



July 2019

FEDERAL CONSTRUCTION

Army Corps of Engineers and GSA Need to Improve Data on Contract Changes

Why GAO Did This Study

In fiscal year 2018, federal agencies spent more than \$36 billion on construction contracts, with more than 45 percent going to small business. Typically, construction projects involve some degree of change as the project progresses. Some federal construction contractors have raised concerns that delays in processing contract changes and making payments creates challenges, particularly for small businesses. Section 855 of the National Defense Authorization Act for Fiscal Year 2019 requires agencies to report information related to how quickly they finalize contract changes.

GAO was asked to review federal construction contract change processes and timeframes. GAO (1) identified factors that affect the time it takes to finalize contract changes, and (2) assessed the extent to which selected agencies monitor time frames for finalizing contract changes. GAO reviewed relevant regulations and agency policies, analyzed available data, and interviewed officials from GSA's Public Buildings Service and USACE—two agencies with large amounts of obligations on construction—and two industry associations.

What GAO Recommends

GAO is making two recommendations: that GSA's Public Buildings Service and USACE each develop a strategy to routinely collect information on and monitor time frames for construction contract changes at the headquarters level. Both agencies concurred with our recommendation.

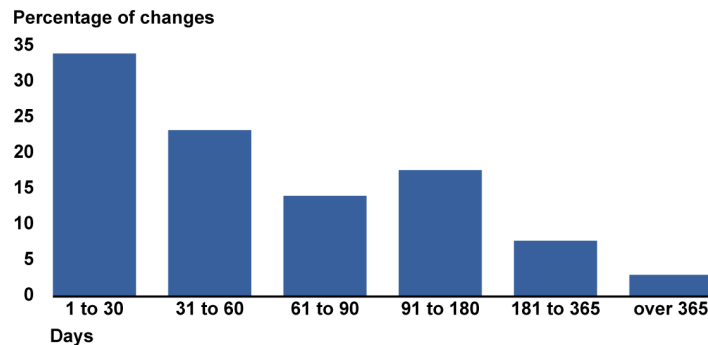
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What GAO Found

Multiple factors affect the time it takes to finalize a construction contract change. For example, preparing cost estimates can be time consuming, particularly for complex changes. Yet the time may be used to help ensure the government has adequate cost data to inform negotiations. In addition, according to agency officials, miscommunication during the contract change process—which can lead to problems such as unauthorized work undertaken by the contractor—can result in additional reviews and longer time frames. According to U.S. Army Corps of Engineers (USACE) data, most of its construction contract changes are finalized within 60 days. Some take much longer, however (see figure).

Time Frames for Finalizing Construction Contract Changes at the U.S. Army Corps of Engineers, 2013 through 2018



Source: GAO presentation of U.S. Army Corps of Engineers data. | GAO-19-500

Note: The General Services Administration's (GSA) Public Buildings Service could not provide similar data.

Agency officials and industry representatives agreed that perceptions differ about the length of the contract change process. For example, because a change can impact the contractor's cost and schedule immediately, the contractor typically perceives that the process starts earlier—and lasts longer—than the government does.

Neither GSA nor USACE regularly monitors how long it takes to finalize construction contract changes, limiting management's ability to identify and respond to problems. Internal controls require agencies to collect and use quality data for management purposes such as monitoring agency activities. GSA systems do not collect data that permit analysis of contract change timeframes at the headquarters level. USACE systems produce contract change data for its districts, but data consolidation and calculations must be done manually and are not done regularly. Neither agency has a strategy in place to address these issues. Without regular review of these timeframes, USACE and GSA contracting officials may be unaware of any existing or potential problems, such as long process times that may affect project schedules. In addition, these data system limitations are likely to create difficulties for agencies when providing the information required by new legislation.

Contents

Letter		1
	Background	3
	Multiple Factors Affect Time Frames for Finalizing Contract Changes	8
	Selected Agencies Do Not Regularly Monitor Contract Change Time Frames	13
	Conclusions	15
	Recommendations for Executive Action	16
	Agency Comments	16
Appendix I	Objectives, Scope, and Methodology	18
Appendix II	Comments from the Department of Defense	21
Appendix III	Comments from the General Services Administration	23
Table		
	Table 1: Construction Contract Change Requirements Established in Agency Regulation and Policy	6
Figures		
	Figure 1: Notional Representation of the Construction Contract Change Process	5
	Figure 2: Selected Steps That Can Be Factors in Contract Change Process Time Frames	10
	Figure 3: Contract Changes by Days to Finalize (January 2013 - August 2018)	12

Abbreviations

DOD	Department of Defense
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System – Next Generation
GSA	General Services Administration
PBS	Public Buildings Service
REA	request for equitable adjustment
USACE	U.S. Army Corps of Engineers
VA	Department of Veterans Affairs

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July 2, 2019

The Honorable Nydia M. Velázquez
Chairwoman
The Honorable Steve Chabot
Ranking Member
Committee on Small Business
House of Representatives

The Honorable Stephanie Murphy
House of Representatives

In fiscal year 2018, federal agencies spent more than \$36 billion on construction contracts, with more than 45 percent going to small businesses. Typically, federal construction projects involve some degree of change as the project progresses. Contract changes, made through modifications to a contract, can occur for a variety of reasons, including design errors, unforeseen site conditions, and changes in user requirements.¹ Some federal contractors have raised concerns that the government’s process for managing construction contract changes causes unnecessary delays in payments, creating cash flow issues and other challenges that can be particularly difficult for small businesses to manage. Recently, Congress took action that, when implemented, should provide more information on certain contract changes to prospective contractors. Section 855 of the National Defense Authorization Act for Fiscal Year 2019 generally requires agencies to include information related to the time frames to definitize – or finalize – some contract changes in certain solicitations, beginning in August 2019.²

You asked us to review federal construction contract change processes and time frames. This report (1) identifies factors that affect the time it takes to finalize contract changes at selected agencies and (2) assesses

¹For the purposes of this report we use “modifications” and “contract changes” or “changes” synonymously to refer to both bilateral and unilateral contract modifications, including the issuance of change orders. This phrase does not include certain other types of modifications that do not generally result in a schedule or price change such as administrative changes or the exercise of priced options. FAR § 43.101, 43.103.

