



June 2021

# SOUTHWEST BORDER

## Schedule Considerations Drove Army Corps of Engineers' Approaches to Awarding Construction Contracts through 2020



A Century of Non-Partisan Fact-Based Work

**Schedule Considerations Drove Army Corps of Engineers' Approaches to Awarding Construction Contracts through 2020**

June 2021

Highlights of GAO-21-372, a report to congressional requesters

**Why This Matters**

Following a 2019 Presidential Declaration of National Emergency, billions of dollars were made available for the U.S. Army Corps of Engineers' use on border barrier construction. This report provides information on the Corps' contracting for border barriers during fiscal years 2018–2020.

**Key Takeaways**

Some Department of Defense funding was only available for a short time before expiring, giving the Corps a tight schedule for awarding contracts. This—and the emergency declaration—led the Corps to depart from its planned acquisition approach.

The Corps focused on starting construction quickly and maximizing the miles of border barrier panels it could build. To do so, it:

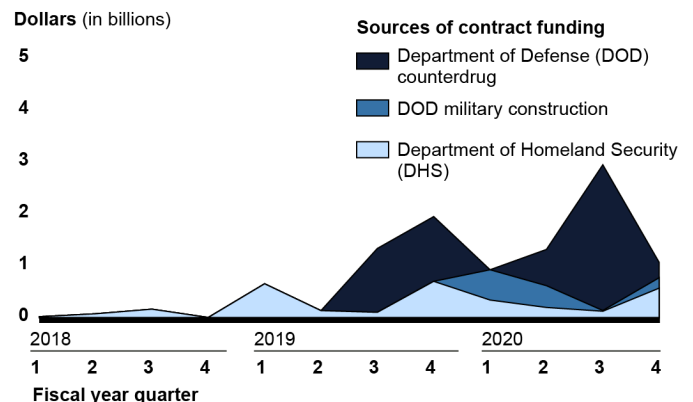
- **Awarded \$4.3 billion in noncompetitive contracts.** Competition helps ensure the government gets a good price.
- **Started work before agreeing to terms.** The Corps awarded several contracts before terms, such as barrier specifications and cost, were finalized.

By focusing on expediency in contracting, the government risks paying higher costs.

Contractors completed most DOD-funded border barrier panels by the end of December 2020 as scheduled. A January 2021 Presidential Proclamation paused border barrier construction to the extent permitted by law, and called for a review. In March 2021, DOD officials said they gave input to the Office of Management and Budget, and OMB will present a plan to the President.

The Corps has not developed plans to examine its overall acquisition approach and identify lessons learned. Without doing so, the Corps could miss opportunities to strengthen its contracting strategies in future border support efforts.

**Border Barrier Obligations, Fiscal Years 2018–2020**



Source: GAO analysis of U.S. Army Corps of Engineers and Federal Procurement Data System - Next Generation data. | GAO-21-372

**How GAO Did This Study**

We reviewed all of the border barrier construction contracts the Corps awarded for projects from fiscal years 2018 through 2020. We also reviewed relevant federal procurement data and interviewed Corps and Department of Homeland Security officials.

**What GAO Recommends**

The Corps should assess the approaches used to build the border barriers and, as appropriate, reassess its acquisition strategy going forward. The Corps concurred with our recommendation.

For more information, contact: Timothy J. DiNapoli at (202) 512-4841 or [DinapoliT@gao.gov](mailto:DinapoliT@gao.gov).

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### Abbreviations

BVTO	best value trade-off
CBP	U.S. Customs and Border Protection
Counterdrug	Department of Defense Drug Interdiction and Counterdrug Activities, Defense account
DHS	Department of Homeland Security
DOD	Department of Defense
FPDS-NG	Federal Procurement Data System-Next Generation
IDIQ	indefinite-delivery, indefinite-quantity
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act
LPTA	lowest price technically acceptable
UCA	undefinitized contract actions
USACE	U.S. Army Corps of Engineers

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June 17, 2021

The Honorable Jack Reed  
Chairman  
Committee on Armed Services  
United States Senate

The Honorable Bennie G. Thompson  
Chairman  
Committee on Homeland Security  
House of Representatives

The U.S. Army Corps of Engineers (USACE) has a long-standing role in supporting the Department of Homeland Security (DHS) along the southwestern U.S. border, including awarding and overseeing construction contracts. USACE's support increased in response to a February 2019 Presidential Declaration of National Emergency, which directed the Secretary of Defense to respond as appropriate to make additional support available to DHS efforts to address the border security and humanitarian crisis at the southern border of the United States. Subsequent to the declaration, the Department of Defense (DOD) redirected nearly \$9.9 billion in funds to support the construction of a border barrier and related efforts. Additionally, in February 2020, DHS exercised its authority to waive certain procurement laws and regulations to help expedite construction of these efforts. After a change in presidential administrations, the new President terminated the 2019 declaration on January 20, 2021, and directed DOD and DHS to pause work on border construction projects, to the extent permitted by law. The President also directed the agencies to develop a plan within 60 days for redirecting border barrier funding, as appropriate and consistent with applicable law, and repurposing contracts.<sup>1</sup>

You asked us to review USACE's contracting and procurement process as it relates to border barrier construction. This report (1) identifies key characteristics, including funding, of the contracts USACE awarded in fiscal years 2018 through 2020 to support construction on the southwest border, (2) assesses the factors that drove USACE's acquisition

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<sup>1</sup>We are separately looking at whether the January 20, 2021, Proclamation directing a pause in border barrier construction and obligations, to the extent permitted by law, violates the Congressional Budget and Impoundment Control Act of 1974.

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approach, and (3) assesses the status of contract completion as of January 2021 and USACE's acquisition plans going forward.

To identify characteristics of contracts USACE awarded to support border construction efforts, we analyzed fiscal year 2018 through fiscal year 2020 data from the Federal Procurement Data System—Next Generation (FPDS-NG).<sup>2</sup> Using these data, we identified characteristics of the contracts in support of border construction, such as the total number of contracts and orders awarded, total obligations, and the contractors receiving awards. We also obtained data from two USACE-generated data sets to determine funding source information and to verify that the contracts included in our analysis supported border barrier construction. We found these data to be sufficiently reliable for the purposes of describing the key characteristics related to the contracts for border barrier construction.<sup>3</sup>

To assess the factors that drove USACE's acquisition approach when awarding border barrier construction contracts from fiscal year 2018 through fiscal year 2020, we reviewed applicable laws, acquisition regulations and policy, and DOD memorandums approving the use of funding for border barrier construction. We also collected and reviewed USACE contract documentation for all 35 contracts and task orders (hereafter referred to as contracts, unless otherwise specified) that USACE awarded between October 2017 and May 2020 for border barrier construction projects.<sup>4</sup> We reviewed relevant acquisition documents and other information to develop an understanding of USACE's acquisition approach. We also interviewed USACE and DHS officials about the construction effort and coordination across the agencies. In addition, we

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<sup>2</sup>The Federal Procurement Data System-Next Generation (FPDS-NG) is the government-wide database used to report data on government procurements. We selected fiscal year 2018 to start our data collection so as to capture changes in contract data associated with the 2019 emergency declaration, and ended our data collection at fiscal year 2020 as it was the most recent year for which we could obtain a full year of data.

<sup>3</sup>The Department of Homeland Security awarded two contracts for border barrier construction during the time period we examined, but these were not included in our review.

<sup>4</sup>To allow time for contract file review and analysis, four contracts and task orders USACE awarded after May 2020 were not included in the second objective. However, the four construction contracts, which were awarded between June and September 2020, were included in the first and third objectives. Therefore, the analysis for the first and third objectives included 39 contracts for construction. The contract modifications we reviewed, including sole-source modifications, are not counted separately.

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reviewed U.S. Custom and Border Protection's (CBP) Border Security Improvement Plans and obtained information from DHS and CBP officials about barrier construction project prioritization. From among the 35 contracts, for more in-depth review, we selected a nongeneralizable sample of eight construction contracts based on factors such as total obligations and source of funding, including DHS appropriations, appropriations to the DOD Drug Interdiction and Counterdrug Activities, Defense account (counterdrug) and military construction appropriations.<sup>5</sup> For the selected contracts, we interviewed contracting and project management officials about the acquisition activities conducted and documented and their decisions during the acquisition planning and award process.

To assess the status of contract completion as of January 2021 and USACE's acquisition plans going forward, we obtained construction updates for all construction projects being funded by DOD and DHS as of January 2021, including the number of wall panels completed. We also analyzed USACE contract documents to identify the associated geolocation coordinates and the total miles of planned construction awarded. We confirmed the location information and mileage, as needed, with USACE contracting and project management officials. We reviewed the January 2021 Presidential Proclamation, which directed a pause in work at the border, to the extent permitted by law, and discussed the status of the efforts to respond to this direction with USACE officials. Further, for our selected sample of eight contracts, we interviewed contracting and project management officials about contractor performance. We also reviewed federal acquisition guidance, including the Federal Acquisition Regulation and guidance from the Office of Management and Budget, for information on contracting in national emergencies. Appendix I provides further details about our scope and methodology.

We conducted this performance audit from February 2020 to June 2021 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

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<sup>5</sup>Simultaneous to our review, DOD's Office of the Inspector General was conducting a review of one of the contracts included in our detailed sample, in response to allegations of inappropriate influence on USACE's contracting decisions. We coordinated with the audit team conducting this work to deconflict the areas under review. As of June 2021, the Inspector General's audit had not been released.



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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.

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## Background

CBP, within DHS, is the federal agency primarily responsible for securing U.S. borders, including the nearly 2,000-mile southwest border between the United States and Mexico. Within CBP, U.S. Border Patrol is responsible for securing U.S. borders between ports of entry. Statute requires the Secretary of Homeland Security to take necessary actions to install physical barriers and roads in the vicinity of the border to deter illegal crossings in areas of high illegal entry. Later legislative amendments required CBP to construct at least 700 miles of border barriers.<sup>6</sup> DHS had built more than 650 miles of barriers as of fiscal year 2015—consisting of both pedestrian barriers and vehicle fencing—along the border.

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## Recent Executive Actions Related to Border Construction

In January 2017, the President issued Executive Order 13767, directing the Secretary of Homeland Security to immediately plan, design, and construct a wall or other physical barriers along the southern border.<sup>7</sup> The Executive Order also directed the Secretary to identify and allocate, to the extent permitted by law, all sources of federal funds for these efforts. In response to the Executive Order, CBP established the Border Wall System Program to construct physical barriers at the border and deploy

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<sup>6</sup>This includes the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, as amended by the REAL ID Act of 2005, Secure Fence Act of 2006, and DHS Appropriations Act, 2008. IIRIRA, Pub. L. No. 104-208, div. C, title I, subtitle A, § 102(a), 110 Stat. 3009, 3009-554 (1996) (classified, as amended, at 8 U.S.C. § 1103 note); REAL ID Act of 2005, Pub. L. No. 109-13, div. B, tit. I, § 102, 119 Stat. 231, 306 (2005); Secure Fence Act of 2006, Pub. L. No. 109-367, §§ 2, 3, 120 Stat. 2638, 2638-2639 (2006); DHS Appropriations Act, 2008, Pub. L. No. 110-161, div. E, tit. V, § 564(a)(2)(B)(ii), 121 Stat. 1844, 2090-91 (2007) (classified at 8 U.S.C. § 1103 note). The DHS Appropriations Act, 2008, rewrote portions of IIRIRA's border fencing section and replaced it with requirements for DHS to construct at least 700 miles of reinforced fencing where it would be most practical and effective, and to install additional physical barriers, roads, lighting, cameras, and sensors to gain operational control of the southwest border. Pub. L. No. 104-208, div. C, title I, subtitle A, § 102(b), as amended by Pub. L. No. 110-161, div. E, tit. V, § 564(a)(2)(B)(ii).

<sup>7</sup>Border Security and Immigration Enforcement Improvements, Exec. Order No. 13767, § 4, 82 Fed. Reg. 8793, 8794 (Jan. 30, 2017) (issued Jan. 25, 2017). Executive Order 13767 defines "southern border" as "the contiguous land border between the United States and Mexico, including all points of entry," and defines "wall" as a "contiguous, physical wall or other similarly secure, contiguous, and impassable physical barrier." See *id.* § 3, 82 Fed. Reg. at 8794.

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related technology and infrastructure, such as lighting, surveillance systems, and roads for patrols and maintenance.

On February 15, 2019, the President declared a national emergency at the U.S. southern border, which expanded DOD's involvement in securing the border.<sup>8</sup> Among other things, the declaration directed the Secretary of Defense to make additional support available to DHS for border security efforts and provided for the transfer, if necessary, of jurisdiction over federal lands along the border.

In February 2020, the acting Secretary of Homeland Security issued a waiver determination pursuant to a 2005 law that allows the Secretary to waive legal requirements to ensure the expeditious construction of barriers and roads along the southwest border.<sup>9</sup> This authority enabled the acting Secretary to waive several statutory requirements and regulations for contracting actions associated with border barrier and road construction. The waived statutes and regulations included those promoting competition in contracting, as well as documentation requirements for the use of certain source selection procedures.

The proclamation from the new President, issued on January 20, 2021, revoked the national emergency declaration that was issued in 2019.<sup>10</sup> The proclamation also directed DOD, DHS, and the Office of Management and Budget to pause work and funding for border construction projects, to the extent permitted by law, while they developed and implemented a new plan for redirecting border wall funding and repurposing contracts. The proclamation directed the creation of the new plan within 60 days. During that time period, the agencies were directed to assess the legality of the funding and the contracting methods used to construct border barriers.

