) write to you regarding the Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA)'s November 13, 2022, Notice of Proposed Rulemaking (NPRM) titled "Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk." We oppose the finality of this rule because: (1) it would impose an undue burden on American businesses, especially small businesses and their workforces, many of which have developed their entrepreneurial models based on existing standards and risk profiles, and (2) its implementation would jeopardize national security by limiting otherwise competitive defense contractors, upon which our nation depends.

AFPI's Interest

AFPI is a 501(c)(3) nonprofit, nonpartisan research institute. AFPI exists to conduct research and develop policies that put the American people first. Our guiding principles are liberty, free enterprise, American military superiority, foreign-policy engagement in the American interest, freedom of conscience, and the primacy of American workers, families, and communities in all we do. In AFPI's view, it is the mandate of policymakers to advance and serve these policy interests above all others. AFPI also aims to help restore American workers and entrepreneurs to their proper place, which is at the center of governance and policy. The class of Americans who made our Republic the greatest Nation on Earth deserves to be heard, valued, and in charge.

AFPI's view is that our government and defense's roles are to serve and protect the interests of everyday Americans, not special interests and radical environmental activists. Some of AFPI's core priorities include maintaining the America First tradition in the national security realm and removing

unsound regulations that impede American economic prosperity. These comments explain why this rule is not only contrary to the law but is also a bad policy that should not be adopted.

Reasons to Withdraw the Proposed Rule

The first problem with this new rule is that it places an unfair and unlawful financial and legal burden on contractors and subcontractors. The second and equally concerning issue is that its implementation would hinder the efficiency of defense services to our country and our allies, many of which are critically dependent on our military's support.

The proposed rule requires all federal contractors to disclose their CO2 emissions and certain risks they pose to the climate. By doing so, the rule will explicitly impact 5,766 contractors who have received at least $7.5 million from the federal government in the prior year. Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk, 87 Fed. Reg. 68312 (proposed Nov. 14, 2022) (to be codified at 48 C.F.R. pts. 1, 4, 9, 23, 52). However, this only scratches the surface of the parties impacted by this regulation, as numerous other subcontractors and suppliers under larger contractors would also be forced to disclose their emissions. These disclosures would lead to a large administrative burden, which increases costs due to the man-hours required to complete paperwork and comply with other legal requirements.

The regulation would require annual disclosures of up to Scope 3 emissions for major contractors, which are considered those with more than $50 million in contracts. Scope 3 encompasses emissions not produced by the contractor itself that are not the result of activities from assets owned or controlled by them. As a result, they include emissions that they are indirectly responsible for, up and down their value chains. This would be an incredible burden for these companies and potentially for other smaller companies in their supply chains, especially those that fall well below the $7.5 million threshold, as their emissions would also need to be disclosed. Whether these small businesses are the primary contractor, subcontractors, or simply part of a supply chain, the extra hours and resources needed for compliance will increase the likelihood of business closures and layoffs.

Additionally, those who are able to adjust their processes to account for this arbitrary and capricious action may lose some of their ability to meet contracting deadlines set by DOD and other agencies because they could become bogged down with paperwork. This could create delays and disruptions in the larger supply chain.

Equally concerning is how this regulation could affect our national security. Implementing this burdensome rule could compromise the efficient production of defense services. In doing so, the DOD would be acting entirely contrary to its stated mission of protecting our Nation's security.

Government contracting firms and the millions of workers that come with them provide skilled expertise in specialized fields that allow uniformed personnel to focus on work that only they can do. If red tape prevents contractors from doing their duties efficiently, our national defense, which uses taxpayer money to leverage contractor labor, is less effective. The red tape created by this rule would likely lead to delays in production and increased expenses on compliance, which would take valuable resources and attention away from federal agencies that are critical to defense efforts.

With serious global conflicts in the Middle East and Eastern Europe and the ever-present threat from China, the said approach is not only short-sighted but could also undermine the needs of American soldiers worldwide and make Americans less safe.

Furthermore, this rulemaking falls well outside the scope of executive authority. This rule unlawfully expands DOD's limited statutory authority to establish new procurement requirements. Statutory authority is limited to setting specifications for products DOD procures and does not include unrelated obligations of vast economic significance on the companies where Congress has not clearly stated an agency's power to do so. See *Louisiana v. Biden,* 55 F.4th 1017 (5th Cir. December 19, 2022). If this scope is extended, it will lay the groundwork for the executive branch to discriminate in its selection of contractors by political ideology and through the lens of a progressive agenda, which is reckless for our economy, national security, and civil liberties.

Overall, this rule presents an undue burden on our already struggling small business community, a potential strain on the defense supply chain, and a clear executive overreach. Based on these factors, and on behalf of our country's military personnel, small businesses, and taxpayers, we respectfully request that this rule be withdrawn.

Sincerely,

Jessica Hart Steinmann

General Counsel

America First Policy Institute