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December 18, 2014

The Honorable Dianne Feinstein
Chairman
The Honorable Lamar Alexander
Ranking Member
Subcommittee on Energy and Water Development, and Related Agencies
Committee on Appropriations
United States Senate

The Honorable Mike Simpson
Chairman
The Honorable Marcy Kaptur
Ranking Member
Subcommittee on Energy and Water Development, and Related Agencies
Committee on Appropriations
House of Representatives

Electronic Submissions in Federal Procurement: Implementation by the Army Corps of Engineers and Department of the Interior's Bureau of Reclamation

In November 1997, Congress enacted legislation requiring the head of each executive agency to establish, maintain, and use procedures and processes that employ electronic commerce in the conduct and administration of its procurement system. The statute and a related regulation¹ allow agencies flexibility in the extent to which procurement activities should be automated, but require, among other things, that the systems and technologies established for electronic commerce be implemented uniformly throughout the agency to the maximum extent practicable, and implemented only after considering the full or partial use of existing infrastructure. More recently, the House Committee on Appropriations report accompanying the *Energy and Water Development Appropriations Bill for Fiscal Year 2014* required GAO to review the U.S. Army Corps of Engineers' (Corps) and the Department of the Interior's (Interior) Bureau of Reclamation's (Bureau) implementation of this statutory requirement, as it relates to the use of electronic submissions in federal procurement.

Accordingly, our objective was to describe how the Corps and Bureau provide for the use of electronic submissions in their procurement processes and determine whether their approach is consistent with relevant requirements of the statute. To do so, we analyzed documentation

¹*National Defense Authorization Act for Fiscal Year 1998*, Pub. L. No. 105-85, § 850 (Nov. 18, 1997). This statute defines the term 'electronic commerce' as electronic techniques for accomplishing business transactions, including e-mail or messaging, electronic funds transfer, and electronic data interexchange, among others. It is now codified primarily at 41 U.S.C § 2301 and implemented at subpart 4.5 of the *Federal Acquisition Regulation* (FAR). The FAR also addresses use of electronic commerce for different contracting methods: 48 C.F.R. §§ 13.003(f) (simplified acquisitions), 14.202-8 (sealed bidding), and 15.203(c) (negotiation).

describing the Corps' and Bureau's current processes for receiving bids.² We also interviewed agency officials including officials from Interior's Office of Acquisition and Property Management, the Bureau's Management Services Office, and the Corps's Directorate of Contracting, to identify potential benefits of and challenges to implementing an electronic submission capability and what options and technologies may be available, if applicable. We then compared the agencies' processes to relevant statutory requirements.³ We also interviewed agency officials at the Naval Facilities Engineering Command and General Services Administration's Public Buildings Service, agencies that, like the Corps and the Bureau, have construction-related missions, to better understand contracting processes and systems in similar industries.

We conducted this performance audit from June 2014 to December 2014 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.

Results in Brief

In summary, the Corps' and Bureau's approaches to electronic bid submissions are consistent with relevant statutory requirements and the flexibilities provided by the statute and implementing regulation. Section 850 of Public Law 105-85 requires agency heads to use electronic solutions to make the procurement process more efficient; however, it provides agencies discretion in meeting electronic commerce goals. While the statute does not specifically mandate the implementation of an electronic bid submission capability, rather, it requires agencies to consider uniform implementation throughout the agency and full or partial use of existing infrastructure in their IT solution design (which could include bid submission functionality).

Both the Corps and Bureau use procurement systems owned and operated by their parent organizations.⁴ The Corps is able to accept electronic bid submissions in some instances. For example, it can accept bids on compact disc. The Corps' approach does not violate the statute, which allows flexibility and does not specifically require electronic submission of bids. In addition, key industry groups have reported to the Corps that the inability to always submit bids electronically has not been a concern. The Bureau is fully able to receive electronic bid submissions and, in line with the statute, uses an existing government-wide infrastructure to do so.

²As used in this report, the term "bids" refers not only to sealed bids submitted in response to an invitation for bids, but generally also to proposals submitted in response to a request for proposals in a negotiated procurement, other offers, and quotations.