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<sup>8</sup>Declaring a National Emergency Concerning the Southern Border of the United States, Pres. Proclamation No. 9844, 84 Fed. Reg. 4949 (Feb. 15, 2019) (issued Feb. 20, 2019).

<sup>9</sup>85 Fed. Reg. 9794, 9796 (Feb. 20, 2020). The REAL ID Act of 2005 amended the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 by expanding the authority of the Secretary of Homeland Security to waive all legal requirements, as determined to be necessary, in the Secretary's sole discretion, to ensure expeditious construction of barriers and roads along the border. Pub. L. No. 104-208, div. C, tit. I, subtit. A, § 102(c), as amended by Pub. L. No. 109-13, div. B, tit. I, § 102.

<sup>10</sup>Termination of Emergency With Respect to the Southern Border of the United States and Redirection of Funds Diverted to Border Wall Construction, Pres. Proclamation No. 10142, 86 Fed. Reg. 7225 (Jan. 20, 2021) (issued Jan. 27, 2021).

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## USACE's Role in Supporting Border Barrier Construction

USACE has a long-standing role as the design and construction agent supporting CBP border barrier activities. For example, USACE has provided technical expertise, as well as design support and acquisition management services, under interagency agreements with CBP. Under these agreements, CBP requests USACE assistance for individual projects and reimburses it according to the terms of the agreement. To help conduct oversight of its border assistance, USACE relies on multi-disciplinary project delivery teams—whose members include project managers, engineering experts, and contracting officers—to ensure each construction project's success. These teams are assembled after projects are accepted, and team members we spoke with reported that they frequently communicate with one another throughout the life cycle of the project—through requirements development, contract award, and project execution. DHS entered into a new interagency agreement with USACE in March 2017, shortly after Executive Order 13767 was issued, to continue providing border barrier support. The agreement does not limit CBP's own ability to award and oversee border construction contracts, which it opted to do in 2020.<sup>11</sup>

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## Funding for the Border Barrier and Decision-Making Processes

Congress has traditionally provided funding for border barrier construction and related activities through DHS's annual appropriations. From 2017 to 2020, DHS received about \$4.5 billion in appropriations for the construction of new and replacement barriers along the southwest border. As we noted in November 2020, the funds provided through each year's DHS appropriations came with various restrictions.<sup>12</sup> For example, funds could not be used for the construction of barriers in the Santa Ana Wildlife Refuge in Texas.

Following the President's February 2019 National Emergency Declaration, the White House announced that the following DOD funding sources would be used for border construction:

- **Military construction funds.** The national emergency declaration invoked 10 U.S.C § 2808, authorizing the Secretary of Defense to

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<sup>11</sup>In January 2021, we reported that CBP is overseeing a portion of the contract awards for the Laredo segment, which CBP officials said are intended to expedite contracting efforts. See GAO, *DHS Annual Assessment: Most Acquisition Programs Are Meeting Goals but Data Provided to Congress Lacks Context Needed For Effective Oversight*, [GAO-21-175](#) (Washington, D.C.: Jan. 19, 2021).

<sup>12</sup>GAO, *Southwest Border: Information on Federal Agencies' Process for Acquiring Private Land for Barriers*, [GAO-21-114](#) (Washington, D.C.: Nov. 17, 2020).

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undertake military construction projects following a declared national emergency to support the use of the armed forces. Such projects may be undertaken only within the total amount of funds appropriated for military construction. At the time of the declaration, the administration stated its intent to use up to \$3.6 billion of military construction funds for border barrier construction from multiple appropriations. Military construction funding is available to DOD for obligation for 5 years; after the 5-year period of availability, the funds are no longer available for new obligations and are expired.

- **Drug Interdiction and Counterdrug (counterdrug) Activities funds.** The administration cited plans to use DOD funds transferred to DOD's Drug Interdiction and Counterdrug Activities account to support border construction efforts. Under 10 U.S.C. § 284, DOD is authorized to support the counterdrug activities of other federal agencies, if requested. Under the statute, DOD may provide support by constructing fences, roads, and lighting to block drug smuggling corridors across international boundaries of the United States. The funding is available to DOD for obligation for one year, after which the funding expires and can no longer be used for new obligations.<sup>13</sup>

In addition to the statutory provisions and restrictions governing the funds, the specific type of funding used—DHS, military construction or counterdrug—also affected the roles and processes for identifying projects that would be undertaken. For projects funded with DHS appropriations, CBP retained responsibility for deciding which projects to carry out and their associated requirements. CBP continued to rely on USACE to award the contracts related to project construction and to manage construction activities. For the DOD military construction and counterdrug-funded projects, DOD coordinated with DHS, but had final say over which construction projects would be funded.

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<sup>13</sup>In September 2019, GAO concluded that DOD's transfer of funds into its Drug Interdiction and Counter-Drug Activities, Defense, account for border fence construction was consistent with DOD's statutorily enacted transfer authority, and that use of these amounts for the purpose of border fence construction was permissible under various statutory provisions. GAO B-330862, Sept. 5, 2019.

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## Contracting Vehicles and Approaches Used for Border Barrier Construction

USACE used several types of contracting vehicles and approaches to award its border barrier construction contracts, including:

- **Stand-alone contracts.** When exact quantities and timing of delivery are known at time of award, a stand-alone contract may be used.<sup>14</sup> Federal law and acquisition regulations generally require that contracts be awarded on the basis of full and open competition. Office of Federal Procurement Policy guidance has stated that competition is the cornerstone of the government’s acquisition system, and can obtain the best return on the government’s investment.<sup>15</sup> However, the Federal Acquisition Regulation recognizes exceptions to full and open competition under certain circumstances—such as an unusual and compelling urgency where a delay in contract award would seriously injure the government—but generally requires written justifications and approvals for their use.<sup>16</sup>
- **Multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) contracts.** IDIQ contracts are awarded to one or more contractors when the exact quantities and timing of products and services are not known at the time of award. In a multiple-award IDIQ, which USACE officials said are commonly used in construction, awards are made to two or more contractors under a single solicitation.<sup>17</sup> This allows USACE to establish a group of preapproved contractors to compete for future orders, under streamlined ordering procedures, in response to a specific need, such as a project to design and build a border barrier at a particular location. Except for obligations associated with the minimum guarantee, funds are not obligated—and work is not authorized—until an order is issued.<sup>18</sup>

The Federal Acquisition Regulation establishes a preference for awarding multiple award IDIQs (as opposed to awarding an IDIQ to a

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<sup>14</sup>Stand-alone contracts, also called “definitive contracts,” are contracts that must be reported to FPDS-NG other than an indefinite delivery vehicle. Federal Acquisition Regulation § 4.601.

<sup>15</sup>Office of Federal Procurement Policy, *Memorandum for Chief Acquisition Officers and Senior Procurement Executives: Enhancing Competition in Federal Acquisition* (Washington, D.C.: May 31, 2007).

<sup>16</sup>Federal Acquisition Regulation § 6.302-2. See also Federal Acquisition Regulation §§ 6.303 and 6.304.

<sup>17</sup>USACE typically refers to these awards as multiple-award task order contracts, or MATOCs.

<sup>18</sup>Federal Acquisition Regulation § 16.504.

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single contractor) and requires that each contract holder be given a fair opportunity to compete for the resulting orders.<sup>19</sup> Providing for competition at the order level can help the government obtain benefits associated with competition, which may include reduced costs. USACE contracting officials also noted that task orders on multiple-award IDIQs can be awarded quickly, as eligible vendors have already been identified. However, because it is a competitive process, some IDIQ contract holders may never win an order.

- **Undefinitized contract actions (UCA).** Through UCAs, DOD can authorize contractors to begin work and incur costs prior to reaching final agreement on contract terms, specifications, or pricing. This type of contractual action is generally used in limited circumstances when there is not enough time to fully negotiate a contract to meet the government's requirement or the government's interests demand that the contractor be given a binding commitment so that performance can begin immediately.<sup>20</sup>
- **Prequalified source lists.** Defense and USACE acquisition regulations allow potential vendors, with proven competence, to prequalify for work on specific construction contracts when necessary to ensure timely and efficient performance. Although similar in some ways to IDIQs, these lists are not contract awards, and their use requires written approval by senior contracting officials.<sup>21</sup> USACE approved the use of pre-qualified source lists for border construction in May 2017. USACE also competed and established subsequent prequalified lists in 2018 and 2019. These lists allowed USACE to advertise a specific project as the requirement became available to a small pool of construction firms, who previously met minimum qualifications. These qualifications included the ability to obtain bonds to cover the work performed, the capability to conduct at least three large construction projects simultaneously, and previous experience. Using these lists, which reduced the time needed for market research

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<sup>19</sup>Federal Acquisition Regulation §16.504(a)(4)(iv), (c) and Federal Acquisition Regulation §16.505(b)(1). Fair opportunity to compete must be provided to task orders exceeding \$3,500 unless an exception—such as an urgent need for supplies or services that would cause unacceptable delays—applies.

<sup>20</sup>Defense Federal Acquisition Regulation Supplement § 217.7403. The Federal Acquisition Regulation refers to this type of contract action as a letter contract. Federal Acquisition Regulation § 16.603-2.

<sup>21</sup>Defense Federal Acquisition Regulation Supplement § 236.272 and USACE Acquisition Instruction § 5136.272.

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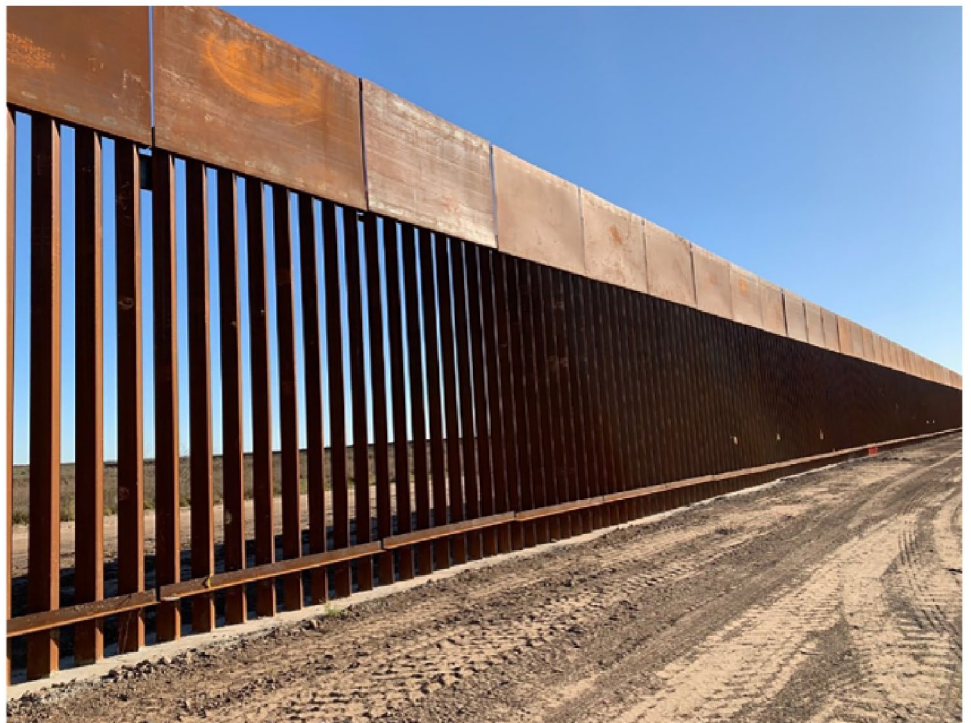
and evaluating competitors, allowed USACE to award contracts faster.

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## Elements of the Border Wall System

CBP uses the term “wall system” to describe the combination of physical barriers, technology, and other infrastructure used at the southwest border. Physical barriers and other elements of the system vary, in part, based on the terrain. For example, pedestrian barrier fencing may consist of steel bollard walls, ranging from 18 to 30 feet, constructed at ground-level or atop levee walls, as shown in figure 1.

**Figure 1: Border Barrier Featuring Steel Bollards in Starr County, Texas**



Source: GAO. | GAO-21-372

CBP uses technology (e.g., surveillance cameras), lighting, and roads for maintenance and patrolling to establish varying enforcement zones as part of the wall system. For example, proposed barrier construction in Texas, specifically in the Border Patrol’s Rio Grande Valley and Laredo

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sectors, includes a 150-foot-wide border enforcement zone on the river side of the barrier, as shown in figure 2.<sup>22</sup> Border Patrol also developed operational requirements, which state that any barrier design must account for future enhancements of technology to support surveillance and detection capabilities.<sup>23</sup>

**Figure 2: Border Barrier and Enforcement Zone under Construction in Rio Grande Valley Sector**



Source: GAO. | GAO-21-372

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## Prior GAO Work

In the past several years, we have reported on a number of areas related to DOD's and DHS's efforts for border barrier construction. Selected reports are included below.

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<sup>22</sup>Border Patrol divides responsibility for border security operations geographically among nine sectors, each with its own headquarters. Each sector is further divided into varying numbers of stations.

<sup>23</sup>U.S. Border Patrol, *Operational Requirements Document for the Impedance and Denial (I&D) Wall System* (Washington, D.C.: Nov. 2, 2017).



