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November 8, 2023

The Honorable Jack Reed
Chairman
The Honorable Roger Wicker
Ranking Member
Committee on Armed Services
United States Senate

Army Corps of Engineers: Data Needed to Monitor Implementation of Revised Policy for Selecting Architecture and Engineering Contractors

In fiscal year 2022, the U.S. Army Corps of Engineers (USACE) obligated \$1.8 billion on contracts for architecture and engineering (A-E) services. When awarding contracts for these services, federal law requires the government to select A-E firms based on their competency and qualifications rather than price.¹ Agencies collect information on firms' qualifications through a standard form and other sources, including performance evaluations of prior work, requests for any additional information, and interviews with the most highly qualified firms.²

For recurring A-E services for a given program or regional area, USACE may use multiple award task order contracts that allow it to place orders for specific projects from among a select number of pre-qualified firms.³ Specifically, under these types of contracts, USACE first uses a single solicitation to award a base contract to a pool of at least three A-E firms using qualification-based procedures. When the need for a task order within the scope of the base contract arises, USACE then selects the most qualified firm to perform the work from the pool of contract holders.

¹Federal law, as implemented by Federal Acquisition Regulation (FAR) subpart 36.6, requires agencies to publicly announce all requirements for A-E services and negotiate contracts for these services based on the demonstrated competence and qualifications of prospective contractors to perform the services at fair and reasonable prices. 40 U.S.C. §§ 1101-1104.

²The FAR states that firms must file a Standard Form 330 to be considered for an A-E contract. See FAR 36.603(b). The FAR also requires any agency maintaining qualification data files, which include firms' Standard Form 330s, to review and update each file at least once a year. See FAR 36.603(d). The FAR states that the review process should include encouraging firms to annually update information in their Standard Form 330. See FAR 36.603(d)(1).

³Multiple award task order contracts (referred to as "multiple award contracts" for the purposes of this report) are a type of indefinite-delivery contract for services. Indefinite-delivery contracts are awarded to one or more contractors when the exact quantities and/or timing of products and/or services are not known at the time of award. The government then places orders under the indefinite-delivery contract once exact quantities and/or timing are known. When an agency has awarded multiple contracts under a single solicitation, an order generally must be competed among all the contract holders using the procedures in FAR 16.505 for "fair opportunity." However, for contracts and orders for A-E services, agencies must select contractors in accordance with a separate set of procedures outlined in FAR subpart 36.6, as described above. See FAR 16.500(d).

In March 2020, USACE issued a policy establishing procedures for selecting the most qualified firm for a task order under multiple award contracts for A-E services. These procedures required contracting officers to issue a task order requirement notice to contract holders that informed them of the needed A-E work. Under the policy, this notice also included a request for additional information on firms' qualifications specific to the needed work to help inform the selection decision. Some federal contractors raised concerns that during this process, USACE was requesting information it already had, such as information in firms' standard forms, and that the new procedures were delaying task order awards. In December 2022, Congress took action related to these concerns. Specifically, section 802 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 prohibits the Department of Defense (DOD) from routinely requesting additional information related to firms' qualifications when awarding task orders under multiple award contracts for A-E services.⁴

The Senate Report accompanying the National Defense Authorization Act for Fiscal Year 2023 includes a provision for us to review USACE's use of multiple award contracts for A-E services.⁵ This report describes (1) USACE's current process for awarding task orders under such contracts and how the process has changed since March 2020, and (2) USACE's use of task orders under multiple award contracts for A-E services from fiscal years 2019 through 2022.

To conduct this work, we obtained the policy USACE issued in March 2020 and subsequent revisions of this policy that were issued in April 2021 and April 2023. We reviewed the policies to identify changes in USACE's process for awarding a task order under multiple award contracts for A-E services. We also observed a training session and reviewed training materials USACE distributed to district and center staff on implementing the April 2023 policy. Further, we interviewed USACE officials who were responsible for developing the policies to understand the reasons for the changes.⁶ To obtain industry's perspective on USACE's process, we spoke with representatives from two industry organizations—the American Council of Engineering Companies and the Society of American Military Engineers—that USACE consulted about its March 2020 policy.

To describe USACE's use of task orders under multiple award contracts for A-E services from fiscal years 2019 through 2022, we analyzed data, including the number of awards and total obligations for A-E services. We obtained the data from the Federal Procurement Data System, which is the government-wide database for reporting contract actions. This system uses product service codes to indicate what the government bought for each action. We used product service code C—Architect and Engineering Services—to identify A-E contracts and task orders. We assessed the reliability of the data by reviewing relevant documentation, such as USACE's annual data quality certifications, and interviewing USACE officials. We determined the data were sufficiently reliable for reporting the summary-level data provided in this report.