²John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, § 855 (2018).

the extent to which selected agencies monitor time frames for finalizing contract changes.

To identify agencies for our review, we used federal procurement data to determine defense and civilian agencies that had a high amount of construction contract spending, with a significant portion going to small business. Based on these factors, we selected the U.S. Army Corps of Engineers (USACE) and the General Services Administration's (GSA) Public Buildings Service (PBS). To identify factors that affect the time it takes to finalize contract changes, we reviewed federal and agency acquisition regulations and agency policies. We also interviewed USACE and PBS contracting officials, agency small business advocates, and representatives from two associations that represent a variety of federal construction contractors: the Associated General Contractors of America and the National Association of Small Business Contractors.

To assess the extent to which selected agencies monitor time frames for finalizing contract changes, we reviewed relevant statutes, regulations, and policies, and interviewed agency officials, including officials from GSA's Office of Government-wide Policy, which is responsible for acquisition policy across GSA. We requested data on contract changes from USACE and PBS, but only USACE was able to provide data. We reviewed USACE data and analysis on contract changes finalized between January 2013 and August 2018—representing more than 62,000 changes primarily from the more than 40 USACE districts that execute construction contracts—to determine the time it takes to process a contract change.³ See appendix I for more information on our scope and methodology and the types of contract modifications included in our review.

We conducted this performance audit from August 2018 to July 2019 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

³A contract change is considered definitized when the contracting officer signs a Standard Form 30, Amendment of Solicitation/Modification of Contract. A contract change order is considered definitized when the parties sign a supplemental agreement containing an equitable adjustment and a contractor's statement of release using Standard Form 30, Amendment of Solicitation/Modification of Contract. FAR 43.204(c); FAR 43.301(a). In this report, we refer to definitization as finalization. Finalization excludes the settlement or payment processes.

the evidence obtained provides a reasonable basis for our findings based on our audit objectives.

Background

Throughout the course of a construction project, small and large contract changes can be expected after the contract is awarded. These changes are made through modifications to a contract. There are two types of contract changes discussed in this report: bilateral and unilateral.⁴

Bilateral change. A bilateral change (also called a supplemental agreement) is a contract modification that is signed by the contractor and the contracting officer. In these cases, the contractor and contracting officer come to an agreement on the price of a contract change prior to the execution of work.

Unilateral change. The contracting officer may direct a unilateral change, executed through a change order, without the contractor's agreement on the terms and conditions of the change.⁵ A unilateral contract modification is signed only by the contracting officer. The contractor is generally required to perform the related work. When change orders do not include an agreed-upon price for the work, they may also be referred to as an unpriced change.

If a contract change causes an increase or decrease to the cost of performing the work or the scheduled time for performing the work, the contractor will communicate these price and schedule changes to the contracting officer. For there to be an adjustment to the contract's price, the contractor must submit a specific request or proposal seeking reimbursement for the change. If the contract change has been ordered unilaterally by the government, the contractor may submit a request for equitable adjustment (REA) that reflects these cost and schedule

⁴FAR § 43.103 definitions refer to these changes as bilateral and unilateral contract modifications.

⁵Generally, government contracts contain a Changes clause that permits the contracting officer to make changes within the general scope of the contract, and requires the contractor to perform the work as changed. FAR § 43.201. Ordinarily, a modification falls within the scope of the contract provided that it is of a nature which potential offerors would have reasonably anticipated under the Changes clause. AT&T Communications, Inc. v. Wiltel, Inc., 1 F.3d 1201, 1205 (Fed. Cir. 1993). The Changes clause also provides a process by which a contractor gives the government written notice that it considers an order to be a change to the contract, also known as a constructive change. FAR clause 52.243-4.

changes and requests reimbursement.⁶ In other circumstances, the contractor may submit a proposal in response to a request by the agency that similarly reflects the contractor's estimate for that increased or decreased cost and the schedule changes.