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- **Use of technology.** In July 2018, we reported that DHS, CBP, and the Border Patrol emphasized the importance of including technology in enforcement zones along with planned barriers.<sup>24</sup> For example, in a February 2017 policy memorandum, the Secretary of Homeland Security called for CBP to include technology to support barriers consistent with the implementation of Executive Order 13767.<sup>25</sup> CBP has also reported that technology enhances the effectiveness of barriers by improving Border Patrol’s situational awareness and increasing agents’ ability to respond to people approaching the barriers.<sup>26</sup> Additionally, we previously reported that CBP recorded almost 9,300 breaches to existing barriers between 2010 and 2015, and Border Patrol has reported that the early detection of attempts to cross or breach barriers is critical to minimizing damage to barriers and the resulting repair costs.<sup>27</sup>
  - **Cost estimates.** In July 2018, we found that the Impedance and Denial Prioritization Strategy—CBP’s decision support tool for prioritizing locations for barrier construction projects—did not include an analysis of the costs of deploying barriers in each location, which can vary depending on topography, land ownership, and other factors.<sup>28</sup> We recommended that CBP analyze the costs associated with future barrier segments and include cost as a factor in the strategy. CBP agreed with this recommendation and stated that, after prioritizing locations, it would develop detailed cost estimates as part of the acquisition process. However, as of September 2020, CBP had not yet addressed the recommendation to use cost as a factor when prioritizing locations for barrier construction.

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<sup>24</sup>GAO, *Southwest Border Security: CBP Is Evaluating Designs and Locations for Border Barriers but Is Proceeding Without Key Information*, [GAO-18-614](#) (Washington, D.C.: July 30, 2018).

<sup>25</sup>Department of Homeland Security, Secretary of Homeland Security, *Implementing the President’s Border Security and Immigration Enforcement Improvements Policies* (Washington, D.C.: Feb. 20, 2017).

<sup>26</sup>Department of Homeland Security, Customs and Border Protection, *Border Security Improvement Plan*, Fiscal Year 2017 Report to Congress (Washington, D.C.: Jan. 4, 2018).

<sup>27</sup>GAO, *Southwest Border Security: Additional Actions Needed to Better Assess Fencing’s Contributions to Operations and Provide Guidance for Identifying Capability Gaps*, [GAO-17-331](#) (Washington, D.C.: Feb. 16, 2017) and U.S. Border Patrol, *Capability Analysis Report for Customs and Border Protection U.S. Border Patrol Impedance and Denial* (Washington, D.C.: Mar. 2017).

<sup>28</sup>[GAO-18-614](#).

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- **Schedule and funding challenges.** In January 2021, we reported that the Border Wall System Program faced significant land access challenges and acquisition issues that could affect the program's ability to meet its schedule goals, according to CBP officials.<sup>29</sup> These goals, as well as program cost and performance parameters, are established in acquisition program baselines as part of DHS's acquisition process. CBP develops acquisition program baselines for new segments of the Border Wall System Program as funding becomes available and does not account for DOD border construction efforts. Further, we reported that the program anticipates a funding shortfall in operation and sustainment costs for its fiscal year 2019 and 2020 baselines, which CBP officials plan to address in part by requesting additional funding in future years. We did not make a recommendation to DHS about the program in this report.
  - **DOD and DHS coordination.** In February 2021, we examined DOD's military support to CBP's operations on the southwest border.<sup>30</sup> Among other things, we found that DOD's and DHS's existing process for planning for and executing DOD's support to DHS's southwest border security mission has enabled the agencies to collaborate on operations in the field. For example, DOD provided camera operators, checkpoint observers, motor transport operators and maintainers, planners, and air support. We concluded, however, that the existing process had not enabled DHS and DOD to establish a common outcome—the purpose the agencies are seeking to achieve—for DOD's support of DHS in fiscal year 2021 and beyond.

We made a number of recommendations, including that DHS and DOD should define a common outcome for DOD's future support. DHS concurred and said it would continue to use the existing request for assistance process to define and articulate a common outcome. However, we reiterated that the existing process focuses on meeting DHS's operational requirements over a short, specified period of time. Without a longer-term common outcome defined, DHS is limited in its ability to plan beyond the current year for how it can best allocate resources and develop the capabilities needed to execute the border security mission without DOD's support. DOD did not concur, stating that implementing the recommendation would represent a more

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<sup>29</sup>[GAO-21-175](#).

<sup>30</sup>GAO, *Southwest Border Security: Actions Are Needed to Address the Cost and Readiness Implications of Continued DOD Support to U.S. Customs and Border Protection*, [GAO-21-356](#) (Washington, D.C.: Feb. 23, 2021).

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permanent and enduring commitment of its resources and may create an impression that DOD has a border security mission, among other things. We agreed that DOD is not responsible for the border security mission. However, we also noted that DOD's disagreement with the recommendation to define an outcome for future DOD support is not consistent with the operational reality that DOD has actively supported DHS at the southern border in varying capacities since DHS's inception nearly 2 decades ago.

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## USACE Obligated More Than \$10 Billion to Support Border Barrier Construction from Fiscal Years 2018 through 2020

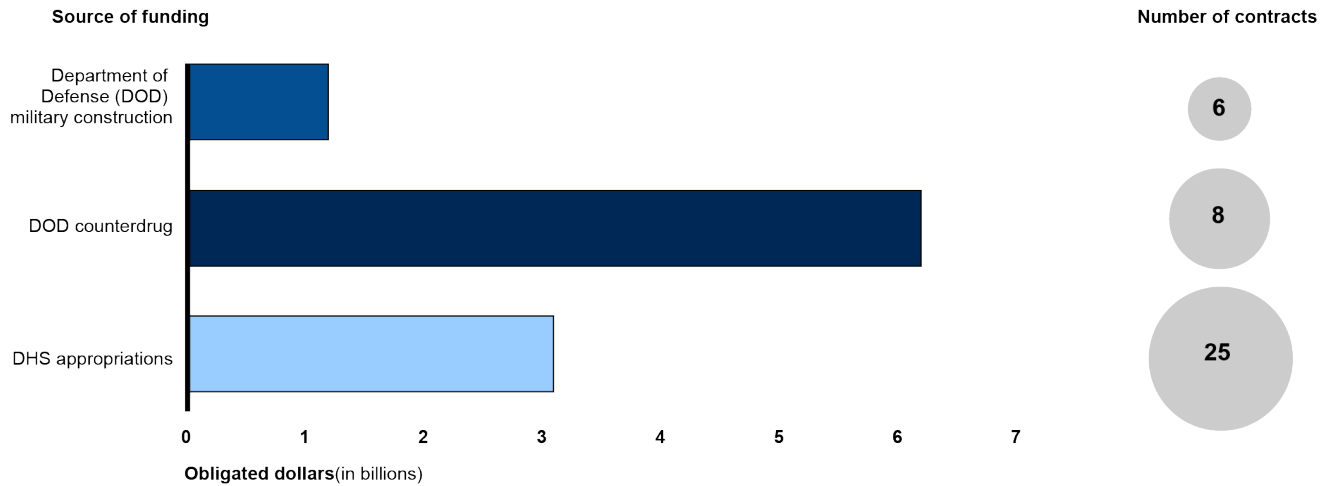
We found that USACE obligated \$10.7 billion to support the border barrier efforts from October 2017 through September 2020, almost all of which—\$10.6 billion—was obligated on construction contracts. USACE obligated the remaining \$102 million to provide services related to border barrier efforts—primarily architecture and engineering services. In total, USACE awarded 119 construction contracts and orders during this time frame, and obligated funds for specific construction projects under 39 of these awards.<sup>31</sup>

For construction, USACE obligated almost 71 percent—\$7.5 billion of the \$10.6 billion—on 14 contracts using either DOD counterdrug or military construction funds. USACE awarded the remaining 25 contracts with DHS funds; these contracts accounted for \$3.1 billion of the obligated funds. Figure 3 shows the breakdown of the number of USACE contracts and obligated amounts for DOD counterdrug, military construction, and DHS funding.

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<sup>31</sup>The other 80 were a combination of base IDIQ contracts and orders. The orders reported in FPDS-NG were for \$2,500 or less and were not for specific construction projects, so we did not focus on these in our review. For purposes of this report, we focus on the 39 construction contracts and task orders awarded for specific border barrier construction projects, unless otherwise noted. All 39 are firm-fixed price awards.

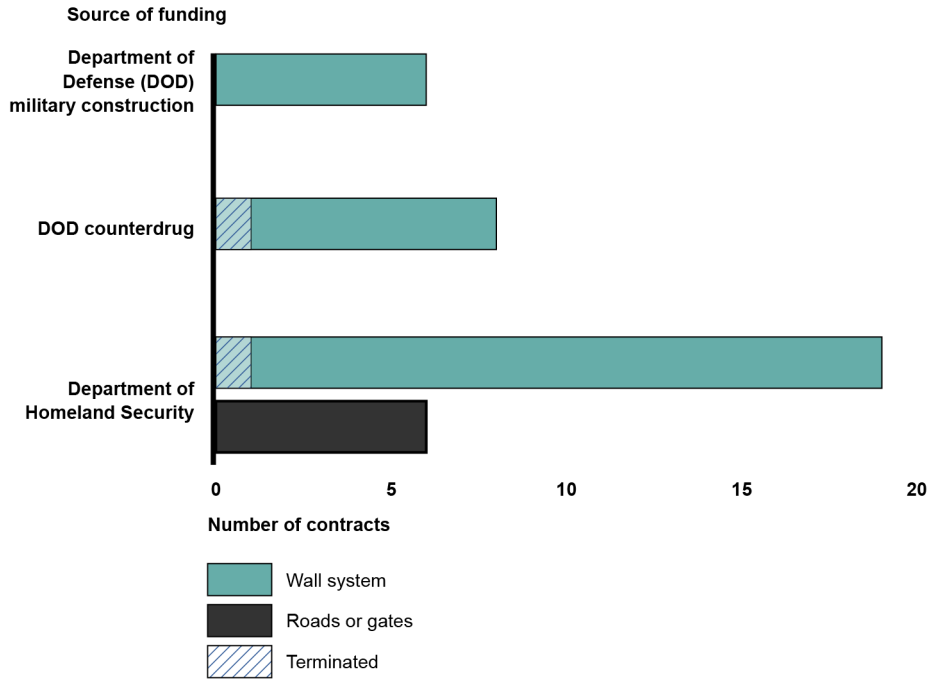
**Figure 3: U.S. Army Corps of Engineers Contract Obligations for Border Barrier Construction by Funding Source, Fiscal Years 2018-2020**



Source: GAO analysis of U.S. Army Corps of Engineers information and Federal Procurement Data System – Next Generation data. | GAO-21-372

The majority of the construction contracts USACE awarded covered requirements for a full wall system—including the vertical wall panels, generally constructed of steel bollards and reinforced concrete, and electrical attributes—and in some cases also included features such as roads or levees. Six of the construction contracts were not for wall panel construction, but exclusively for building roads or gates within the wall system. Two of the 39 contracts were terminated shortly after award and before construction began. Figure 4 shows the number of contracts awarded with each type of funding.

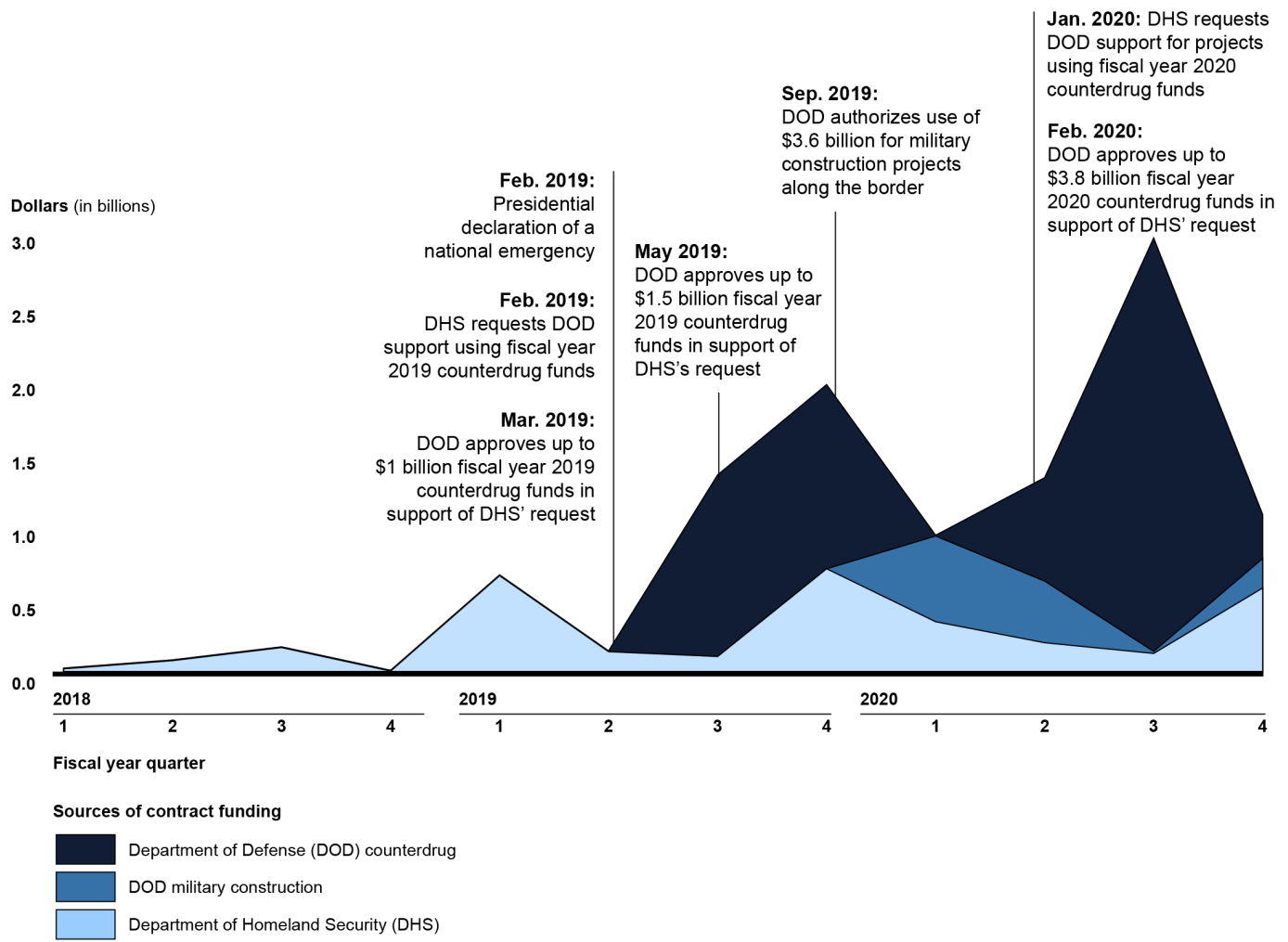
**Figure 4: U.S. Army Corps of Engineers Border Barrier Construction Contracts, Fiscal Years 2018-2020**



Source: GAO analysis of U.S. Army Corps of Engineers contract information. | GAO-21-372

USACE obligations for border barrier construction contracts increased significantly following the February 15, 2019, National Emergency Declaration and the subsequent availability of DOD funds. See figure 5 for USACE obligations on construction contracts over time, by funding source, and in relation to key events.