We conducted this performance audit from March to November 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁴PUB. L. NO. 117-263, § 802 (2022).

⁵S. REP. NO. 117-130 (2022).

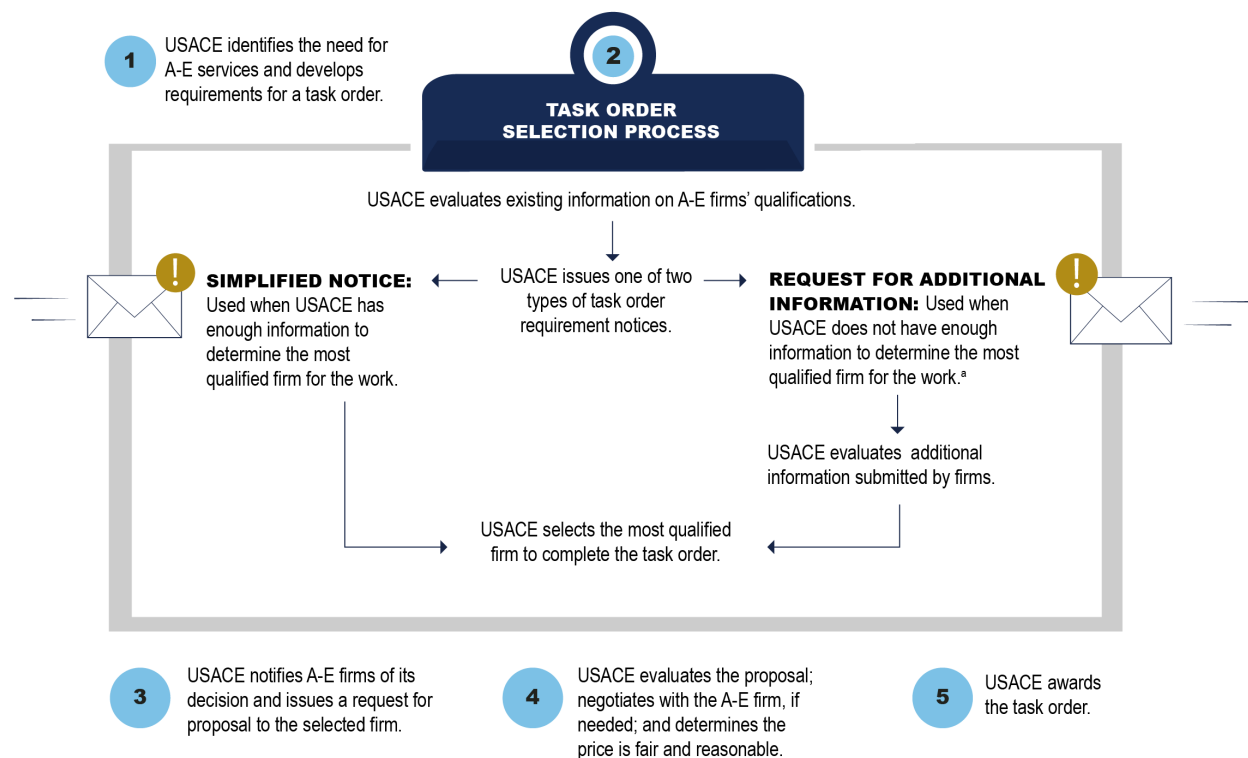
⁶USACE, which is headed by the Chief of Engineers and Commanding General, has both civilian and military responsibilities.

USACE Revised Its Task Order Selection Process to Implement the New Law and Address Other Industry Concerns

In April 2023, USACE issued a revised policy for selecting the most qualified firm for task orders under multiple award contracts for A-E services to implement section 802 of the National Defense Authorization Act for Fiscal Year 2023.⁷ As previously mentioned, section 802 of this Act prohibits DOD from routinely requesting additional information related to firms' qualifications using this contracting approach. The April 2023 policy still allows USACE officials to request additional information from firms when notifying them of a task order requirement. However, consistent with the statute, the policy states that additional information may not be routinely requested. Specifically, requests for additional information may only be made when contracting officials do not have enough existing information available to determine the most qualified firm for the needed work. The policy states that such requests will typically be necessary for large, technically complex projects.