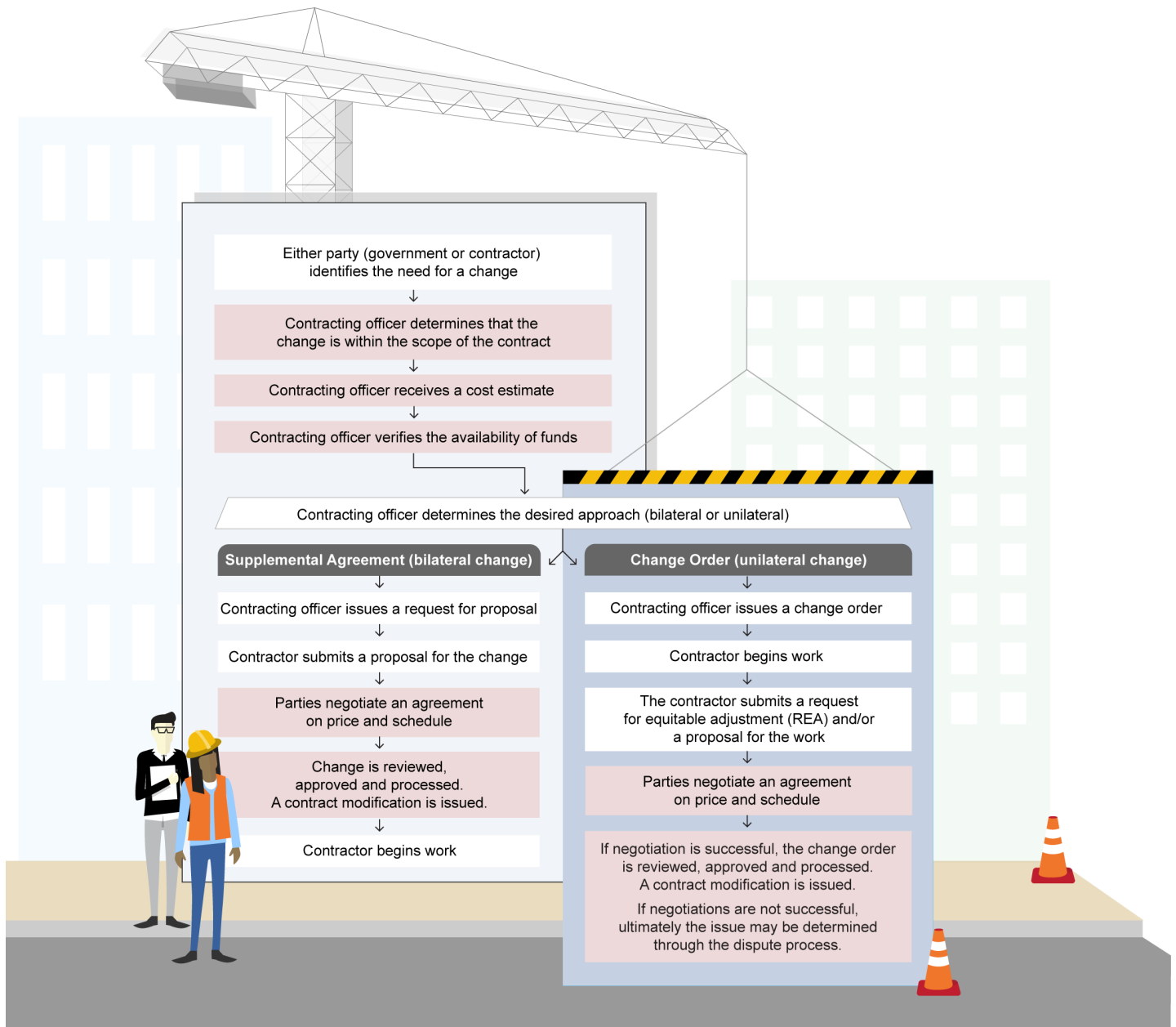
Bilateral and unilateral contract changes typically begin with a similar set of activities, but then the processes diverge once the bilateral or unilateral determination is made. Initial process steps include:

- identifying the need for a change;
- determining that the change is within the scope of the existing contract;
- receiving a cost estimate; and
- verifying that funds are available for the change.

It is generally after this point that the contracting officer determines the type of change—unilateral or bilateral—required. See figure 1 for a notional representation of a change process. Individual contract changes may involve circumstances and process steps that are not outlined below.

⁶Other clauses give contractors the right to give notice and initiate a request for a time extension or equitable adjustment in price for events like differing site conditions, or to request a revised schedule for completion following an excusable delay such as unusually severe weather. FAR clause 53.236-2; FAR clause 52.249-14.

Figure 1: Notional Representation of the Construction Contract Change Process



Source: GAO analysis of Federal Acquisition Regulation and Department of Defense, U.S. Army Corps of Engineers, and General Services Administration policies and regulations. | GAO-19-500

Note: Individual contract changes may not follow the process as laid out above. For example, according to contracting officials at the U.S. Army Corps of Engineers, at that agency a “notice to proceed” change begins as a unilateral change that includes a ceiling or not-to-exceed price, which permits the contractor to begin work and receive payments up to the specified amount while negotiations take place. Ultimately this type of change is finalized through a supplemental agreement.

Agency regulations and policies provide additional direction for managing the construction contract change process (see table 1).

Table 1: Construction Contract Change Requirements Established in Agency Regulation and Policy

	General Services Administration (GSA)	U.S. Army Corps of Engineers (USACE)
Delegates	The contracting officer may delegate the responsibility to execute contract changes to the contracting officer's representative, within the delegate's warrant. ^a	The contracting officer may delegate the responsibility to execute contract changes to the administrative contracting officer, within the delegate's warrant. ^a
Review processes	If the contracting officer's representative personally performs all actions related to an unpriced change order, the contracting officer must either review each change order or designate another official to perform the review.	Contract changes greater than \$500,000 must be reviewed by the contracting officer and Counsel before being finalized.
Cost estimates	Both GSA and USACE permit the short-term use of a less detailed cost estimate to expedite the work, with the full cost estimate required prior to negotiations.	
Time frames	Unilateral modifications must be finalized within 90 days, unless the contracting officer receives an extension.	Certain unpriced change orders greater than \$5 million must contain a schedule for definitization. ^b

Source: Defense Federal Acquisition Regulation Supplement, the USACE Acquisition Instruction, the GSA Acquisition Manual, the GSA Acquisition Regulation and the GSA Public Buildings Service, Procurement Instructional Bulletin 13-03, Amendment 02 (Nov. 10, 2015). | GAO-19-500

^aA warrant authorizes a contracting officer to obligate funds on behalf of the federal government.

^bThe Defense Federal Acquisition Regulation Supplement requires that an unpriced change order greater than \$5 million contain a schedule that provides for definitization by the earlier of (1) 180 days after the issuance of the change order, with possible extension to 180 days after the contractor submits a qualifying proposal, or (2) the date on which the amount of funds obligated is equal to more than 50 percent of the not-to-exceed price. DFARS §§243.204-70-1 (a) and 243.204-70-3. Our review of data provided by USACE indicated less than 1 percent of all reported changes from 2013 to 2018 were greater than \$5 million.

Prior GAO Work, Industry Concerns, and Recent Congressional Action

In prior work at the Department of Veterans Affairs (VA), we identified challenges and made several recommendations related to the time required for the construction contract modification process.

- In 2013, we found that VA had not developed guidance to ensure that change orders were approved in a prompt manner, and recommended that officials implement guidance on streamlining the change-order process.⁷ VA agreed with our recommendations and has implemented them.

⁷GAO, *VA Construction: Additional Actions Needed to Decrease Delays and Lower Costs of Major Medical-Facility Projects*, [GAO-13-302](#) (Washington, D.C.: Apr. 4, 2013).

