



November 1, 2023

The Honorable Jack Reed  
Chairman  
Senate Armed Services Committee  
228 Russell Senate Office Building

The Honorable Roger Wicker  
Ranking Member  
Senate Armed Services Committee  
228 Russell Senate Office Building

The Honorable Mike Rogers  
Chairman  
House Armed Services Committee  
2216 Rayburn House Office Building

The Honorable Adam Smith  
Ranking Member  
House Armed Services Committee  
2216 Rayburn House Office Building

Chairman Reed, Chairman Rogers, Ranking Member Wicker and Ranking Member Smith:

On behalf of the American Concrete Pipe Association (ACPA), Copper Development Association Inc. (CDA), Ductile Iron Pipe Research Association (DIPRA), National Ready Mixed Concrete Association (NRMCA), National Stone, Sand & Gravel Association (NSSGA), and the Steel Tank Institute/Steel Plate Fabricators Association (STI/SPFA), we are concerned about continued efforts in Washington to pass legislation that prefers specific materials at the expense of proven materials. Collectively, we represent many of the materials and industries that serve as the foundation for our nation's infrastructure. With centuries of proven performance, our materials have provided reliable, resilient, safe, and sustainable infrastructure for millions of Americans. Building upon our proven success, our industries constantly innovate to serve Americans and our infrastructure into the future.

Specifically, we oppose Sec. 2877 in the Senate National Defense Authorization Act (NDAA) and Sec. 2807 of the House NDAA and encourage the elimination of these provisions in conference. These sections contain material preference language under the guise of so-called "open competition." These provisions are part of a failed national material preference effort that has been ongoing for approximately fifteen years. The language in these sections is similar to language that has been rejected repeatedly by the federal government and at least fourteen states.

This effort has failed time and time again for good reason. Despite the creative marketing terms to promote both Senate Sec. 2877 and House Sec. 2807, the goal is to use government to pick certain materials over others. This is a classic example of creating government preferences to address a problem that does not exist – and it is not without harm.

While the word “consider” seems harmless, the goal is to force the inclusion of certain materials in project specifications and/or bids – regardless of the material’s merits. At best, this language creates more work and red tape for DoD and the project engineers before any DoD project can be approved for bidding. At worst, it creates new and separate legal grounds to challenge the bid process. Inevitably, this will result in delayed projects and increased costs.

Senate Sec. 2877 and House Sec. 2807 also make unfair and inaccurate assumptions about professional engineers and DoD decision-makers. This standard assumes that they are currently making decisions without making proper considerations (i.e., this language assumes they are ignorant, incompetent, or corrupt). No such evidence exists to support these assumptions. Accordingly, this national effort has been opposed by a broad coalition of engineers, end-users, utilities, local government groups, and materials groups (iron, steel, copper, aggregates, concrete and others).

Each provision also has its own unique standards and problems. Senate Sec. 2877 has a unique requirement that “all” materials be considered “equally,” which is more stringent than the standard in House Sec. 2807. House Sec. 2807 has a unique requirement that DoD consider “all relevant” construction methods in addition to construction materials. Both provisions are harmful, and they exacerbate the underlying problems with this effort. The requirement to consider all materials equally is an impossible standard to meet given the numerous material combinations that would have to be considered for each and every component of a construction project. Requiring the consideration of all “relevant” construction materials and methods will exacerbate the potential for delays and increased costs because there are infinite combinations of construction materials and methods that can be used on any given project.

Historically, Congress has opposed these provisions, as they spark material wars and undermine the ability of Congress to pass much-needed infrastructure legislation. The same approach should apply to our nation’s defense.

We fully support the mission of DoD and all efforts to support our warfighters. Unfortunately, Senate Sec. 2877 and House Sec. 2807 will divert precious time and resources away from the DOD’s core mission, which is especially dangerous now given all of the threats we face across the globe. Instead of providing what our warfighters need to defend our country, these provisions will force DOD to support preferences for certain materials. These provisions will only create waste, delays and distractions, and it will be at the expense our men and women in uniform and our nation’s defense. Accordingly, we hope Congress will remain material-neutral and reject these harmful material preference provisions in the final NDAA bill.

Thank you very much for your service and your consideration of our concerns. Please let us know if you have any questions.

Sincerely,

American Concrete Pipe Association  
Copper Development Association Inc.  
Ductile Iron Pipe Research Association  
National Ready Mixed Concrete Association  
National Stone, Sand & Gravel Association  
Steel Tank Institute/Steel Plate Fabricators Association