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November 16, 2023

The Honorable Thomas R. Carper
Chairman
The Honorable Shelley Moore Capito
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Sam Graves
Chairman
The Honorable Rick Larsen
Ranking Member
Committee on Transportation and Infrastructure
House of Representatives

U.S. Army Corps of Engineers: Use of Other Transaction Agreements in Water Development Projects

Located within the Department of Defense, the U.S. Army Corps of Engineers (Corps) has both military and civilian responsibilities. During fiscal year 2022, the Corps invested more than \$1.86 billion in research and development activities, primarily for warfighter support programs.¹ The Water Resources Development Act of 2022 (Act) authorized the Corps to use a contracting mechanism known as an “other transaction agreement” to carry out prototype projects and follow-on production transactions to support the basic, applied, and advanced research activities of its civilian Civil Works mission.² These research efforts can aid the Corps’ management of water resources infrastructure including dams, levees, hurricane barriers, and floodgates across the U.S.

The Act also includes a provision for GAO to report on the Corps’ use of its other transaction agreement authority for its Civil Works program. This report examines the status of the Corps’ efforts to implement and use its other transaction agreement authority for its Civil Works program.

To determine this information, we reviewed relevant Department of Defense documents and GAO reports and conducted interviews with Corps and Department of Defense officials about the status of guidance and implementation efforts.

¹The Corps has both a military and a Civil Works program. The military program provides, among other things, engineering and construction services to other U.S. government agencies and foreign governments. The Civil Works program is responsible for investigating, developing, and maintaining water resources development projects.

²Water Resources Development Act of 2022, Pub. L. No. 117-263, § 8160(a), 136 Stat. 2395, 3741-44 (codified at 33 U.S.C. § 2313(c)).

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

Background

Other transaction agreements are those other than procurement contracts, cooperative agreements, and grants.³ Other transaction agreements are generally not subject to the same federal laws and regulations applicable to federal contracts or financial assistance. This allows agencies to customize their other transaction agreements to help meet project requirements and mission needs. Furthermore, because less restrictive requirements apply, other transaction agreements can attract companies that have traditionally not done business with federal agencies.

Agencies use other transaction agreements for a variety of projects and activities. For example, agencies can use these agreements for research, development, and demonstration activities that help advance new technologies or processes. Agencies can also use these agreements for developing and reviewing “prototypes,” or physical or virtual models that can help evaluate the technical or manufacturing feasibility, or the utility, of a particular technology, process, concept, or system.

Corps Is Developing Guidance

Corps officials told us that they have drafted guidance for the use of other transaction agreements that involve Civil Works projects and that this guidance is under review by the Assistant Secretary of the Army for Civil Works. According to these officials, the draft guidance relevant to Civil Works projects is similar to existing guidance that pertains to the Corps’ military program. These officials further said that an Army-wide review of the department’s authorities for other transaction agreements is in progress and must be completed before the Corps can finalize its guidance.

According to an official from the Office of the Deputy Assistant Secretary of the Army for Procurement, this Army-wide review is expected to be completed in November 2023. Corps and Assistant Secretary of the Army for Civil Works officials said they plan to issue their other transaction agreement guidance for Civil Works projects as early as the end of 2023, subject to the completion of the Army-wide review.

Once guidance is in place, Corps officials said that the U.S. Army Engineer Research and Development Center will oversee the implementation of other transaction agreements. According to Corps officials, such agreements could be used to, for example, study how automation could allow one operator to remotely operate multiple canal locks, presenting a potentially significant cost savings. In another example the officials provided, these agreements

³Cooperative agreements and grants are agreements with a principal purpose of transferring something of value to a recipient to carry out a public purpose rather than acquiring property or services for direct benefit or use.

could be used to study different concrete mixes for project infrastructure that produce fewer adverse environmental effects than existing materials.⁴

Agency Comments

The Assistant Secretary of the Army for Civil Works, Army Corps of Engineers, and Defense Contract Management Agency collectively provided a technical comment, which we incorporated.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Defense, the Assistant Secretary of the Army for Civil Works, the Chief of Engineers and Commanding General of the U.S. Army Corps of Engineers, and other interested parties. In addition, the report will be made 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 202-512-6888 or BothwellB@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were Mike Armes (Assistant Director) and Charlotte E. Hinkle (Analyst-in-Charge). Also contributing to this report were Jenny Chanley, Vondalee Hunt, Mark Kuykendall, Claire Li, and Nihar Vora.



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⁴Cement production—one of the main components of concrete—yields carbon dioxide, a greenhouse gas that can be harmful to the environment. Using materials that yield lower amounts of carbon dioxide in their production than traditional concrete could reduce constructed infrastructure’s environmental effects.

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