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- In 2017, we found that VA did not collect sufficient information to determine if new guidelines intended to ensure the timely processing of change orders were being followed. We also found that it did not have a mechanism in place to evaluate data on time frames to process change orders. Without such a mechanism, VA could not determine how processing time frames and design changes affect costs and schedules, and thus was at risk for unexpected cost increases and schedule delays. We recommended that VA establish a mechanism to monitor the extent that major facilities projects were following guidelines on change orders' time frames and design changes.⁸ VA has also addressed this recommendation.
 - In 2018, we found that the Veterans Health Administration, a component of the VA, had not established time frames for processing contract changes, and did not have a way to monitor the length of time or the reason contract changes occur. We recommended that officials collect information on contract modifications, establish target time frames that trigger a higher-level review of contract modifications, and centrally establish a mechanism to monitor and review certain contract modifications that were taking longer than the established target time frame.⁹ To date, the Veterans Health Administration has not yet fully implemented the recommendations.

At a May 2017 congressional hearing before two subcommittees of the House Committee on Small Business, witnesses from the construction industry identified the contract change process as a challenge. They stated that the change process negatively affects cash flows, increases administrative and legal costs, and creates a risk of not receiving reimbursement for completed work. Industry representatives we spoke with reiterated these concerns. Industry representatives also explained that while contract changes were a challenge for businesses of all sizes, small business were likely to be more susceptible to challenges due to their having fewer financial and administrative resources. One resource for small businesses is an agency's Office of Small and Disadvantaged Business Utilization or Office of Small Business Programs. These offices are responsible for working with agency officials to facilitate participation

⁸GAO, *VA Construction: Improved Processes Needed to Monitor Contract Modifications, Develop Schedules, and Estimate Costs*, [GAO-17-70](#) (Washington, D.C.: Mar. 7, 2017).

⁹GAO, *VA Construction: Management of Minor Construction and Non-Recurring Maintenance Programs Could Be Improved*, [GAO-18-479](#) (Washington, D.C.: July 31, 2018).

of small businesses in procurement.¹⁰ However, the small business advocates at GSA and USACE told us that their offices had a limited role in the construction contract change process. According to small business advocates at GSA, for example, their office may get involved in a limited manner when a small business contractor is having difficulty receiving payment by providing guidance on how to make a claim.

Congress recently took action that will prompt agencies to gather information on the time it takes to make certain contract changes. Section 855 of the Fiscal Year 2019 National Defense Authorization Act includes a provision that requires agencies to make available information about the agency's past performance in finalizing, or "definitizing," REAs with certain construction solicitations.¹¹ The provision also requires agencies to provide information about its policies and practices associated with how the agencies comply with Federal Acquisition Regulation requirements to definitize REAs in a timely manner. Agencies must start including this information no later than August 13, 2019.

Multiple Factors Affect Time Frames for Finalizing Contract Changes

A variety of factors affect how long it takes to process a contract change. The factors include the time needed for making a change determination, creating a cost estimate, identifying funds, negotiating with the contractor, completing reviews, and processing the change. According to agency officials, some of these steps play a role in protecting the government's best interests. For example, creating robust cost estimates helps provide the government with information to inform negotiations with the contractor. Unauthorized work—resulting from unauthorized direction or miscommunication—is another factor that can affect the change process timelines. When the contractor performs unauthorized work, the agency must then take additional steps, such as reviewing the work to determine

¹⁰In 1978, statute established an Office of Small and Disadvantaged Business Utilization in each federal agency with procurement powers. The Small Business Act, as amended, establishes a number of requirements related to the functions and duties of these offices. For example, duties include assisting small businesses in obtaining payments from an agency or prime contractor with which they have contracted. See GAO, *Small Business Contracting: Actions Needed to Demonstrate and Better Review Compliance with Select Requirements for Small Business Advocates*, [GAO-17-675](#) (Washington, D.C.: Aug. 25, 2017).

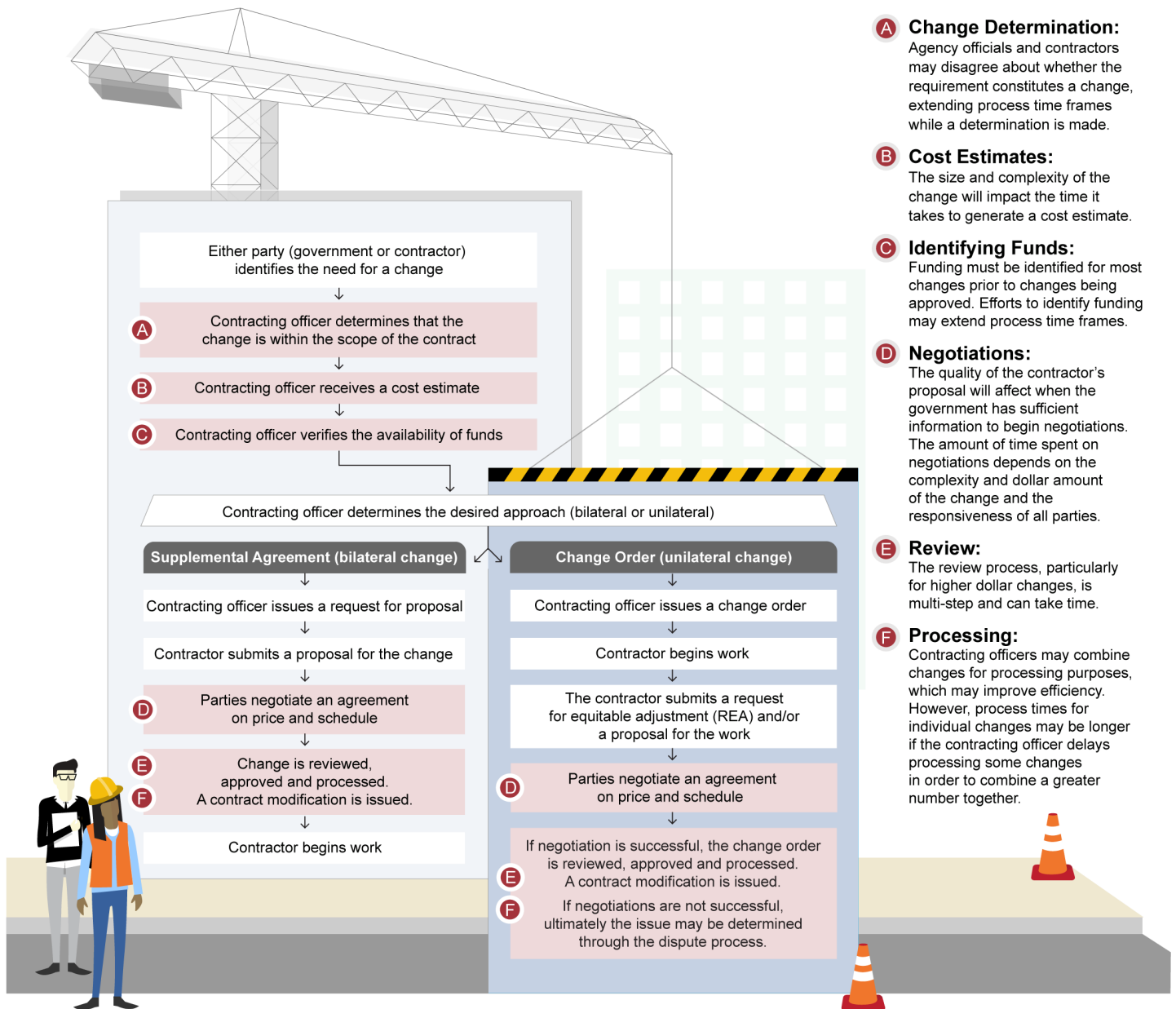
¹¹Pub. L. No. 115-232, § 855, amending Section 15 of the Small Business Act (15 U.S.C. § 644). Generally, agencies are to include the required information in the notices accompanying solicitations for the award of a construction contract anticipated to be awarded to a small business.