**Figure 5: Key Events, Funding Source, and Construction Contract Obligations by Quarter for Border Barriers, Fiscal Years 2018-2020**



Source: GAO analysis of U.S. Army Corps of Engineers information, Presidential declaration, and Federal Procurement Data System – Next Generation data. | GAO-21-372

The project request and acceptance processes between DHS and DOD differed slightly for each funding source. Immediately following the February 2019 national emergency declaration, DHS requested DOD's assistance in executing 11 projects in drug smuggling corridors using defense counterdrug funds. DHS's request specified the priority order of the projects, which DOD selectively authorized as funding became available. Between March and May 2019, DOD agreed to undertake the first seven projects requested and authorized USACE to begin planning

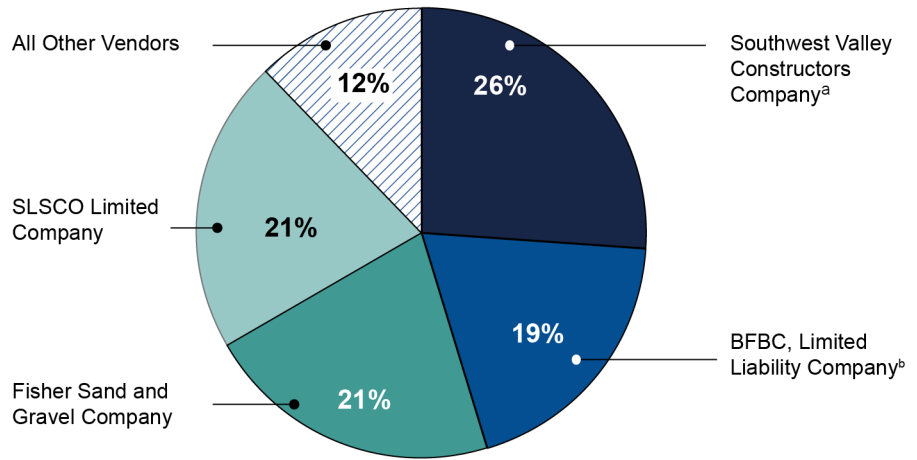
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and executing up to \$2.5 billion in support to DHS from funds that had been transferred to the counterdrug account. In January 2020, DHS again requested DOD's assistance, this time to support projects using fiscal year 2020 counterdrug funds. These included portions of two projects requested in fiscal year 2019 that had not previously been funded. DOD agreed and authorized USACE to execute up to \$3.8 billion to undertake most of the projects requested.

For the military construction funds, however, while DOD asked DHS to identify construction projects, DOD made the final decision as to which projects to fund. The Secretary of Defense asked the Chairman of the Joint Chiefs of Staff to independently analyze the projects recommended by DHS, for both military and counterdrug funding, to determine where military construction funds would be best used to support the armed forces. In September 2019, the Secretary of Defense authorized the use of up to \$3.6 billion in military construction funds to support another 11 military construction projects, which were selected based on DOD's analysis. They included two of the projects originally included in DHS's 2019 counterdrug fund request.

USACE obligated the bulk of the border barrier construction dollars on awards to a small number of contractors from fiscal years 2018 through 2020. Specifically, USACE awarded 25 of the 39 contracts and task orders, comprising 88 percent of the \$10.6 billion in construction contract obligations, to four contractors and two of their subsidiaries, as shown in figure 6.

**Figure 6: Percent of \$10.6 Billion in Contract Obligations for Border Barrier Construction Awarded to Individual Contractors, Fiscal Years 2018-2020**



Source: GAO analysis of Federal Procurement Data System – Next Generation data. | GAO-21-372

Note: Percentage do not add to 100 due to rounding.

<sup>a</sup>Southwest Valley Constructors Company is a subsidiary of Kiewit Infrastructure West Company. For the purposes of this analysis, we combined Kiewit and Southwest Valley Constructors.

<sup>b</sup>BFBC, Limited Liability Company is a subsidiary of Barnard Construction Company, Incorporated. For the purposes of this analysis, we combined Barnard and BFBC.

USACE awarded the remaining 14 contracts and task orders—representing about 12 percent of total construction contract obligations—to 10 other companies.

## Expediency Drove USACE’s Approach to Border Construction Contracts

Senior DOD leadership direction, the need to obligate \$6.3 billion in counterdrug funding before it expired, and the administration’s goal to complete at least 450 miles of border walls by the end of 2020 drove USACE’s ultimate acquisition approach. In response to the 2019 National Emergency Declaration and with the influx of DOD funds, USACE changed its planned acquisition approach to expedite construction. Following the National Emergency Declaration, USACE took advantage of various authorities to start construction quickly, in part by authorizing or expanding work without full and open competition and authorizing contractors to begin work before defining key requirements. USACE also structured many of its DOD awards to prioritize the construction of wall panels, rather than the full barrier system. Projects’ location on federal lands facilitated USACE’s approach for DOD construction.



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## USACE Changed Its Planned Acquisition Approach after the Emergency Declaration

In response to the National Emergency Declaration and DOD senior leadership's direction, USACE changed its May 2017 acquisition approach to move more expeditiously. USACE had planned a three-phase acquisition approach for border barrier construction to support CBP's 5-year, \$11 billion border security investment plan.

- In the first phase, USACE planned to use its existing or planned IDIQ contracts to competitively award a few small projects in fiscal year 2017.
- In the second phase, USACE planned to establish a prequalified source list to competitively award eight larger DHS priority projects in fiscal years 2018 and 2019. USACE set minimum qualification standards that contractors had to meet to be included on the list and planned to award contracts using best value trade-off procedures. For the prequalified list established in August 2017, among other things, contractors had to submit an acceptable implementation approach for construction in two geographic scenarios: remote sites along the southwestern U.S. border and a location in the lower Rio Grande Valley; and demonstrate their ability to construct projects of this magnitude.

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### DOD Source Selection Procedures

When awarding a contract competitively, DOD has a number of source selection procedures to evaluate firms' proposals. One is **lowest price technically acceptable** (LPTA) in which DOD awards the contract to the firm presenting the lowest evaluated price that is technically acceptable. LPTA procedures are used when minimum requirements can be clearly defined and the risk of unsuccessful contract performance is minimal, so that cost or price should play a dominant role in the source selection process.

Another option is using **best value trade-off** procedures, in which DOD can vary the relative importance of cost or price with other factors such as a firm's technical capability or past performance. In these cases, DOD may award a contract to a firm offering other than the lowest priced proposal or highest technically rated proposal if it determines that this is in the best interest of the government. Best value trade-off may be used when requirements are less defined, more development work is required, or the acquisition has a greater performance risk.

Source: GAO summary of DOD source selection procedures and the Federal Acquisition Regulation. | GAO-21-372

- In the third phase, USACE planned to establish new IDIQ contracts by March 2019 using full and open competition, with some awards set aside for small businesses. USACE planned to competitively award the vast majority of border construction projects—more than 80 percent—using these new IDIQs.

The additional DOD funds made available after the National Emergency Declaration coincided with delays USACE faced in awarding its new IDIQ contracts, all of which drove changes to USACE's planned contracting approach.<sup>32</sup> According to USACE officials, they did not develop separate plans for DOD-funded awards. Instead, we found USACE made greater use of prequalified source lists than they previously planned and used a limited source list as well as noncompetitive contracts.<sup>33</sup> See table 1 for a summary of USACE's acquisition plan and awards.<sup>34</sup>

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<sup>32</sup>According to USACE, the agency received numerous challenges to its base IDIQ border construction contracts, including, for example, a May 2019 protest over the contractors USACE identified as being in the competitive range, as well as four protests over USACE's June 2019 award decision. According to agency documentation, the four protests were resolved when, in October 2019, USACE awarded a base contract to all contractors that submitted an acceptable proposal, including the four protestors.

<sup>33</sup>Senior contracting officials determined that a new source list was necessary for three DOD counterdrug-funded projects because no other available contracting vehicle would allow for expedited evaluation, award, and construction start for the estimated \$1.3 billion contract. According to these officials, the new IDIQs were not yet established and the new award would exceed the established ceilings of the existing prequalified source lists.

<sup>34</sup>For a complete list of border barrier construction contracts, including award value as of September 2020, contract vehicle used, and competition achieved, see appendix II.

**Table 1: USACE Planned and Actual Acquisition Approach from October 2017 through May 2020**

<b>Contracting approach</b>	<b>May 2017 plan</b>	<b>Actual</b>
Existing indefinite-delivery, indefinite-quantity (IDIQ)	Fiscal Year (FY) 2017: Competitively award an estimated \$100 million in task orders using lowest price technically acceptable (LPTA) or best value trade-off (BVTO) source selection procedures.	November 2017 – September 2019: Competitively awarded seven task orders valued at \$118 million using LPTA or BVTO source selection procedures. Awarded one of these task orders, valued at \$43 million, after receiving only one bid.
Prequalified source list	FY 2018 – FY 2019: Until the IDIQs were available, competitively award up to eight urgently needed Department of Homeland Security border barrier construction contracts, estimated value \$1.8 billion, using BVTO source selection procedures.	January 2018 – April 2020: Awarded 12 contracts valued at about \$4.3 billion, including three noncompetitively awarded counterdrug-funded contracts valued at \$2.1 billion and nine competitively awarded contracts valued at about \$2.2 billion using BVTO or LPTA source selection procedures—this included one contract, valued at \$147 million, for which USACE received only one bid.
Limited source list	Not a part of the planned approach.	May 2019 – May 2020: Noncompetitively awarded one contract valued at \$2.2 billion.
New IDIQ	FY 2019 – ongoing: Competitively award task orders for any remaining and new border barrier construction, estimated at \$9.1 billion, using either BVTO or LPTA source selection procedures.	June 2019 – ongoing: Competitively awarded 15 task orders valued at \$3.4 billion using BVTO or LPTA source selection procedures.

Source: GAO analysis of U.S. Army Corps of Engineers (USACE) information and Federal Procurement Data System-Next Generation data. | GAO-21-372

Note: This analysis reports obligations as of September 30, 2020 for the 35 barrier construction contracts USACE awarded from October 2017 through May 2020. Existing IDIQ refers to contracts USACE had in place or planned to have in place shortly after it developed its planned acquisition approach for border barrier construction in May 2017. New IDIQ refers to the contracts USACE planned to establish in fiscal year 2019.

## USACE Used Available Flexibilities to Speed Up Its Acquisition Process

USACE used contracting flexibilities to speed up the acquisition process for border barrier construction with the goals of maximizing the number of miles under contract and using DOD counterdrug funds before they expired. Examples of the contracting flexibilities we observed among the eight awards we reviewed in detail are summarized in table 2.

**Table 2: Contracting Flexibilities the U.S. Army Corps of Engineers (USACE) Used with Border Barrier Construction Contracts and Task Orders**

Examples are from eight awards that GAO reviewed as part of a nongeneralizable sample.