When USACE has enough existing information to select the most qualified firm to perform the work, the policy instructs contracting officials to issue a simplified task order requirement notice. This type of notice informs firms of the needed work, but does not request additional information. After sending a simplified notice, contracting officials may immediately proceed with the next steps in the task order selection process. This process includes selecting the most qualified firm to perform the work and issuing a request for proposal to begin the process of negotiating a fair and reasonable price for the services. Figure 1 depicts the general process for awarding an A-E task order award under the April 2023 policy.

Figure 1: U.S. Army Corps of Engineers (USACE) Updated Process for Awarding Task Orders under Multiple Award Contracts for Architecture and Engineering (A-E) Services as of April 2023



Source: GAO analysis of USACE policy; GAO (Illustration). | GAO-24-106730

^aUSACE's April 2023 policy states that requests for additional information may not be routinely used. It also states that such requests will typically be necessary for large, technically complex projects.

⁷DOD is in the process of developing regulations to implement this provision but, as of October 2023, these efforts are not yet complete.

The April 2023 policy also reflects changes to address other concerns industry had with USACE's two prior policies issued in March 2020 and April 2021. Under the first policy, USACE contracting officials were required to request additional information from firms for every task order. According to USACE officials, the March 2020 policy originated from a draft memorandum from its Office of Chief Counsel that explained the legal requirements for awarding task orders under multiple award contracts for A-E services.⁸ The memorandum stated that a selected firm's qualifications evaluated at the time of the base contract award may be different than the qualifications needed later to fulfill a specific task order requirement. The memorandum explained this is because requirements are not fully known at the time of the base contract award. Industry voiced concerns, noting an increased burden to respond to task order notices and that some of the information requested in the notices was duplicative to information the government already had available. For example, USACE officials sometimes requested information already contained in firms' standard forms that are generally updated annually.

USACE subsequently consulted representatives from two industry organizations—the American Council of Engineering Companies and the Society of American Military Engineers—on ways to improve its task order selection process. USACE issued a revised policy in April 2021. While contracting officials were still required to notify firms of a task order requirement, the policy provided two notification options. The first option allowed officials to request additional information specific to the task order, if needed. The second option introduced the simplified task order requirement notice for situations where USACE had enough existing information to identify the most qualified firm to perform the work. However, firms were allowed to voluntarily provide additional information in response to a simplified notice and USACE officials were required to provide firms time to submit additional information before proceeding with the next steps in the task order selection process.

Representatives of the two industry organizations told us that implementation of the April 2021 policy did not address all of industry's concerns. First, firms believed they needed to provide additional information in response to a simplified notice, although it was not required, to remain competitive for selection. Second, firms did not think that USACE provided prompt notification of selection decisions. Third, firms expressed concern that USACE did not consistently implement the policy across districts and centers. For example, industry representatives stated that some districts continued to always request additional information whereas others began issuing simplified notices.

In the April 2023 policy, USACE took steps to address industry's other concerns. For example, USACE no longer accepts or evaluates additional information submitted by firms in response to a simplified notice. Additionally, the policy directs contracting officials to notify firms of the selection decision within three business days of it being approved. Further, USACE has conducted training and developed tools to improve the consistency in implementation of the April 2023 policy across its districts and centers. For example, USACE officials stated they have established an internal knowledge portal that contains training materials and are hosting weekly seminars to provide district and center staff a forum to discuss questions and any challenges they may have implementing the new policy.