if it should be reimbursed. Data we reviewed from USACE indicate that a majority of contract changes made from January 2013 through August 2018 were finalized in fewer than 60 days, and a little more than 3 percent took more than 1 year. Contractors and the government sometimes have different perceptions about when the contract change process begins—and therefore how long it takes—based on when the change begins to impact the work.

Contract Change Steps Add Time to the Process

The construction contract change process includes a number of steps that can factor into the time frames for finalizing a contract change, depending on the facts and circumstances surrounding an individual change. For example, USACE officials stated that obtaining a complete proposal from the contractor—with sufficient information on cost and schedule changes to begin negotiations—is a significant factor affecting contract change time frames. Figure 2 illustrates where these factors fall in a notional change process and describes how they may affect time frames.

Figure 2: Selected Steps That Can Be Factors in Contract Change Process Time Frames



- A Change Determination:** Agency officials and contractors may disagree about whether the requirement constitutes a change, extending process time frames while a determination is made.
- B Cost Estimates:** The size and complexity of the change will impact the time it takes to generate a cost estimate.
- C Identifying Funds:** Funding must be identified for most changes prior to changes being approved. Efforts to identify funding may extend process time frames.
- D Negotiations:** The quality of the contractor's proposal will affect when the government has sufficient information to begin negotiations. The amount of time spent on negotiations depends on the complexity and dollar amount of the change and the responsiveness of all parties.
- E Review:** The review process, particularly for higher dollar changes, is multi-step and can take time.
- F Processing:** Contracting officers may combine changes for processing purposes, which may improve efficiency. However, process times for individual changes may be longer if the contracting officer delays processing some changes in order to combine a greater number together.

Source: GAO analysis of Federal Acquisition Regulation and Department of Defense, U.S. Army Corps of Engineers, and General Services Administration policies, regulations and interviews. | GAO-19-500

Note: Some of the selected steps above may occur at points other than those identified in the figure. For example, cost estimates and reviews may be performed at varying points in the process.

Agency contracting officials at both PBS and USACE note that some of these procedural steps are necessary to protect the government's interests—which includes negotiating a fair and reasonable price for the work related to the change.

According to USACE and PBS contracting officials, any unauthorized work undertaken by the contractor is another factor that can extend contract change process timelines. When unauthorized work is done, the government must take steps such as determining (1) if the work was required; (2) if the work constituted a change to the existing contract; and (3) if so, a fair and reasonable price for the work. Unauthorized work may occur, for example, when the contractor receives direction from a person who is not authorized to direct work, like a project manager. An authorized individual, such as the contracting officer, must provide such direction. Agency officials explained that unauthorized work can be the result of miscommunication between a government project official and the contractor. The contractor may interpret instructions from the unauthorized official as a formal direction to proceed with a change. In other cases, the contractor may begin work in anticipation of a contract change, before receiving any direction at all. One contractor representative told us that, at times, contractors feel pressured to start work without authorized direction to avoid disruption to the overall project that may result in negative performance reviews from the agency.

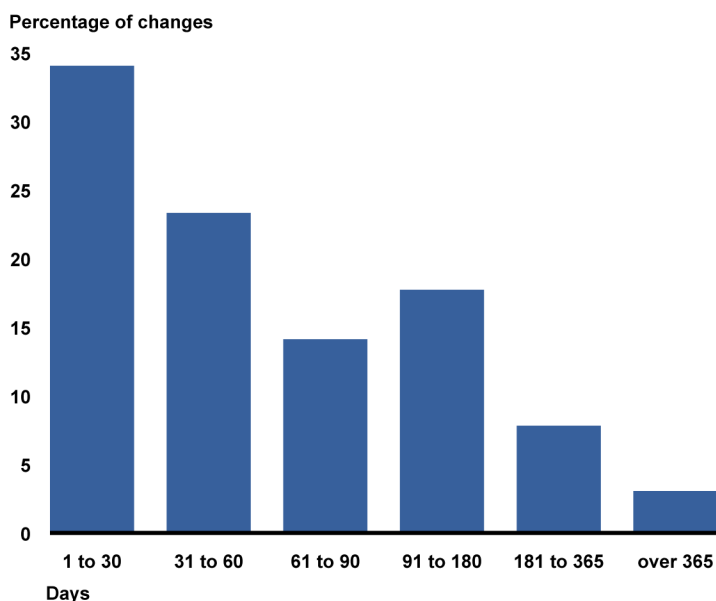
USACE Data Show That More than Half of Construction Contract Changes Are Finalized Within 60 Days, but Some Take Much Longer