Description	Authority
<b>Flexibilities generally available for border barrier awards</b>	
Agencies may limit the use of full and open competition when authorized.	Federal Acquisition Regulation part 6
Department of Defense (DOD) components may award a contract action—called an “undefinitized contract action” or UCA—for which the contract terms, specifications, or price are not agreed upon before performance is begun when the negotiation of a definitive contract action is not possible in sufficient time to meet the government’s requirements. This type of contract action is called a “letter contract” by the Department of Homeland Security (DHS) and other civilian agencies.	10 U.S.C. § 2326; Defense Federal Acquisition Regulation Supplement § 217.74; Federal Acquisition Regulation § 16.603
DOD components may waive certain departmental requirements in accordance with regulation and policy (for instance, peer review requirements).	Example: Army Federal Acquisition Regulation Supplement § 5101.170 (peer reviews)
DOD components can exclude price evaluations when evaluating offers for multiple award task order contracts if awarding base contracts to all qualified offerors.	Defense Procurement and Acquisition Policy, Class Deviation 2018-O0006, Evaluation Factors for Certain Multiple-Award Task or Delivery-Order Contracts, December 2017
<b>Used for selected DHS-funded and DOD counterdrug-funded awards</b>	
DHS waived environmental review statutes to speed up construction. <sup>a</sup>	Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, as amended
<b>Used for selected DOD military construction-funded awards</b>	
Secretary of Defense memorandum directed the Army to proceed without regard to any other provision of law that may impede the expeditious construction of projects in response to the national emergency.	Proclamation 9844 of Feb. 15, 2019, Declaring a National Emergency Concerning the Southern Border of the United States; 10 U.S.C. § 2808
<b>Used for selected DOD counterdrug-funded awards</b>	
DHS waived certain procurement laws, including 10 U.S.C. § 2304 (competition requirements) and Section 813 of Public Law 114-328, as amended by Section 822 of Public Law 115-91 (LPTA requirements), to speed up construction.	IIRIRA, as amended

Source: GAO analysis of U.S. Army Corps of Engineers (USACE) contract file information. | GAO-21-372

<sup>a</sup>Waived statutes include, but are not limited to, the Federal Water Pollution Control Act (Clean Water Act), National Historic Preservation Act, Migratory Bird Treaty Act, Migratory Bird Conservation Act, Archeological Resources Protection Act, Paleontological Resources Preservation Act, Federal Cave Resources Act, Safe Drinking Water Act, Noise Control Act, Solid Waste Disposal Act, Native American Graves Protection and Repatriation Act, and American Indian Religious Freedom Act, as amended. See e.g., 84 Fed. Reg. 52118 (Oct. 1, 2019).

Among the 35 contracts we reviewed, USACE used several of these flexibilities to noncompetitively award four DOD counterdrug-funded contracts, valued at over \$4 billion, and authorize contractors to begin work before the initial terms and conditions were negotiated. For

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example, to begin construction quickly, USACE used the unusual and compelling urgency exception to competition, as defined in the Federal Acquisition Regulation, to award four noncompetitive contracts in April and May 2019 using fiscal year 2019 counterdrug funds. USACE justified the use of these flexibilities by citing DOD directives and the declared national emergency. In addition, for two of these contracts, USACE also identified the need to award these counterdrug projects before funding expired on September 30, 2019. At that time, USACE estimated that awarding the contracts noncompetitively would help save the agency at least 8 months. USACE terminated one of these contracts for the government's convenience, however, shortly after award.<sup>35</sup>

USACE also initially awarded these four noncompeted contracts as undefinitized contract actions (UCA). UCAs allow contractors to begin work while the scope and terms—along with the price—are negotiated and the contracts are fully definitized. According to contract documents, USACE determined that competing and negotiating a definitive contract would not allow it the time needed to undertake construction in fiscal year 2019 as directed by DOD and to meet USACE's delivery schedule of 18 months. Therefore, USACE moved forward with awarding noncompetitive UCAs before finalizing project requirements and completing other acquisition planning activities, such as developing independent government cost estimates. For example, at the time of award, barrier requirements for the first three projects were in flux and changed from 18-foot to 30-foot wall panels the same day that USACE awarded the initial contracts. The next day, DHS also requested that DOD remove 4 miles from the scope of one of the projects. USACE's use of noncompetitive UCAs was not a part of the agency's documented May 2017 planned approach of competitively awarding construction contracts and using prequalified source lists for well-defined projects.

UCAs may be considered potentially risky for the government because contractors have little incentive to control costs, as the government normally reimburses contractors for all allowable costs incurred during the undefinitized period.<sup>36</sup> Additionally, requirements may change before the contract is definitized, resulting in unnecessary costs. Contracting officials

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<sup>35</sup>According to a senior contracting official, the agency identified that it mistakenly used the 2017 prequalified list, which did not include Arizona—the site of the two awarded projects. USACE later awarded new contracts for the same work.

<sup>36</sup>For example, see GAO, *Defense Contracting: Observations on Air Force Use of Undefinitized Contract Actions*, [GAO-15-496R](#) (Washington, D.C.: May 18, 2015).

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responsible for two of these awards that were in our sample said they do not typically use UCAs. However, the officials said using UCAs in these cases made sense due to the schedule pressures of the soon-to-be expiring funds, leadership's direction to accelerate construction time frames, and limited information available when developing the projects' scope, including project requirements and mileage. USACE ultimately definitized each of the contracts in less than 165 days.<sup>37</sup>

USACE also used another flexibility—DHS's February 2020 waiver of procurement competition requirements—to modify three of the four contracts that began as UCAs.<sup>38</sup> Specifically, USACE obligated an additional \$1.6 billion for about 60 more miles of construction using fiscal year 2020 counterdrug funds. Generally, such modifications could be considered out of scope and, if so, the requirement would need to be competed. However, USACE's determinations for the modifications stated that the new projects were located relatively close to where the contractors were already working, and were in line with the Secretary of Defense's directive to begin construction on these projects as quickly as possible. The contracts' values, including the total definitive contract ceiling at the time of award, are listed in table 3.

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<sup>37</sup>Defense Federal Acquisition Regulation Supplement § 217.7404-3 states UCAs shall be definitized by the earlier of the date that is 180 days after the contractor submits a qualifying proposal (this date may be extended by an additional 90 days) or the date on which the amount of funds obligated under the contract action is equal to more than 50 percent of the not-to-exceed price.

<sup>38</sup>According to a senior USACE contracting official, USACE chose not to invoke the waivers categorically, but instead used them only when it was determined that a specific statute or regulation would impede expeditious construction of border infrastructure.

**Table 3: Department of Defense Counterdrug Border Barrier Construction Contracts USACE Initially Awarded as Noncompetitive Undefined Contract Actions (UCA)**

Initial UCA award date	Definitization date	Original definitive contract ceiling	Definitization value	Contract value including modifications as of September 30, 2020
April 2019	Not applicable <sup>a</sup>	\$187 million	\$0.2 million <sup>a</sup>	\$0.2 million <sup>a</sup>
April 2019	September 2019	800 million	739 million	829 million
May 2019	September 2019	284 million	440 million	1.277 billion
May 2019	August 2019	1.300 billion	1.299 billion	2.176 billion
<b>Total</b>		<b>2.571 billion</b>	<b>2.478 billion</b>	<b>4.282 billion</b>

Source: GAO analysis of U.S. Army Corps of Engineers (USACE) contract file documentation. | GAO-21-372

Note: Individual values are rounded to the nearest million.

<sup>a</sup>USACE terminated the award at the government’s convenience prior to definitization. Following settlement between USACE and the contractor, the terminated award value was \$244,106.

In addition to competition and UCA flexibilities used when it awarded the four DOD-funded contracts discussed above, USACE used other flexibilities to speed up the award process.<sup>39</sup> For example, for the eight contracts we reviewed in-depth, we found the following flexibilities were used:

- **Waiving environment and real estate reviews.** For the two contracts that were awarded using military construction funding, USACE waived numerous statutory requirements related to environmental protections to facilitate construction, according to a senior contracting official.<sup>40</sup> The authority to do so was exercised based upon the Secretary of Defense’s direction to expeditiously

<sup>39</sup>USACE also waived certain procedures included in agency guidance. For example, DOD waived all peer reviews for border barrier construction contracts and orders regardless of the funding source, as of March 2019. For USACE, these reviews are generally conducted for awards with an estimated value of \$50 million or more, and help assure USACE contracting officials that solicitation and award activities have been conducted according to regulation and guidance. According to senior contracting officials, due to the high dollar value the reviews require time and effort of high-level officials within USACE and the Army, and there is a diminishing return with each peer review completed since the awards and award process are similar.

<sup>40</sup>The official said these included the National Environmental Policy Act, National Historical Preservation Act, Archeological and Historic Preservation Act, Endangered Species Act, Migratory Bird Treaty Act, Migratory Bird Conservation Act, Clean Water Act, Fish and Wildlife Coordination Act, Clean Air Act, and Government-to-Government consultation requirements.

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undertake military construction projects without regard to provisions of laws that may impede construction. For the six other construction contracts in our sample, CBP was responsible for real estate and environment reviews, and DHS generally authorized the use of flexibilities or waivers for conducting these activities.<sup>41</sup> As a result, USACE did not have to wait for certifications of real estate availability for private and federal lands or environment reviews before soliciting and awarding projects. USACE project management officials said that while the environment review requirements were waived, they took steps to substantively address the requirements using best management practices. We did not assess these steps as part of our review.

- **Issuing a price evaluation deviation for certain contracts.** USACE also used a DOD flexibility to expedite its award of IDIQ base contracts. USACE changed its solicitation approach as of February 2019 to no longer require contractors to submit cost proposals when competing for orders on one of the IDIQ contracts.<sup>42</sup> This deviation authorized contracting officers to exclude cost or price as an evaluation factor if the government awarded IDIQ base contracts to all qualifying offerors that submitted a technically acceptable proposal that conformed to the requirements of the solicitation. In addition to the above, the deviation said a qualifying offeror must be a responsible source that the contracting officer has no reason to believe would be likely to offer other than fair and reasonable pricing.

While USACE employed numerous contracting flexibilities available to help expedite the award process, we found USACE generally conducted required acquisition planning and award activities when initially awarding the eight contracts we reviewed in detail. For example, USACE generally documented its acquisition planning activities, such as developing source selection plans and independent government cost estimates, and its source selection decisions, including determination of contractor responsibility, consistent with regulation and guidance. A summary of our review of these activities is included in appendix III.

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<sup>41</sup>Of these six contracts, four used counterdrug funds, which CBP officials said could not be used to purchase real estate. These projects replaced barriers that previously existed on federal lands. The other two contracts were DHS-funded and required DHS to obtain access to portions of the land.

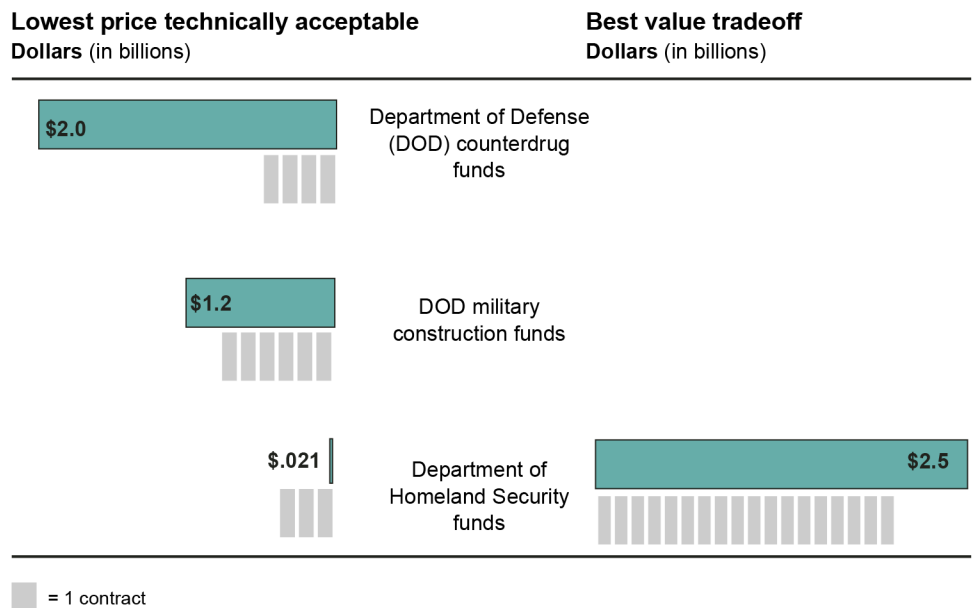
<sup>42</sup>DOD, Defense Procurement and Acquisition Policy, Class Deviation 2018-O0006, *Evaluation Factors for Certain Multiple-Award Task- or Delivery-Order Contracts*, December 13, 2017.



## USACE Desire for Expediency Drove Its Use of Lowest Price, Technically Acceptable Selection Procedures

In our review of the 31 competed construction contracts, we found USACE used either best value trade off or lowest price technically acceptable (LPTA) selection procedures. USACE used LPTA for all 10 of the DOD-funded barrier construction awards. For DHS-funded construction, USACE generally used best value trade-off procedures (see fig. 7).

**Figure 7: USACE Source Selection Procedures for Competitively Awarded Border Barrier Construction Contracts by Funding Source, October 2017 through May 2020**



Source: GAO analysis of Federal Procurement Data System - Next Generation and U.S. Army Corps of Engineers (USACE) information. | GAO-21-372

Note: USACE also noncompetitively awarded four contracts during this time, valued at \$4.3 billion as of September 30, 2020.

While expediency is not a criterion for using LPTA, a senior contracting official said that LPTA is generally a faster source selection process. Contracting officials for the four DOD awards we reviewed in our sample that used LPTA procedures said that, in addition to the requirements being well-defined, senior DOD leadership’s priority to accelerate construction awards factored into their decision to use LPTA. Some USACE officials also noted that they had previously identified the pool of contractors as being technically qualified when they established the prequalified source lists and competed the base IDIQ contracts.