³The requirements of section 850 that apply to agencies apply to the heads of those agencies rather than directly to their components, such as the Corps and the Bureau. Accordingly, for the Corps and the Bureau, responsibility for implementation of section 850 is at the departmental level—the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the Secretary of Interior, respectively. We focused on two of the requirements (uniform implementation and use of existing infrastructure) because these are procedures that component agencies like the Corps or the Bureau would generally have to follow in order for their parent organizations to be in compliance with the statute and because of their direct applicability to an electronic bid submission capability.

⁴The Corps refers to their parent organizations as "higher headquarters."

Background

The *Federal Acquisition Regulation* (FAR) and our work on procurement management practices⁵ describe the federal acquisition process as involving a number of steps that are common to all government agencies and generally consist of these three phases:

- **Acquisition planning:** agencies establish their requirements and develop a plan to meet those requirements. Both program and contracting officials participate in acquisition planning activities. During this phase, agencies conduct market research to determine what products or services are available and on what terms. They select a contracting approach best suited to the nature of the acquisition, addressing, among other things, the availability of existing contracts, extent of competition required, and the most appropriate contract type, such as cost-reimbursable or fixed-price.
- **Contract award:** agencies solicit bids, quotes, or proposals from prospective vendors, depending on the contracting method selected. For example, in a negotiated acquisition, agencies evaluate the proposals from vendors under established evaluation criteria in the solicitation and award a contract to the vendor representing the best value to the government, based on a combination of technical and cost factors.
- **Contract monitoring:** agencies engage in a range of activities intended to ensure that the contractor delivers according to the terms of the contract.

Building on an electronic commerce initiative from the National Performance Review in 1993, the *Federal Acquisition Streamlining Act of 1994* set the stage for the governmentwide use of electronic data systems to streamline the federal acquisition process and reduce costs. It required the Administrator of Federal Procurement Policy and the heads of each agency to establish and implement a federal acquisition computer network (FACNET).⁶ This network was to allow the electronic exchange of procurement information between the private sector and the federal government and among agencies, employ recognized data formats that serve to broaden and ease the electronic exchange of data, and allow convenient and universal user access through any point of entry.

Among the government functions specified by the statute was that the FACNET architecture allow functionality for agencies to provide electronically widespread public notice of solicitations for contract opportunities and to receive responses to solicitations and associated requests for information through the same system. The statute also specified that the FACNET architecture allow private sector users to respond to solicitations issued by an agency, among other functions.

Section 850 of Public Law 105-85, the *National Defense Authorization Act for Fiscal Year 1998*,⁷ replaced or revised much of the language in the sections of the *Federal Acquisition Streamlining*

⁵GAO, *National Science Foundation: Steps Taken to Improve Contracting Practices, but Opportunities Exist to Do More*, GAO-13-292 (Washington, D.C.: Mar. 28, 2013).

⁶*Federal Acquisition Streamlining Act of 1994*, Pub. L. No. 103-355, title IX (Oct. 13, 1994).

⁷The requirements of section 850 are codified at 41 U.S.C. § 2301, Use of Electronic Commerce in Federal Procurement (formerly section 30 of the Office of Federal Procurement Policy Act (41 U.S.C. § 426) before it was recodified and enacted as positive law by Pub. L. No. 111-350 in 2011), 10 U.S.C. § 2302c, Implementation of electronic commerce capability (Department of Defense, Coast Guard, and NASA), and 41 U.S.C. § 4709,

Act establishing FACNET. Among other things, it allowed federal agencies greater flexibility in implementing uniformly the electronic commerce capability requirements. In particular, the law required agencies to establish, maintain, and use procedures and processes that employ electronic commerce to the maximum extent practicable and are cost effective in the conduct and administration of agencies' procurement systems. In meeting agency electronic commerce goals, section 850 requires that agencies consult with the Administrator of Federal Procurement Policy, apply recognized standards that broaden interoperability and ease electronic interchange, and, for civilian agencies, designate a program manager for electronic commerce implementation. Section 850 also contains requirements for systems, technologies, procedures, and process that agencies should address in their IT solution design (which could include bid submission functionality): uniform implementation throughout the agency to the extent practicable; consideration of full or partial use of existing infrastructure; facilitating access to contracting opportunities, including by small business concerns; and ensuring notice of contracting opportunities through a single, government-wide point of entry. Section 850 eliminated the specific functions required of FACNET, such as the requirement that agencies receive responses to solicitations and associated requests for information through such a system, and that the architecture allow private sector users to respond to solicitations.