According to USACE contracting officials, the agency compiles and reviews data on construction contract changes on an ad hoc basis to gain insight into time frames for the contract change process within that agency. The data and analysis show that the majority of changes from 2013 through 2018 at that agency were finalized within 60 days; however, a smaller percentage took substantially longer.¹² Approximately 45 percent of the completed contract changes took more than 60 days to finalize, and a little more than 3 percent took more than 1 year. See figure

¹²The data—compiled from USACE's Resident Management System—provides high-level information on each contract change that was finalized from January 2013 to August 2018, including the dates of key milestones, the price of the change, and a reason code. USACE officials calculated how long each contract change took by determining how many days passed between when a proposal was received from the contractor and the contract change was finalized. When compiling these data, USACE officials excluded modifications identified as terminations, paid through claims, exercising options, and administrative modifications. GSA was unable to provide similar data on its contract changes.

3 for information on USACE contract changes by the number of days taken to finalize the change.

Figure 3: Contract Changes by Days to Finalize (January 2013 - August 2018)



Source: GAO presentation of U.S. Army Corps of Engineers data. | GAO-19-500

Note: Days to finalize are calculated by measuring the time elapsed from the date USACE receives a proposal from the contractor to when the contract change is finalized by the signature of Standard Form 30, which officially modifies the contract.

Agency Officials and Industry Representatives Report Differing Perceptions of When the Process Begins

Contracting officials at USACE, as well as industry representatives, told us that government officials and contractors often have different perspectives on when the contract change process begins and, therefore, the time needed to complete it. For example, one industry representative said that the process begins for some contractors when the need for a contract change is identified. The representative explained that this is the point that the project work can change and the contractor begins to experience an impact on cost and schedule. Another industry representative said that some businesses think that the process begins when they submit their request for equitable adjustment, but that the government may not start measuring the process until a government official actively begins to address the request.

Meanwhile, USACE contracting officials stated that process time should be measured from when they receive a complete proposal from the contractor, with no missing information. USACE officials told us that the

data collected in its contract information system do not always reflect this metric, however. USACE contracting officials told us that, when recording the proposal receipt date that it uses as the start date for the contract change process, some contracting officers enter the date that the *initial* proposal was received, and others enter the date that a *complete* proposal was received. USACE contracting officials stated that they plan to address this issue in the future as part of a larger system upgrade.

An industry representative explained that these varying viewpoints between government contracting officials and contractors are exacerbated by the contractors' lack of understanding about the contract change process. The representative also stated that contractors find that the process is not transparent and implementation of the process varies by agency and even by district within the same agency, increasing confusion.

Selected Agencies Do Not Regularly Monitor Contract Change Time Frames

While the amount of information on contract changes varies between USACE and PBS, neither agency regularly monitors contract change time frames. In addition to agency guidance that establishes time frames for certain contract change order actions, federal standards for internal control state that an organization should obtain quality information to achieve management objectives and establish monitoring activities.¹³ Neither GSA nor USACE has fully established such controls over the contract change process at the headquarters level, limiting management's ability to identify and respond to problems.

- USACE information systems have data on contract changes for its more than 40 districts that are sufficient to calculate time frames for finalizing contract changes, but the agency does not regularly aggregate or monitor the information. Officials explained that this was in part due to the manual process required to compile the data centrally and perform calculations. A user must pull data for each USACE district from its contract information system and then manually manipulate the data to determine the time frames. As a result, the data are not reviewed by officials at headquarters on a routine basis. The contracting officials we spoke with said that contract change time frames are reviewed at the local level, specifically by project teams, typically on a weekly basis. Contracting

¹³GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

officials also stated that contract change time frames are a factor in performance reviews for contracting personnel. There is currently no agency guidance or documentation for how often contract changes should be reviewed at either the project or district levels, the officials said. USACE contracting officials noted that they are in the early stages of planning for a system upgrade that they hope will automate the process of compiling and analyzing construction contract change data. However, these plans are preliminary. USACE has not yet determined which systems will be involved, nor has it documented these planning efforts to date.

- PBS contracting officials cannot track time frames for contract changes. While GSA's contract information system does track and centrally compile data on all contract modifications, PBS contracting officials said there was no efficient way to separate the types of contract changes that we included in our review from other modifications, such as administrative changes or the exercise of options, preventing the calculation of time frames for contract changes. Our review of the GSA data confirmed that the data cannot be used to distinguish between the various types of contract changes. According to PBS contracting officials, to identify a contract change type, a reviewer would have to seek information at the local level by going into the individual contract file and reviewing the modification.

Given these limitations, USACE and PBS cannot centrally identify emerging problems with contract change time frames or monitor compliance with existing Department of Defense (DOD) and GSA requirements. As noted above, DOD and GSA have established time frames for certain contract changes. USACE contracting officials said that they would likely establish additional, broad goals for finalizing contract changes in future policy revisions because more targeted goals were often not practical due to the unique circumstances that may affect process times. PBS contracting officials said that compliance with those time frames should be monitored by local staff, such as the contracting officer assigned to the project; however, there is no regular monitoring of that data or systematic way for contracting officers to track this information at the local level. There is currently no effort under way to develop a strategy to address data limitations at the local and headquarters level via information technology system upgrades, according to GSA officials.