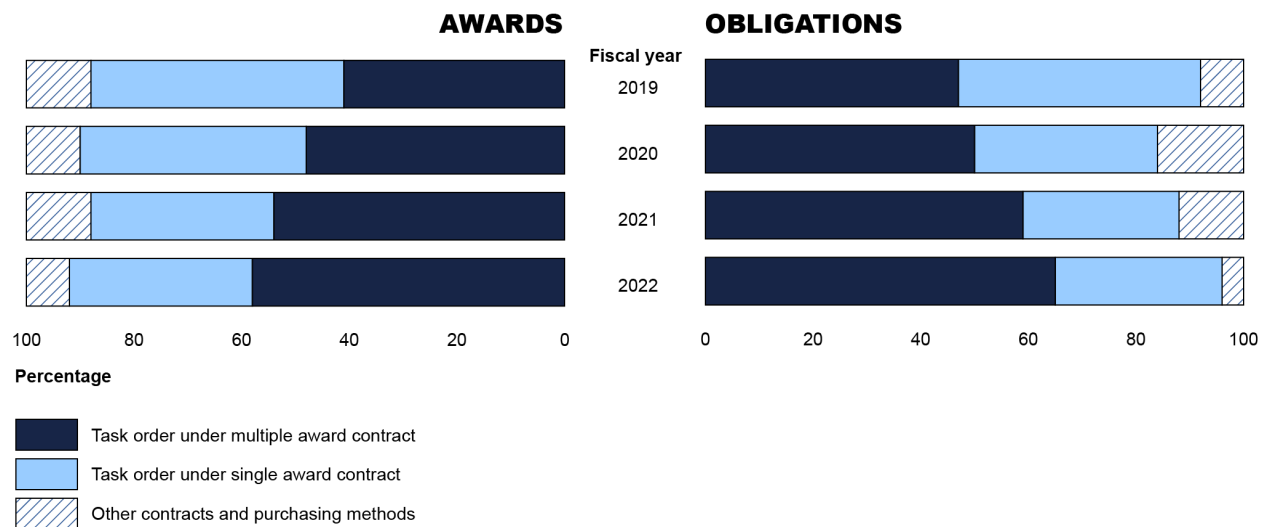
⁸USACE officials told us that the draft memorandum was circulated, but never formalized.

Use of Task Orders under Multiple Award Contracts for A-E Services Has Increased since Fiscal Year 2019, but USACE Does Not Track Data on Its Selection Process

USACE’s use of task orders under multiple award contracts for A-E services has increased since fiscal year 2019. However, USACE does not track when it notifies contract holders of a task order requirement or the extent to which it requests additional information on firms’ qualifications.

From fiscal years 2019 through 2022, the proportion of task orders USACE awarded under multiple award contracts for A-E services increased over time, totaling more than half of all awards and obligations for these services in fiscal year 2022 (see fig. 2).

Figure 2: Percent of Contract Awards and Obligations for Architecture and Engineering Services Made by the U.S. Army Corps of Engineers, Fiscal Years 2019-2022



Source: GAO analysis of Federal Procurement Data System data. | GAO-24-106730

USACE uses an internal Army system to track key milestones for awarding contracts and orders under indefinite-delivery contracts. These milestones include receiving requirements for the product or service needed, issuing a solicitation to industry or the contract holders, evaluating proposals, and awarding the contract or order. However, this system does not track which type of task order requirement notice—a request for additional information or simplified notice—contracting officials issue or the date the notice is sent to contract holders.

Other existing measures also do not adequately track USACE’s task order selection process for A-E services under multiple award contracts. For example, procurement administrative lead time (PALT) is a metric the government uses to measure time frames leading up to the award of a contract or task order. The Army previously defined PALT as the time between contracting officials receiving requirements for a procurement and awarding a contract or order. The time frame included in this definition encompassed USACE’s task order selection process. However, as noted above, USACE does not track the date the task order requirement notice is sent, which would be necessary to measure the amount of time the selection process contributed to the PALT. According to officials, past efforts to collect this information were ad hoc and required manual reviews of individual contract files. In January 2023, the Army adopted a new definition of PALT, which measures the time between issuance of a solicitation and awarding a contract or

order.⁹ Guidance for recording the solicitation date in the Army system refers to the date a request for proposal or quote is sent.¹⁰ As previously shown in figure 1, a request for proposal would be issued after the most qualified firm is selected for task orders under multiple award contracts for A-E services.

USACE officials acknowledged they did not have a systematic way to collect and monitor key data for the A-E task order selection process, but are working to identify a solution. For example, they have discussed developing guidance to specify that issuance of the task order requirement notice should be recorded as the solicitation date for task orders under multiple award contracts for A-E services. This change would put the selection process within the time frame of the Army's new definition of PALT. However, it would not enable USACE to track which type of notice contracting officials issued. Furthermore, officials told us in August 2023 that they did not have a time frame for when the new guidance would be complete.

Standards for Internal Control in the Federal Government state that management should use quality information to achieve the entity's objectives.¹¹ Quality information includes reliable data obtained on a timely basis so it can be used for effective monitoring. Until USACE has a system in place to collect key data on its task order selection process, it cannot monitor implementation—or understand the effects—of the revised policy. Collecting reliable and timely data on the type of notices contracting officials issue under the new April 2023 policy would allow USACE to evaluate the rate of requests for additional information sent to A-E firms and whether the rates are less than “routine” as called for by the new law. Additionally, information on when the notices are sent will allow USACE to measure the amount of time the selection process contributed to awarding the task order under the Army's new definition of PALT.