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A contracting official who used both LPTA and best value trade-off procedures explained that, other than for more complex levee wall construction, the differences in which procedure they used was based on funding source and the official's past experience.<sup>43</sup> When using best value trade-off, several officials said they could consider variation in proposed technical approaches and contractors' experience. However, as one official explained, using best value trade-off can take longer because officials must evaluate each proposal's strengths, weaknesses, and proposed efficiencies. A senior contracting official explained that the LPTA selection process is less complex and there are fewer decisions for contractors to protest. Each procedure is allowable as described in the Federal Acquisition Regulation, and both were included in USACE's April 2018 acquisition plan for its IDIQ contracts' task orders. The two procedures were also included in USACE's acquisition plan for the 2019 prequalified sources list, which USACE has used exclusively for DOD-funded awards.

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### USACE Structured DOD Contracts to Prioritize Completing Wall Panels by December 31, 2020

All 13 DOD-funded contracts were required to complete some or all wall panel construction by the end of 2020.<sup>44</sup> According to a May 2020 DOD memorandum, the administration had established a goal of completing 450 miles of DOD construction by December 31, 2020. A senior USACE official explained that the Office of the Secretary of Defense asked USACE to determine how many miles could be built by the end of 2020, and the agency was held responsible for meeting that target.

When discussing one of the contracts included among our nongeneralizable sample, some project management officials told us that by setting an aggressive schedule in response to the national emergency, it likely led to the government paying higher prices to achieve a shorter period of performance, but they did not quantify how much. We found, for example, that two contracts' documentation discussed paying higher profit rates because of the shorter schedule for constructing wall panels.

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<sup>43</sup>Contracting officials said that the design and construction of a levee wall and the barrier built atop the levee wall was more complex. A senior contracting official explained that the complexity of the levee wall work provided more opportunity for a trade-off of price to technical approach as there was greater flexibility in the way the contractor could approach the requirement. The official contrasted the levee wall to DOD's counterdrug-funded projects, which were considered more time-sensitive than complex because the requirements for these projects used a standard panel design with a foundation that was adapted for the site.

<sup>44</sup>As previously discussed, USACE terminated one of the 14 DOD-funded contracts.

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For one of the noncompetitive modifications previously discussed, USACE determined that the contractor's profit rate—2.5 percent higher than the rate USACE calculated based on defense regulation and guidance—was fair given the wall panel delivery deadline of December 31, 2020, among other things.

Among the eight awards in our sample, we found USACE awarded or modified the six DOD-funded contracts we examined in detail to maximize the number of panels constructed by the end of 2020. USACE's prioritization of panels over other attributes of the wall means it may take USACE longer to produce a complete wall system that can be handed over to DHS for operation.<sup>45</sup> For example, after awarding three of the contracts, USACE added a separate wall panel deadline of December 31, 2020 and extended the overall contract end date by 7 to 8 months. In addition, as previously mentioned, between March and May 2020, USACE noncompetitively modified two of the noncompetitive contracts we reviewed. The panels for almost all of the new miles, 59 in total, were initially required to be completed by the end of December 2020—around the same time as the panels in the original contracts, which had been awarded a year earlier. However, to ensure the contractors focused on completing the wall panels on time, the contractors were provided 6 to 9 months of extra time to complete the remaining aspects of the full wall system, including electrical attributes. Project delivery team officials told us that electrical attributes typically lag behind panel completion by about 4 months because it is not ideal to construct both at the same time.

For one of these contracts, focusing on the wall panels to be completed in 2020 factored into the decision to award a \$173 million contract modification to build 10 additional miles, but to postpone awarding key electrical elements, so that construction could begin quickly. When negotiating this noncompetitive modification, USACE initially could not reach agreement with the contractor, in part because of unknowns associated with providing electrical attributes in the remote locations involved—which increased the prices offered. To get panel construction started and meet the 2020 timeline, USACE awarded a modification for the miles that they could agree on in March 2020. USACE awarded the electrical attributes for these miles in a subsequent \$58 million modification 4 months later. Meanwhile, USACE and the contractor

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<sup>45</sup>The other two contracts in our sample of eight, funded by DHS, have wall panel construction end dates in 2021 or later.

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continued negotiating the remaining miles, for which wall panel construction was also due by December 31, 2020, in yet another modification.

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### Projects' Location on Federal Lands Facilitated USACE's Efforts to Begin Construction Quickly

DOD-funded projects' locations also facilitated USACE's efforts to begin construction quickly. Contracts awarded using counterdrug and military construction funds covered projects located on federal lands, allowing USACE to proceed without the government first having to acquire real estate from private landowners—a process that according to Border Patrol could take years, as we reported in November 2020.<sup>46</sup> We found that six counterdrug-funded contracts and three military construction-funded contracts awarded as of May 2020 included a total of 214 miles that CBP officials reported as not being among the top priority groups in CBP's January 2018 10-year investment plan.<sup>47</sup> Some of these miles, located in challenging terrains, required blasting through rock or with some construction occurring at grades of nearly 70 percent. In August 2020, CBP issued a report with revised priorities, which increased the priority level of most of these groups of projects.<sup>48</sup>

Location on federal lands was a prominent factor in CBP and DOD's selection of border barrier construction projects and, as a result, DOD border barrier construction did not consistently align with the order of CBP's prioritized groups of projects. CBP officials told us that when identifying projects for construction, generally they go sequentially down the line of prioritized projects while also considering factors such as limitations associated with available funds. For example, CBP officials said they considered project location when selecting projects for requests for assistance from DOD using counterdrug funds because these funds cannot be used to purchase real estate. For military construction projects, DOD conducted its own analysis of the requested projects and, after a few iterations, selected 11 to build using military constructions funds. Five of the 11 were not awarded as of September 30, 2020, primarily because they were to be built on privately-held land which had not yet been

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<sup>46</sup>[GAO-21-114](#).

<sup>47</sup>Department of Homeland Security, Customs and Border Protection, *Border Security Improvement Plan*, Fiscal Year 2017 Report to Congress (Washington, D.C.: Jan. 4, 2018).

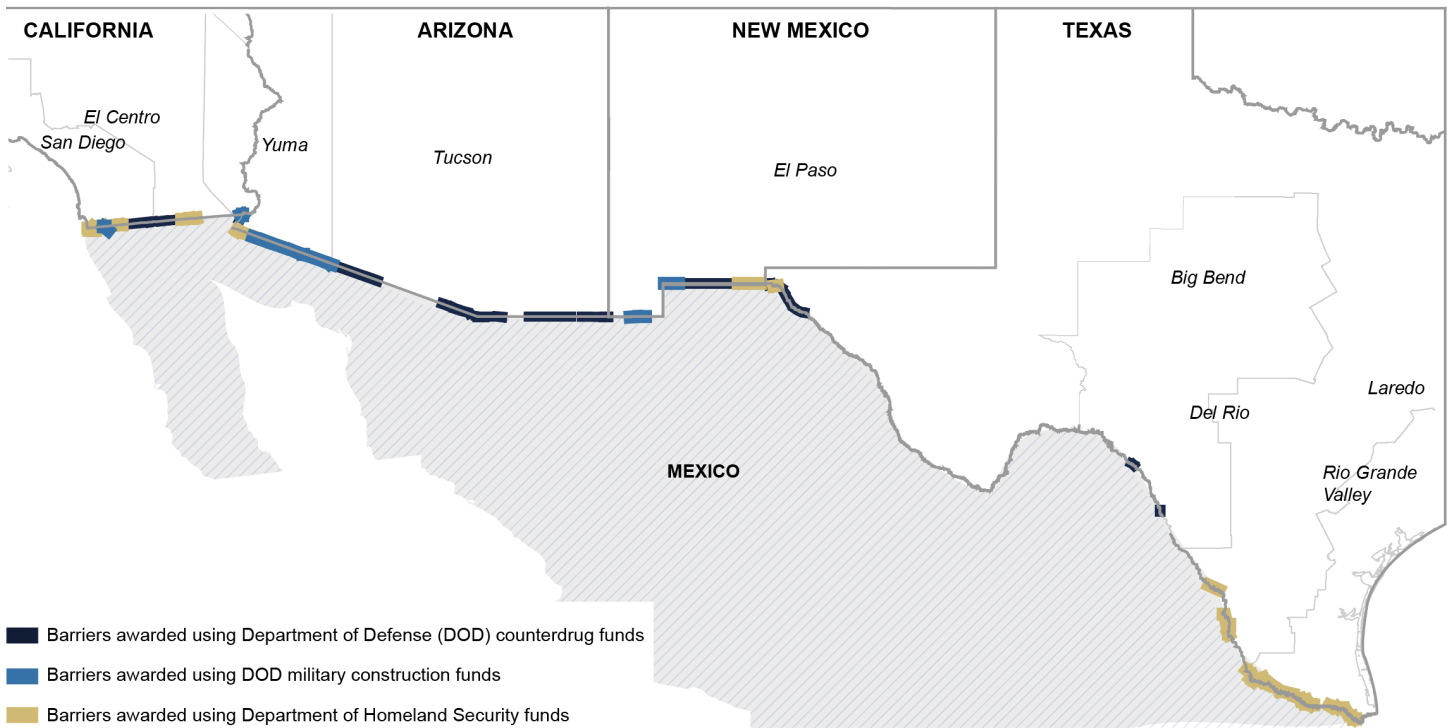
<sup>48</sup>Department of Homeland Security, Customs and Border Protection, *Fiscal Year 2019-2020 Border Security Improvement Plan*, Fiscal Year 2019-2020 Report to Congress (Washington D.C.: Aug. 1, 2020).

acquired by the federal government. According to a summary of the department’s assessment, DOD selected the 11 projects based on factors such as whether the land was federal and whether border construction would reduce the demand for DOD assets and military personnel in support of CBP.

## USACE Completed Planned Wall Panels but Has Not Assessed Its Future Acquisition Approach

USACE met the goal of completing approximately 450 miles of border barriers, but most of these miles represented the installation of wall panels, rather than the completion of the entire wall systems. From October 1, 2017, through September 30, 2020, USACE contracted for more than 600 miles of primary and secondary border barriers, as shown in figure 8—primarily through DOD-funded contracts. Overall, approximately 32 percent of the miles awarded were for new barriers in areas where no barriers had previously existed, while about 68 percent of the miles will replace existing barriers, including vehicle and pedestrian fences.

**Figure 8: Map of Border Barriers USACE Awarded between Fiscal Years 2018 – 2020, by Source of Funding**



Source: GAO analysis of U.S. Army Corps of Engineers (USACE) information. | GAO-21-372

Note: Italicized labels identify border segments designated by U.S. Customs and Border Protection.

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Most of the project delivery teams responsible for the eight contracts we reviewed in depth described relatively few performance issues in meeting the wall panel deadline. In general, the officials emphasized USACE's efforts to partner with the contractors and take actions, as needed, to ensure timely completion and mission success.

- For example, for one award, the project delivery team said that when the contractor was having difficulties with design in a particular terrain, USACE and other contractors shared lessons learned from previous projects to solve the problem and keep the work on track.
- For another award, USACE extended the contract's completion date by 8 months—from January 2021 to September 2021—so that the contractor could focus on finishing the panels by the end of December 2020. Officials explained that they gave the contractor extra time to complete the electrical attributes to ensure that they built the panels on time. The contractor was able to complete approximately 13 miles of wall panels by the end of 2020, as required, but the full wall system remains incomplete.

However, we found that one contractor struggled to meet its December 2020 deadline to finish constructing wall panels. According to USACE officials, the small business contractor—who had received a May 2020 award to build approximately 4 miles of border barrier—experienced delays for a variety of reasons. This included being unfamiliar with working in the terrain and because the contractor, who had not previously worked on the border barrier, had to become familiar with USACE's construction processes and expectations. Although the contract required panels to be completed by December 2020, USACE had not approved the contractor's final design plans as of mid-November 2020. However, despite various steps the parties took to mitigate impacts and delays, USACE reports show that the contractor had only completed two-tenths of a mile of wall panels—or 5 percent of the panels required by December 2020.

Overall, as of January 2021, when the new administration directed DOD to pause ongoing construction for the border contracts, to the extent permitted by law, USACE reported that it had built approximately 450 miles of barriers. But only slightly less than 69 of these miles—or about 15 percent—were for completed wall systems, as shown in table 4. While the wall panels are typically the most costly part of border barrier construction, the full wall system remains incomplete.

**Table 4: Completion Status for Selected USACE Construction Contracts, as of January 2021**

Funding source	Contracts awarded <sup>a</sup>	Miles under contract	Wall panels complete	Wall system complete (contract complete)	Funds obligated	Funds disbursed
Department of Defense (DOD) counterdrug	7	295 miles	258 miles	0 miles	6.3 billion	4.0 billion
DOD military construction	6	96 miles	87 miles	0 miles	1.2 billion	0.9 billion
Department of Homeland Security	18	240 miles	112 miles	69 miles	3.0 billion	1.8 billion
<b>Total</b>	<b>31</b>	<b>631 miles</b>	<b>458 miles</b>	<b>69 miles</b>	<b>10.5 billion</b>	<b>6.6 billion</b>

Source: GAO analysis of U.S. Army Corps of Engineers (USACE) documentation and data from the Federal Procurement Data System – Next Generation. | GAO-21-372

Note: Numbers may not sum due to rounding.

<sup>a</sup>This includes 31 of the 39 contracts we reviewed. Six of the remaining contracts were exclusively for roads or gates, so do not count toward the total miles of border wall constructed. The two remaining contracts were terminated shortly after award.