Further, USACE and GSA anticipate, and our analysis of available data confirms, that system limitations at both agencies are likely to make implementing section 855 of the Fiscal Year 2019 National Defense

Authorization Act more difficult. This provision generally requires agencies to include information on recent time frames for definitizing REAs with any construction solicitations anticipated to be awarded to small businesses no later than August 2019. For example, GSA officials stated that to implement this provision would require substantial changes to their contract information system, which they must plan for 2 years in advance. USACE officials said that staff level discussions were ongoing on potential ways to comply with the requirement. They added, however, that in the absence of a system change making the data readily available, they would likely compile data manually, similar to what was provided to us, as an ad hoc substitute.

In addition, both agencies said that they had questions about what information they would include in solicitations. Specifically, while section 855 refers to REAs, a USACE contracting official stated that REA could be interpreted differently by the government and industry. Similarly, GSA contracting officials said that the statutory language potentially covers a broad category of information, making it difficult to decide what data to capture and report. USACE officials stated that they will wait for DOD and the Department of the Army to provide direction before changing their system. GSA officials stated that they were not going to take action until further information is provided. One potential source of additional direction is Federal Acquisition Regulation (FAR) case 2018-020, which is developing a proposed FAR rule to implement section 855. The proposed rule is anticipated to be released in the first quarter of fiscal year 2020.

Conclusions

Routine, central data collection on the construction contract change process can help agencies understand the scope of any problems encountered. While USACE can compile and review construction contract change information on an ad hoc basis, the agency does not conduct regular monitoring at the headquarters level and must manually manipulate data to review this information. GSA lacks information on the contract change process and its time frames at the headquarters, regional, and local levels. Without regular collection and review of information on the contract change process, contracting officials may be unable to spot potential problems—such as long process times that may affect project schedules—as they occur and respond accordingly. In addition to needing data for management purposes, agencies must also implement new legislative requirements when issuing certain construction solicitations starting in August 2019. While the proposed FAR rule, when issued, should provide agencies with more information on how to implement the new requirements, GSA and USACE could immediately

begin to develop strategies to support routine collection and monitoring of time frames. Pursuing preliminary strategies on basic issues—such as what systems may need to be updated and what groups or individuals should be involved—would help these agencies better position themselves to comply with the requirement in a timely manner, and more quickly expand the data available for management purposes.

Recommendations for Executive Action

We are making the following two recommendations:

The Administrator of General Services should ensure that the Commissioner of the Public Buildings Service develops a strategy that outlines the steps needed to routinely collect information on and monitor the time frames for finalizing construction contract changes at the headquarters level. The strategy could address issues such as the types of construction contract changes that should be included, when the measurement of the contract change process should begin, and the information systems that will be affected. (Recommendation 1)

The Secretary of the Army should direct the Chief of Engineers and Commanding General of the U.S. Army Corps of Engineers to develop a strategy to expand on existing data and systems to routinely collect information on and monitor the time frames for finalizing construction contract changes at the headquarters level. (Recommendation 2)

Agency Comments

We provided a draft of this product to DOD, GSA, and OMB for comment. DOD and GSA provided written comments, reproduced in appendixes II and III, respectively. DOD concurred with our recommendation and provided a technical comment, which we incorporated as appropriate. GSA also concurred with our recommendation, and noted that the agency is developing a plan to address it. OMB provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Director of the Office of Management and Budget, the Acting Secretary of Defense, and the Administrator of General Services. 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 woodsw@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 made key contributions to this report were Tatiana Winger (Assistant Director); Betsy Gregory-Hosler (Analyst-in-Charge); Michael Dworman; Gail-Lynn Michel; Peter Anderson; George Depaoli; Lorraine Ettaro; Lori Fields; Gina Hoover; Sam Portnow; Bill Shear; and Anne Louise Taylor.



William T. Woods
Director, Contracting and National Security Acquisitions

Appendix I: Objectives, Scope, and Methodology

This report (1) identifies factors that affect the time it takes to finalize contract changes at selected agencies, and (2) assesses the extent to which selected agencies monitor time frames for finalizing contract changes.

In this report we examined the process for managing unilateral and bilateral contract changes, but exclude certain types of contract modifications to focus on the issues of payments and cash flow challenges. Specifically, we excluded (1) administrative modifications because they do not entail changes to contract costs or time frames;¹ (2) contract changes that go beyond the scope of the existing contract, referred to as cardinal changes; (3) contract options because exercising an existing priced option does not entail the same type of negotiations that unilateral and bilateral changes require; (4) contract disputes and claims because they follow a separate and distinct process; (5) the payment process after a contract change has been finalized because that process is directed by the Prompt Payment Act;² and (6) any processes taking place between a prime contractor and its subcontractors because that is outside the focus of this review.³

To identify agencies for our review, we analyzed Federal Procurement Data System – Next Generation (FPDS-NG) data on construction contract obligations for fiscal year 2017, the most recent data available at the time. This allowed us to identify defense and civilian agencies that had large amounts of construction contract obligations and a relatively significant portion of those obligations going to small business. The data that we used assigned the contract obligations to the agency that managed the construction project rather than the funding agency. We found that the Department of the Army’s U.S. Army Corps of Engineers (USACE) obligated approximately \$10.5 billion for construction contracts, with approximately \$3.9 billion going to small business concerns. This obligated amount is more than any other federal agency or service within the Department of Defense. We found that the General Services

¹Administrative modifications do not affect the substantive rights of the contractor or the government.

²The Prompt Payment Act (31 U.S.C. §§3901-3907) requires federal agencies to make timely payments to vendors and impose interest penalties for late payments.

³The data we report on time frames for finalizing contract changes include anything that occurred between the time that the contractor’s proposal or request for equitable adjustment was received and when the change was finalized, which could include time where the prime contractor was interacting with the subcontractor.

Administration's (GSA) Public Buildings Service (PBS) obligated approximately \$1.9 billion for construction contracts, with approximately \$870 million going to small business concerns. To assess the reliability of the FPDS-NG data we used, we (1) performed electronic testing of selected data elements, and (2) reviewed existing information about the FPDS-NG system and the data it produces. Specifically, we reviewed the data dictionary, data validation rules, and other documentation. Based on these steps, we determined the data were sufficiently reliable for the purposes of this report.