Conclusions

USACE took swift action to update its policy for selecting the most qualified firm for task orders under multiple award contracts for A-E services in response to section 802 of the National Defense Authorization Act for Fiscal Year 2023. This update also provided USACE an opportunity to address some of industry's other concerns, such as inconsistent implementation of the policy nationwide. However, USACE has not yet developed a way to monitor implementation of the updated policy. Given USACE's increased use of task orders under multiple award contracts to procure A-E services, such monitoring can help USACE evaluate its adherence with the new law and provide it with insights about the effect of its updated policy.

Recommendation for Executive Action

We recommend the Secretary of the Army ensure that the Chief of Engineers and Commanding General of the U.S. Army Corps of Engineers develop a mechanism to track data on USACE's selection process for task orders under multiple award contracts for A-E services, including the type of notice issued to contract holders and the date the notice is sent. (Recommendation 1)

⁹USACE officials provided a memorandum from the Army dated January 31, 2023, which updates the PALT definition to be consistent with the definition included in section 878 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019. Pub. L. No. 115-232, § 878 (2018) (codified at 41 U.S.C. § 1122 note). We have an ongoing audit reviewing PALT across DOD and select components, including the Army. This review includes an assessment of PALT outcomes from fiscal years 2019 through 2022 and how DOD and selected components have implemented processes to monitor PALT, among other things.

¹⁰The guidance is consistent with DOD's guidance for reporting the solicitation date in the Federal Procurement Data System. See the Defense FAR Supplement Procedures, Guidance, and Information, § 204.606(3)(v)(F).

¹¹GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: September 2014).

Agency Comments

We provided a draft of this report to the Department of the Army for review and comment. In its comments, reproduced in the enclosure, the Army concurred with our recommendation and provided technical comments that we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, as well as the Secretary of Defense, the Secretary of the Army, and the Chief of Engineers and Commanding General of the U.S. Army Corps of Engineers. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-4841 or sehgal@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who contributed to this report include Julie A. Clark, Assistant Director; Aryn Ehlow, Analyst-in-Charge; Shannell Ciruso; Matthew T. Crosby; Lorraine Ettaro; Suellen Foth; Laura Greifner; and Robin Wilson.

A handwritten signature in black ink, appearing to read 'M. Sehgal', with a long horizontal line extending from the bottom left of the signature.

Mona Sehgal
Acting Director, Contracting and National Security Acquisitions

Enclosure I: Comments from the Department of the Army



DEPARTMENT OF THE ARMY
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CIVIL WORKS
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WASHINGTON, DC 20310-0108

Ms. Mona Sehgal
Director, Contracting and National Security Acquisitions
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Sehgal:

This is the Department of Defense response to the Government Accountability Office (GAO) draft report "Army Corps of Engineers: Data on Architecture and Engineering Contracts Needed to Monitor Implementation of Revised Policy," dated September 13, 2023 (GAO-24-106730).

The Army appreciates this opportunity to review the draft report. The Army also values the GAO staff's professionalism, collaboration, and insights during this project.

Thank you again for the opportunity to comment. My point of contact is Mr. Theodore Kerr, Assistant for Fiscal Programs Management, theodore.e.kerr.civ@army.mil, 571-278-6754.

Sincerely,

Michael L. Connor
Assistant Secretary of the Army
(Civil Works)

Enclosures

ENCLOSURE 1

**GAO Draft Report Dated September 13, 2023
GAO-24-106730 (GAO CODE 106730)**

**“ARMY CORPS OF ENGINEERS: DATA ON ARCHITECTURE AND ENGINEERING
CONTRACTS NEEDED TO MONITOR IMPLEMENTATION OF REVISED POLICY”**

**ARMY COMMENTS
TO THE GAO RECOMMENDATIONS**

RECOMMENDATION 1: The Secretary of the Army should ensure that the Chief of Engineers and Commanding General of the U.S. Army Corps of Engineers develop a mechanism to track data on USACE’s selection process for task orders under multiple award contracts for architecture and engineering (A-E) services, including the type of notice issued to contract holders and the date the notice is sent.

DoD RESPONSE: Army concurs with GAO’s assessment and will develop guidance on data requirements and reporting as an interim measure, while concurrently working changes to automated systems and reports that will track the selection process for task orders under multiple award contracts for A-E services, to include the type of notice sent to contract holders and the date the notice is sent.

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