All 13 DOD-funded contracts were expected to complete at least some wall panels by the end of 2020. Prior to the direction to pause work, 12 of these contracts were expected to be finished by the end of fiscal year 2021—i.e., the wall system was expected to be completed for most of the 391 miles awarded. While seven of the 18 contracts for border wall construction that were funded by DHS appropriations were completed, the completion timelines and construction status for the remaining DHS-funded contracts varied. Several were pushed back until fiscal year 2022 or suspended prior to the direction to pause work, and the completion status of the remaining miles is uncertain. According to CBP officials, these suspensions were related to difficulties they experienced in certifying real estate availability, which led USACE to pause construction activities, although design activities continued until the work stoppage.

Following the January 20, 2021 Presidential direction, USACE officials issued stop-work orders to pause construction for the border wall contracts. In general, when an agency issues a stop-work order, it can take several actions. The agency can restart the work and complete the contracts or terminate the contracts for the government’s convenience. Under terminations for the government’s convenience, the government is responsible for covering certain costs incurred by the contractor, such as the contract price for completed supplies or services accepted by the government. As part of a settlement negotiation, the contractor may be entitled to the costs of material purchased—such as steel—or the loss of value of equipment purchased specifically for the contract that cannot be

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used elsewhere. According to USACE officials, as part of their 60-day review efforts, they assessed the current projects and provided recommendations to senior defense officials on whether projects should continue or be terminated. This presentation also reflected USACE's assessment of the operational effect should the projects be terminated. Similarly, DHS officials told us they are working with other federal agencies to develop the consolidated plan in response to the presidential directive. As of the end of March, a senior DOD official told us that DOD had provided its input in response to the 60-day review to the Office of Management and Budget.

Among the issues that are being assessed is how to transfer those portions of the border wall system to DHS and CBP for operation. Because these construction efforts were managed by DOD and were not part of DHS's acquisition process, the typical planning and oversight regarding affordability and costs for operations and sustainment of the DOD-built miles are not fully known. Using CBP's assumptions for estimating border barrier operations and sustainment costs, we calculated that it will cost CBP over \$1.6 billion over 30 years to operate and maintain the portions of the wall included in the 13 DOD contracts we reviewed. As we have previously reported, CBP does not have enough money in its current budget to fund the border wall system program—for which CBP will have to request additional funds and is using funds from another CBP program in the meantime.<sup>49</sup> Further, DHS officials noted that the conditions under which they would assume responsibility for wall systems built using DOD military funds are not yet determined.

We believe our prior recommendation that DOD and DHS define a common outcome for DOD's military support in fiscal year 2021 and beyond is critical in light of the expected \$1.6 billion in operations and maintenance costs that previously have not been budgeted. This is further needed as DOD and DHS have not yet agreed upon a process or timeline for the transfer of DOD's portions of the border wall system.<sup>50</sup> DOD has a long-standing relationship with DHS, both providing support for DHS's border security mission and with USACE as construction agent—a role that has broadened with DOD funding for construction. As of the conclusion of our review, it is not clear what USACE's acquisition approach will be in the future.

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<sup>49</sup>[GAO-21-175](#).

<sup>50</sup>[GAO-21-356](#).



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The Presidentially-directed pause and associated reassessments provide the opportunity, among other things, for USACE to review its acquisition activities over the past 2 years, as well as for DOD and DHS to assess how they can address prior recommendations, such as those regarding using cost as a factor when prioritizing locations for barrier construction and defining common outcomes. According to the Office of Management and Budget's Emergency Acquisition Guide, many lessons can be learned from emergency response efforts, to help an agency plan for addressing future emergencies, including generally avoiding noncompetitive and limited competition contracting actions.<sup>51</sup> Such steps also align with key practices that we have identified for both program and project management to limit the chance of recurrence of previous difficulties or failures.<sup>52</sup> Further, the Federal Acquisition Regulation charges agencies to ensure that knowledge gained from prior acquisitions is used to further define future requirements and acquisition strategies. Subsequent to the completion of the 60-day review and in conjunction with DHS's efforts to assess how best to meet its mission to secure the border, USACE has an opportunity to review its acquisition approaches over the past 2 years and determine how best to promote competition and reduce the use of undefinitized contractual actions and contracting approaches that limit competition. Without doing so, USACE will miss opportunities to strengthen its future acquisition approaches in furtherance of its longstanding support for CBP on the southwest border.

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## Conclusions

To respond to the National Emergency Declaration—and ensure the use of billions in expiring DOD funds—USACE took advantage of a number of flexibilities available to quickly award border barrier contracts. While the actions USACE took were permissible, they resulted in USACE awarding a substantial amount of money through contracting approaches that may carry more risk, including awarding noncompetitive contracts and beginning work before finalizing contract terms. Given the long-standing role of USACE in DHS's border wall project, USACE could benefit from reassessing the acquisition approaches it used.

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<sup>51</sup>Office of Management and Budget, Memorandum for Chief Acquisition Officers Senior Procurement Executives: *Emergency Acquisitions Guide*, January 14, 2011.

<sup>52</sup>For example, see GAO, *Project Management: DOE and NNSA Should Improve Their Lessons-Learned Process for Capital Asset Projects*, [GAO-19-25](#) (Washington, D.C.: Dec. 21, 2018).

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## Recommendation for Executive Action

We are making one recommendation to the Department of Defense:

The Commanding General of the U.S. Army Corps of Engineers should conduct an assessment of the approaches used to build the border barriers and, as appropriate, reassess its acquisition strategy going forward. (Recommendation 1)

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## Agency Comments

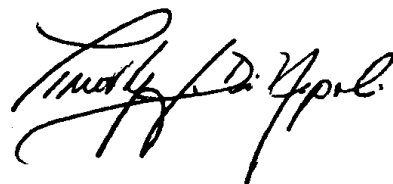
We provided a draft of this report to DOD and DHS for review and comment. DOD provided written comments through USACE, which are reproduced in appendix IV.

In its comments, USACE concurred with the recommendation and stated that it will conduct after-action reviews to identify lessons learned from its use of UCAs and other approaches to respond to the national emergency. USACE is also considering additional tools it can create to respond to similar, less-predictable emergencies in the future. USACE also provided technical comments on the draft report, which we incorporated as appropriate. DHS told us they reviewed the draft report and had no comments.

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We are sending copies of this report to the appropriate congressional committees, the Secretary of Defense, and the Secretary of Homeland Security. 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 [dinapolit@gao.gov](mailto:dinapolit@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 are listed in appendix V.



Timothy J. DiNapoli  
Director, Contracting and National Security Acquisitions

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# Appendix I: Objectives, Scope, and Methodology

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This report (1) identifies key characteristics, including funding, of the contracts the U.S. Army Corps of Engineers (USACE) awarded fiscal years 2018 through 2020 to support construction on the southwest border, (2) assesses the factors that drove USACE's acquisition approach, and (3) assesses the status of contract completion as of January 2021 and USACE's acquisition plans going forward.

To identify characteristics of contracts USACE awarded to support border construction efforts, we analyzed fiscal year 2018 through fiscal year 2020 data from the Federal Procurement Data System—Next Generation (FPDS-NG).<sup>1</sup> Using these data, we identified characteristics of the contracts in support of border construction, such as the total number of contracts and orders awarded, total obligations, the type of services provided, and the contractors receiving awards. We also obtained and reviewed data from USACE to determine the funding source of the contracts and to verify that the contracts included in our analysis supported border barrier construction. We discussed the USACE-generated data with knowledgeable officials and followed up with them as needed to resolve data discrepancies. We determined the reliability of FPDS-NG data by examining the data for obvious errors and missing data, interviewed knowledgeable USACE officials, and corroborated FPDS-NG with the information provided by USACE and relevant contract documents. We found these data to be sufficiently reliable for the purposes of describing the key characteristics related to the contracts for border barrier construction.<sup>2</sup>

To assess the factors that drove USACE's acquisition approach when awarding border barrier construction contracts from fiscal year 2018 through fiscal year 2020, we reviewed applicable laws, acquisition regulations and policy, such as the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, and Department of Defense (DOD) memorandums approving funding for border barrier construction. We also collected and reviewed USACE summary reports on border barrier construction progress and contract documentation for all 35 contracts and task orders (hereafter referred to as contracts, unless otherwise specified) that USACE awarded between October 2017 and May 2020 for border barrier construction projects. We reviewed relevant acquisition documents, including acquisition plans and strategies, source selection plans and decision memorandums, price negotiation memorandums, and other information to develop an understanding

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<sup>1</sup>The Federal Procurement Data System-Next Generation (FPDS-NG) is the government-wide database used to report data on government procurements. We selected fiscal year 2018 to start our data collection so as to capture changes in contract data associated with the 2019 emergency declaration, and ended our data collection at fiscal year 2020 as it was the most recent year for which we could obtain a full year of data.

<sup>2</sup>The Department of Homeland Security awarded two contracts for border barrier construction during the time period we examined, but these were not included in our review.

of USACE's acquisition approach. We also reviewed selected documentation for four additional construction contracts that USACE awarded between June 2020 and September 2020.<sup>3</sup> We also interviewed USACE and Department of Homeland Security (DHS) officials about the construction effort and coordination across the agencies. In addition, we reviewed Customs and Border Patrol's (CBP) Border Security Improvement Plans and obtained information from DHS and CBP officials about barrier construction project prioritization. Further, from among the 35 contracts awarded between October 2017 and May 2020, we selected a nongeneralizable sample of eight construction contracts based on factors such as contracts with obligations greater than \$1 billion and the largest contracts from each funding source for more in-depth review. These contracts account for about \$6 billion—about 60 percent of the total dollars obligated for construction awards during that time—and included contracts funded using DHS appropriations, DOD Drug Interdiction and Counterdrug Activities, Defense account (counterdrug) appropriations, and military construction appropriations (see table 5).

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<sup>3</sup>To allow time for contract file review and analysis, four contracts and task orders USACE awarded after May 2020 were not included in the second objective. However, the four construction contracts, which were awarded between June and September 2020, were included in the first and third objectives. Therefore, the analysis for the first and third objectives included 39 contracts for construction. The contract modifications we reviewed, including sole-source modifications, are not counted separately.

**Table 5: U.S. Army Corps of Engineers Border Barrier Construction Contracts Selected for In-Depth Review**

Contract or order number	Funding source	Initial award date	Obligations as of September 30, 2020
W912PL19C0014	Department of Defense (DOD) counterdrug	5/15/2019	\$1,277,317,096
W912PL19C0015	DOD counterdrug	5/15/2019	2,175,654,240
W9126G19C0118	Department of Homeland Security (DHS)	8/7/2019	306,476,690
W9126G19F6147	DHS	9/28/2019	259,035,543
W912PL20C0004	DOD military construction	12/5/2019	419,393,259
W50UW820F0003	DOD military construction	1/17/2020	107,021,453
W50UW820F0022	DOD counterdrug	5/6/2020	1,349,593,000
W50UW820F0024	DOD counterdrug	5/27/2020	46,725,331
<b>Total</b>			<b>5,941,216,612</b>

Source: GAO analysis of U.S. Army Corps of Engineers and Federal Procurement Data System – Next Generation information. | GAO-21-372

For the eight contracts reviewed in detail, we compared selected USACE activities for identifying and selecting contractors, estimating costs, and documenting award decisions, to applicable acquisition regulations. However, we did not assess the quality of the individual activities conducted such as whether USACE adhered to best practices for cost estimating when developing its independent government cost estimates. To identify selected acquisition activities, the team reviewed the Federal Acquisition Regulation and applicable supplements to identify key activities of the acquisition process, such as market research, source selection planning, development of independent government cost estimates, competition achieved, documentation of source selection decision, and waivers or justifications for deviation from regulations. We interviewed contracting and project management officials about the acquisition activities conducted and documented and their decisions during the acquisition planning and award process for each contract.

Simultaneous to our review, DOD’s Office of the Inspector General was conducting a review of one of the contracts included in our detailed sample, in response to allegations of inappropriate influence on USACE’s contracting decisions. We coordinated with the audit team conducting this work to deconflict the areas under review. As of the conclusion of our review, the Inspector General’s audit had not been released.

To assess the status of contract completion as of January 2021 and USACE’s acquisition plans going forward, we obtained USACE status updates for all construction projects being funded by DOD and DHS as of January 2021, including the number of wall panels completed. We also analyzed USACE contract documents

to identify the associated geolocation coordinates and the total miles of planned construction awarded. We confirmed contract location and mileage information, as needed, with USACE contracting and project management officials. We also reviewed contract documentation and selected agency status reports, and interviewed contracting and project management officials for the nongeneralizable sample of contracts we reviewed, to identify potential performance issues. We reviewed the January 2021 Presidential Proclamation pausing work at the border and discussed the status of the efforts to respond to this direction with USACE officials. We also reviewed federal acquisition guidance, including the Federal Acquisition Regulation and guidance from the Office of Management and Budget, for information on contracting in national emergencies.

We conducted this performance audit from February 2020 to June 2021 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.

