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MEMORANDUM

To: AGC Chapter Executives

From: Michael E. Kennedy, General Counsel, AGC of America

Date: April 25, 2020

Subject: **Latest CISA Advisory on the Essential Critical Infrastructure Workforce**

The Cybersecurity and Infrastructure Security Agency of the U.S. Department of Homeland Security (CISA) issued its third advisory on “the Essential Critical Infrastructure Workforce” on April 17, 2020. The expressly stated purpose of this advisory is “to support state, local, tribal, territorial and industry partners in identifying the critical infrastructure sectors and the essential workers needed to maintain the services and functions Americans depend on daily and that need to be able to operate resiliently during the COVID-19 pandemic response.”

Following is a brief overview its provisions insofar as they relate to the construction industry. The bottom line is the third advisory does not any way narrow the scope of the construction activity that CISA had already found to be essential. To the contrary, it confirms that AGC’s reading of the agency’s second advisory was well-founded. The second advisory made it clear to the association that CISA considers the whole of the construction industry to be essential and the third advisory makes that even clearer.

The Agency’s Approach

Like the two that preceded it, the third advisory neglects to address the construction industry *per se*. Rather, it identifies twenty broad categories of private and/or public endeavor that CISA considers critical and then lists the workers and activities that the agency finds essential to each one. But there, in the detailed process of listing those workers and activities, the advisory covers the whole of the construction industry.¹ Collectively, the lists cover the construction waterfront. In their own but unmistakable way, they reflect the reality that the construction industry either directly or indirectly supports every sector of the U.S. economy and government operations.

CISA devotes a separate section of its advisory to each of its twenty categories. The five that expressly refer to “construction” are these:

¹ The third advisory often addresses “workers” and not “contractors.” At the outset, however, the advisory provides that the CISA intends “the term ‘workers’ . . . to apply to both employees and contractors performing the described functions.”

- Public Works and Infrastructure Support Services;
- Other Community-Based or Government-Based Operations and Essential Functions;
- Residential/Shelter Facilities and Services;
- Energy; and
- Communications and Information Technology.

Public Works and Infrastructure Support Services

This section of the advisory is shorter than several others, but its declarations are broad enough to make the agency’s intentions clear. As examples of the structures that it covers, the section lists both civil works, such as “bridges,” and “residences, businesses and buildings, such as hospitals and senior living facilities.” The workers that the section declares to be essential include all “who support the construction, maintenance, or rehabilitation of critical infrastructure.” And it explains that these workers include “plumbers, electricians” and both “builders” and “contractors” who are “necessary to maintaining [its] safety . . . and essential operation.”

Other Community-Based or Government-Based Operations and Essential Functions

Residential/Shelter Facilities and Services

These two sections of the advisory are best read together and in conjunction with the preceding section on Public Works and Infrastructure Support Services. The first one expands on the earlier reference to “businesses,” declaring that “construction for essential products, services, supply chain, and COVID-19 relief efforts” – which would include a broad and very diverse range of private “businesses” – is essential. The second one similarly expands on the preceding section’s references to “residences” and “buildings,” for it declares essential workers to include “[w]orkers performing housing and commercial construction related activities” and that “government functions related to the building and development process, . . . should continue and enable the continuity of the construction industry”

Energy

The energy section is the most detailed of the five that expressly refer to “construction” and it declares, for example, that essential workers include the following:

- workers needed “to construct, . . . repair, . . . and maintain” the energy system;
- workers “providing services related to energy sector fuels,” including “those supporting construction”;
- workers involved in “construction” required for “the generation, transmission and distribution of electric power”;
- workers “supporting new and existing construction projects” for the petroleum industry, “including, but not limited to pipeline construction”; and
- workers “supporting new and existing construction projects” for the natural, liquid natural gas, propane and other liquid fuels industries, “including, but not limited to pipeline construction.”

Communications and Information Technology

Turning to communications, the advisory finds that essential workers include those “responsible for . . . construction and restoration” of the “communications infrastructure,” such as the “engineers, technicians, and contractors [required] for construction and engineering of fiber optic cables, buried, conduit, small cells, other wireless facilities and other communications-related infrastructure.” Dispelling any doubts, the advisory also specifies that such infrastructure includes “privately owned and maintained communications systems,” and that the construction deemed essential includes the “construction of new facilities.”

With regard to information technology, the advisory expressly finds that that essential work includes the “construction of essential global, national, and local infrastructure for computing services, . . . business infrastructure, financial transactions and services, web-based services, and critical manufacturing.”

The Services and Supply Chain Needed to Sustain the Construction Industry

Repeatedly, the advisory also refers to the services or the supply chain needed to sustain the construction industry. For example, the section devoted to Public Works and Infrastructure Support Services includes a reference to workers “supporting construction materials production, . . . material delivery services and construction inspection.” While the section on Commercial Facilities makes no express reference to “construction,” it similarly refers to the “install[ation] of residential and commercial HVAC systems, boilers, furnaces and other heating, cooling, refrigeration, and ventilation equipment,” and to workers who support:

- “the supply chain of building materials from production through application/installation, including cabinetry, fixtures, doors, cement, hardware, plumbing, electrical, heating/cooling, refrigeration, appliances [and] paint/coatings”; and
- “hardware and building materials stores.”

Along the same lines, the detailed section on the Energy sector of the economy refers to workers in the “electricity industry,” the “petroleum industry” and the “natural gas, NGL, propane and other liquid fuels industries” but responsible for “supporting . . . construction.”

Together, these statements reinforce the plain language of the advisory and render it even clearer that CISA considers the whole of the construction industry to be essential. Indeed, there would be little logic to a federal effort to sustain the federal, state and local inspection of construction projections, or the supply chain of building materials, if “the continuity of the construction industry” were not considered essential, in and of itself.

Conclusion

CISA has scattered its comments on and related to the construction industry throughout its third advisory, making it difficult to quickly determine everything that the agency has to say about the industry. But when assembled and read together, the agency’s comments send a clear and coherent message. The whole of the construction industry, and the services and materials required to sustain it, are all essential.