To identify federal construction industry representatives for this engagement, we collected information on potential associations from various sources including previous congressional testimony and our prior work. From this list of options, we sought organizations that were focused on federal construction contracting, included a small business focus, represented a large number of contractors, and had performed previous advocacy work on the issues of under review in this engagement. Based on these criteria, we selected two organizations to interview: the Associated General Contractors of America and the National Association of Small Business Contractors. The Associated General Contractors of America, which sent a representative to a congressional hearing on the contract change process, represents 26,000 member firms and includes a division dedicated to federal construction as well as a small business committee. The National Association of Small Business Contractors specializes in small business contractors working with the federal government, and is affiliated with the American Small Business Chamber of Commerce. We interviewed representatives from these associations to confirm background information about how the change process impacts industry and further discuss the factors that affect process time frames.

To identify the factors which affect the time it takes to finalize contract changes at selected agencies, we reviewed relevant legislation such as the John S. McCain National Defense Authorization Act for Fiscal Year 2019, regulations including the Federal Acquisition Regulation (FAR), the Defense Federal Acquisition Regulation Supplement, GSA Acquisition Regulation, and the GSA Acquisition Manual and relevant agency policies and guidance. We interviewed staff from the Office of Management and Budget's Office of Federal Procurement Policy—the Administrator of which serves as the Chair of the FAR Council—and contracting officials from the PBS and USACE. In addition, we interviewed officials from GSA's Office of Small Business Utilization and USACE's Office of Small Business Programs to discuss their role in the change process and their perspective on possible impacts to small business concerns.

To assess the extent to which selected agencies monitor time frames for finalizing contract changes, we collected and reviewed available GSA data on contract modifications. We also collected available data and analysis from USACE on construction contract changes from January 1, 2013 to August 17, 2018—representing more than 62,000 changes from the more than 40 USACE districts and one office that execute construction contracts—obtained from the USACE’s Resident Management System. We reviewed USACE analysis of those data that calculated time frames for the contract changes by measuring the time elapsed from the date a proposal is received to when the contract change is finalized by the signature of Standard Form 30, which officially modifies the contract. We also reviewed system documentation on the requirements for users to enter data into the systems. We interviewed PBS and USACE officials at the headquarters level to discuss the time frames for contract changes, including on how long officials believe the process takes, what data are available, and who reviews any data collected on the contract change process. We discussed the provided USACE data with knowledgeable USACE officials who performed the calculations to understand their process, assumptions, and methodology. We determined the data were sufficiently reliable for the purposes of describing what is known about the time frames for finalizing construction contract changes. We also interviewed an official in GSA’s Office of Government-wide policy, to discuss any GSA-wide plans for system changes.

We conducted this performance audit from August 2018 to July 2019 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 based on our audit objectives.

Appendix II: Comments from the Department of Defense



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

May 29, 2019

Mr. William T. Woods
Director
Contracting and National Security Acquisitions
U.S. Government Accountability Office
441 G Street, NW
Washington, D.C. 20548

Dear Mr. Woods:

This is the Department of Defense (DoD) response to the GAO Draft Report, GAO-19-500, "FEDERAL CONSTRUCTION: Army Corps of Engineers and GSA Need to Improve Data on Contract Changes," dated May 7, 2019 (GAO Code 102975).

The DoD concurs with comment to the recommendation in the GAO report. The DoD appreciates this opportunity to review the draft report. My point of contact is Mr. Theodore Kerr who can be reached at theodore.e.kerr.civ@mail.mil and 703-697-6985.

Sincerely,

A handwritten signature in purple ink, reading "Edward E. Belk, Jr.", is positioned above the typed name.

EDWARD E. BELK, JR.
Deputy Assistant Secretary of the Army
Management and Budget

Encl



GAO DRAFT REPORT DATED JUNE 1, 2019
GAO-19-500 (GAO CODE 102975)

**“FEDERAL CONSTRUCTION: ARMY CORPS OF ENGINEERS AND GSA NEED TO
IMPROVE DATA ON CONTRACT CHANGES”**

**DEPARTMENT OF DEFENSE COMMENTS
TO THE GAO RECOMMENDATION**

RECOMMENDATION 2: The Chief of Engineers and Commanding General of the U.S. Army Corps of Engineers should develop a strategy to expand on existing data systems in order to routinely collect information on and monitor the timeframes for finalizing construction contract changes at the headquarters level.

DoD RESPONSE: Concur, with comment. The Assistant Secretary of the Army (Civil Works) will direct the Commanding General, U.S. Army Corps of Engineers, to develop a strategy to expand on existing data systems in order to routinely collect information on and monitor the timeframes for finalizing construction contract changes at the headquarters level.

Appendix III: Comments from the General Services Administration



The Administrator

June 14, 2019

The Honorable Gene L. Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
Washington, DC 20548

Dear Mr. Dodaro:

The U.S. General Services Administration (GSA) appreciates the opportunity to review and comment on the U.S. Government Accountability Office (GAO) draft report entitled *Federal Construction: Army Corps of Engineers and GSA Need to Improve Data on Contract Changes* (GAO-19-500).

GAO made the following recommendation to GSA:

The Administrator of General Services should ensure that the Commissioner of the Public Buildings Service develops a strategy that outlines the steps needed to routinely collect information on and monitor the timeframes for finalizing construction contract changes at the headquarters level. The strategy could address issues such as the types of construction contract changes that should be included, when the measurement of the contract change process should begin, and the information systems that will be affected.

GSA concurs with the recommendation and is developing a plan to address the recommendation.

If you have any questions or concerns, please contact me at (202) 969-7277 or Jeffrey A. Post, Associate Administrator, Office of Congressional and Intergovernmental Affairs, at (202) 501-0563.

Sincerely,

A handwritten signature in blue ink that reads "Emily W. Murphy".

Emily W. Murphy
Administrator

cc: Ms. Lori Rectanus, Director, Physical Infrastructure, GAO

1800 F Street, NW
Washington, DC 20405-0002

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