# Appendix II: U.S. Army Corps of Engineers Border Barrier Construction Awards, October 2017 through May 2020

**Table 6: U.S. Army Corps of Engineers Border Barrier Construction Awards, October 2017 through May 2020**

Contract or order number	Contracting approach	Funding source	Offers received	Initial award date	Obligations as of September 30, 2020
W9126G18F0038	Existing IDIQ	DHS	3	11/8/2017	20,513,725
W9126G18C0008	PQSL	DHS	3	1/22/2018	75,875,350
W9126G18C0022	PQSL	DHS	1	4/18/2018	147,210,426
W9126G18F2500	Existing IDIQ	DHS	5	6/1/2018	23,085,784
W9126G19F0001	Existing IDIQ	DHS	3	10/3/2018	5,964,212
W9126G19C0005	PQSL	DHS	3	10/31/2018	146,769,036
W9126G19C0006	PQSL	DHS	3	11/11/2018	167,619,120
W9126G19C0007	PQSL	DHS	3	11/13/2018	260,886,467
W9126G19C0011	PQSL	DHS	5	12/20/2018	258,380,676
W912PL19C0013	PQSL	DOD counterdrug	Noncompetitive	4/9/2019	244,106
W912PP19C0018	PQSL	DOD counterdrug	Noncompetitive	4/9/2019	829,407,023
<b>W912PL19C0014</b>	<b>PQSL</b>	<b>DOD counterdrug</b>	<b>Noncompetitive</b>	<b>5/15/2019</b>	<b>1,277,317,096</b>
<b>W912PL19C0015</b>	<b>Limited source list</b>	<b>DOD counterdrug</b>	<b>Noncompetitive</b>	<b>5/15/2019</b>	<b>2,175,654,240</b>
W9126G19F0194	Existing IDIQ	DHS	2	5/24/2019	9,967,500
W9126G19F0196	Existing IDIQ	DHS	1	5/28/2019	42,968,912
W9126G19F0249	New IDIQ	DHS	9	6/26/2019	42,100,579
W9126G19F0250	New IDIQ	DHS	11	6/26/2019	5,191,945
W9126G19F0298	Existing IDIQ	DHS	2	7/31/2019	11,639,335
<b>W9126G19C0118</b>	<b>PQSL</b>	<b>DHS</b>	<b>3</b>	<b>8/7/2019</b>	<b>306,476,690</b>
W912PP19F0055	Existing IDIQ	DHS	2	9/12/2019	4,088,300
<b>W9126G19F6147</b>	<b>New IDIQ</b>	<b>DHS</b>	<b>5</b>	<b>9/28/2019</b>	<b>259,035,543</b>
W9126G19F6154	New IDIQ	DHS	6	9/29/2019	259,371,634
W9126G19F6152	New IDIQ	DHS	4	9/29/2019	297,920,478
W912PL20C0002	PQSL	DOD military construction	4	11/6/2019	419,474,301
W912PL20F0006	New IDIQ	DOD military construction	5	11/20/2019	90,378,051
<b>W912PL20C0004</b>	<b>PQSL</b>	<b>DOD military construction</b>	<b>3</b>	<b>12/5/2019</b>	<b>419,393,259</b>
W912PL20F0010	New IDIQ	DOD military construction	4	1/10/2020	46,098,141
W50UW820F0002	New IDIQ	DOD military construction	5	1/17/2020	137,883,877
<b>W50UW820F0003</b>	<b>New IDIQ</b>	<b>DOD military construction</b>	<b>6</b>	<b>1/17/2020</b>	<b>107,021,453</b>

**Appendix II: U.S. Army Corps of Engineers  
Border Barrier Construction Awards, October  
2017 through May 2020**

<b>Contract or order number</b>	<b>Contracting approach</b>	<b>Funding source</b>	<b>Offers received</b>	<b>Initial award date</b>	<b>Obligations as of September 30, 2020</b>
W912QR20FA001	New IDIQ	DHS	5	2/28/2020	-
W912QR20FA002	New IDIQ	DHS	5	3/13/2020	177,851,000
W50UW820F0010	New IDIQ	DOD counterdrug	4	4/22/2020	403,550,000
W50UW820F0027	New IDIQ	DOD counterdrug	5	5/2/2020	205,000,000
<b>W50UW820F0022</b>	<b>New IDIQ</b>	<b>DOD counterdrug</b>	<b>3</b>	<b>5/6/2020</b>	<b>1,349,593,000</b>
<b>W50UW820F0024</b>	<b>New IDIQ</b>	<b>DOD counterdrug</b>	<b>6</b>	<b>5/27/2020</b>	<b>46,725,331</b>

Legend: IDIQ – Indefinite-delivery, indefinite-quantity, PQSL – Prequalified source list, DHS – Department of Homeland Security, DOD – Department of Defense.

Source: GAO analysis of U.S. Army Corps of Engineers and Federal Procurement Data System – Next Generation information. | GAO-21-372

Notes: (1) The eight bolded contracts were included in the nongeneralizable sample examined in-depth in this report. (2) Existing IDIQ refers to contracts USACE had in place or planned to have in place shortly after it developed its planned acquisition approach for border barrier construction. (3) New IDIQ refers to the long-term strategy contracts USACE planned to establish in fiscal year 2019.



# Appendix III: Information on Selected U.S. Army Corps of Engineers Border Barrier Construction Contracts

**Table 7: Acquisition and Contracting Information for Selected USACE Contracts**

Contract or order number	W912PL19C0014	W912PL19C0015	W9126G19C0118	W9126G19F6147	W912PL20C0004	W50UW820F0003	W50UW820F0022	W50UW820F0024
<b>Funding source</b>	DOD counterdrug	DOD counterdrug	DHS	DHS	DOD military construction	DOD military construction	DOD counterdrug	DOD counterdrug
<b>Contracting approach used</b>	Prequalified sources list	Limited sources list	Prequalified sources list	Multiple-award IDIQ	Prequalified sources list	Multiple-award IDIQ	Multiple-award IDIQ	Multiple-award IDIQ
<b>Obligations as of September 2020 (dollars in millions)</b>	1,277	2,176	306	259	419	107	1,350	47
<b>Number of offers received</b>	1 <sup>a</sup>	1 <sup>a</sup>	3	5	3	6	3	6
<b>Market research documented</b>	✓	✓	✓	✓ <sup>b</sup>	✓ <sup>c</sup>	✓	✓	✓
<b>Source selection plan documented</b>	✓	✓	✓	✓	✓ <sup>d</sup>	✓	✓	✓
<b>Independent government cost estimate documented</b>	✓	✓	✓	✓	✓	✓	✓	✓
<b>Source selection procedure used</b>	Not applicable <sup>e</sup>	Not applicable <sup>e</sup>	Best value trade-off	Best value trade-off	Lowest price technically acceptable	Lowest price technically acceptable	Lowest price technically acceptable	Lowest price technically acceptable

Appendix III: Information on Selected U.S. Army Corps of Engineers Border Barrier Construction Contracts

Contract or order number	W912PL19C0014	W912PL19C0015	W9126G19C0118	W9126G19F6147	W912PL20C0004	W50UW820F0003	W50UW820F0022	W50UW820F0024
<b>Source selection evaluation criteria</b>	<ul style="list-style-type: none"> <li>• Related experience</li> <li>• Capacity for concurrent scoping of multiple sites</li> <li>• Ability to mobilize pre-construction activities</li> <li>• Identify major subcontractors</li> <li>• Past performance</li> <li>• Bonding capacity</li> </ul>	<ul style="list-style-type: none"> <li>• Related experience</li> <li>• Capacity for concurrent scoping of multiple sites</li> <li>• Ability to mobilize pre-construction activities</li> <li>• Identify major subcontractors</li> <li>• Past performance</li> <li>• Bonding capacity</li> </ul>	<ul style="list-style-type: none"> <li>• Schedule</li> <li>• Technical Approach (design and construction approaches)</li> <li>• Past performance</li> <li>• Small business participation</li> <li>• Price (all factors equal to price)</li> </ul>	<ul style="list-style-type: none"> <li>• Design technical approach</li> <li>• Construction technical approach</li> <li>• Small business participation</li> <li>• Price (all factors equal to price)</li> </ul>	<ul style="list-style-type: none"> <li>• Past performance</li> <li>• Small business participation plan</li> </ul>	<ul style="list-style-type: none"> <li>• Experience</li> <li>• Past performance</li> <li>• Small business commitment document</li> <li>• Bonding capacity</li> </ul>	<ul style="list-style-type: none"> <li>• Experience</li> <li>• Past performance</li> <li>• Key personnel</li> </ul>	<ul style="list-style-type: none"> <li>• Implementation approach</li> <li>• Schedule</li> <li>• Small business participation</li> </ul>
<b>Source selection decision documented</b>	✓	✓	✓	✓	✓	✓	✓	✓
<b>Fair and reasonable price determination documented</b>	✓	✓	✓	✓	✓	✓	✓	✓
<b>Contractor responsibility determination documented</b>	✓	✓	✓	✓	✓	✓	✓	✓

Legend: ✓ - USACE documented this activity, X - USACE did not document this activity, DHS – Department of Homeland Security, DOD – Department of Defense

Source: GAO analysis of U.S. Army Corps of Engineers (USACE) and Federal Procurement Data System-Next Generation information. | GAO-21-372

<sup>a</sup>USACE obtained interest from multiple contractors and engaged in a phased evaluation process known as a down-select, but, citing an unusual and compelling urgency exception chose to proceed with noncompetitive negotiation and award.

<sup>b</sup>Market research and source selection plan were documented after USACE advertised the award.

<sup>c</sup>Market research conducted did not identify a border barrier Indefinite-Delivery, Indefinite-Quantity (IDIQ) vehicle that was available for ordering.

<sup>d</sup>Source selection plan was documented after the award was advertised and proposals received.

<sup>e</sup>USACE solicited and negotiated with only one source.

# Appendix IV: Comments from the Department of Defense



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS  
441 G STREET, NW  
WASHINGTON, DC 20314-1000

May 28, 2021

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

Dear Mr. DiNapoli:

This is the U.S. Army Corps of Engineers (USACE) response for the Department of Defense (DoD) to the GAO Draft Report, GAO-21-327 SOUTHWEST BORDER: Schedule Considerations Drove Army Corps of Engineers' Approaches to Awarding Construction Contracts Through 2020, dated April 28, 2021 (GAO Code 104114).

The USACE appreciates the opportunity to review the GAO draft report and values GAO insights. The USACE concurs with the GAO Recommendation 1 (Enclosure).

My point of contact is the USACE External Audit Liaison Officer, HQ-CEIR@usace.army.mil, (202) 761-8518.

Sincerely,

MICELI,ROBERT JOSEPH  
SEP1022434973  
Date: 2021.05.25 11:08:21 -07'00'

COL Robert J. Miceli  
Deputy Director of Contracting  
HQ USACE

HEITKAMP,RICHARD JOHN  
EDWAR.1137796291  
Date: 2021.05.26 19:39:49 -04'00'

BG Richard Heitkamp  
Deputy Commander  
HQ USACE

Enclosure

GAO DRAFT REPORT DATED JUNE 1, 2021  
GAO-21-372 (GAO CODE 104114)

“GAO Draft Report, GAO-21-327 SOUTHWEST BORDER: Schedule Considerations  
Drove Army Corps of Engineers’ Approaches to Awarding Construction Contracts  
Through 2020”

DEPARTMENT OF DEFENSE COMMENTS  
TO THE GAO RECOMMENDATION

**RECOMMENDATION:** “The Commanding General of the U.S. Army Corps of Engineers should conduct an assessment of the approaches used to build the border barriers and, as appropriate, reassess its acquisition strategy going forward.”

**DoD RESPONSE:**

The DoD concurs with the GAO recommendation for the U.S. Army Corps of Engineers (USACE) to conduct an assessment of the approaches used to build the border barriers and, as appropriate, reassess its acquisition strategy going forward.

USACE concurs that one of the approaches utilized to build border barrier included the use of undefinitized contract actions (UCAs), and as GAO stated, “Through UCAs, DOD can authorize contractors to begin work and incur costs prior to reaching final agreement on contract terms, specifications, or pricing. This type of contractual action is generally used in limited circumstances when there is not enough time to fully negotiate a contract to meet the government’s requirement or the government’s interests demand that the contractor be given a binding commitment so that performance can begin immediately.” In the last five years, USACE has only executed UCAs on .006% of all initial contract awards. The most complex UCAs were issued in response to Presidential Declarations of a National Emergency and were focused on the Southern Border of the United States (border barrier) and the Coronavirus Disease 2019 Pandemic (acute care facilities), as well as for other actions associated with a declared emergency or where it was a necessity to respond quickly with performance to begin immediately. In the After Action Review of the Border Barrier program, USACE will identify lessons learned from the UCAs and other approaches utilized to further strengthen its contracting strategies.

As we look to the future, USACE takes the GAO recommendation seriously and is considering creating additional tools for emergency response. USACE currently has tools accessible for the more constant, “predictable” emergency responses such as hurricanes and similar natural disasters. It is the unpredictable, largely undefined, unusual and compelling emergencies such as the Presidential Declarations of Emergency cited above that are more difficult to preposition contracts with the capacity and expertise needed to be responsive.

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# Appendix V: GAO Contact and Staff Acknowledgments

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**GAO Contact:**

Timothy J. DiNapoli, 202-512-4841 or [DiNapoliT@gao.gov](mailto:DiNapoliT@gao.gov)

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**Staff****Acknowledgments:**

In addition to the contact named above, Janet McKelvey (Assistant Director), Jennifer Dougherty (Analyst-in-Charge), Leslie Ashton, Alyssa Bertoni, Rose Brister, Alejandro Coste-Sánchez, Jenny Chanley, Julia Kennon, Miranda Riemer, and Robin Wilson made contributions to this report.

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