Section 850 (the part codified at 41 U.S.C. § 2301), subpart 4.5 of the FAR, provides policy for the establishment and use of electronic commerce in federal acquisition, and states that the government shall use electronic commerce whenever practicable or cost-effective.⁸ The FAR provides that agencies may exercise broad discretion in selecting the hardware and software that will be used in conducting electronic commerce, but requires that agencies address the requirements specified in section 850 just described. Further, the FAR provides contracting officers with discretion to use electronic commerce in different contracting methods, including sealed bidding.⁹ In authorizing the use of electronic commerce in solicitations, the FAR also states that contracting officers may supplement electronic transactions by using other media (such as transmitting a hard copy of drawings).¹⁰

The Corps' and Bureau's Mission-Related Contracting and Procurement Systems

The Corps and Bureau use procurement systems owned and operated by their parent organizations and these systems are used to award contracts for a variety of projects. The Corps, a component of the Department of the Army in the Department of Defense, is the world's largest public engineering, design, and construction management agency, and does work in the area of water resources and infrastructure, such as navigation, flood and coastal storm damage reduction, hydropower, and water supply, among other things. At the Corps, the Directorate of Contracting is responsible for all aspects of contracting. In fiscal year 2014, the Corps reportedly

Implementation of electronic commerce capability (civilian agencies) (formerly section 302C of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. § 252c) before it was recodified and enacted as positive law by Pub. L. No. 111-350 in 2011).

⁸FAR, 48 C.F.R. § 4.502(a).

⁹FAR, 48 C.F.R. § 14.202-8, Electronic bids, provides that contracting officers may authorize use of electronic commerce for submission of bids and that, if electronic bids are authorized, the solicitation shall specify the electronic commerce method(s) that bidders may use. Likewise, FAR, 48 C.F.R. § 15.203(c), Requests for proposals, states that electronic commerce may be used to issue RFPs and to receive proposals, modifications, and revisions and, if that is the case, the request for proposals shall specify the electronic commerce method(s) that offerors may use.

¹⁰FAR, 48 C.F.R. §§ 4.502(a).

obligated \$17 billion for the acquisition of the goods and services it needs to carry out its mission.

The Corps issues all solicitations electronically using the Army Single Face to Industry portal. This portal is the U.S. Army's designated site to host all Army contracting opportunities and is the repository for solicitations, amendments, and drawings. All Army contracting activities, including those of the Corps, are required to issue solicitations electronically that are linked to the Federal Business Opportunities website (<http://www.FedBizOpps.gov>, which redirects to <https://www.fbo.gov>).¹¹ The portal receives solicitation and contract award data electronically from multiple systems, including the Standard Procurement System, a procurement system used for acquisition planning and contract award and monitoring. The Standard Procurement System provides automated, strategic, streamlined, contract management support and is the single automated system to perform all contract management-related functions. It is owned by the Department of Defense (Defense) and is under the management of the Director of Defense Procurement and Acquisition Policy.

Established in 1902, the Bureau, an agency within the Department of the Interior, awards contracts for the construction of dams, reservoirs, power plants, and canals in 17 western states, and today is the second largest producer of hydroelectric power in the western United States and the largest wholesaler of water in the nation. According to officials, the Management Services Office has overall responsibility for the Bureau's acquisition and financial assistance policy, acquisition, and financial assistance operations as carried out in the regional offices, and property programs. The Acquisition and Assistance Management Division, a division within the Management Services Office, develops, issues, and performs oversight of compliance with acquisition and financial assistance policy. Procurement at the Bureau is accomplished primarily at six regional acquisition offices and at some subordinate area offices. In fiscal year 2014, the Bureau reportedly obligated \$396 million for the acquisition of the goods and services it needs to carry out its mission.

The Department of the Interior's contract writing system, called the Financial and Business Management System (FBMS), is used by all of the department's bureaus and offices, including the Bureau. According to officials, FBMS is based on two main software products—the SAP financial and property management system and CompuSearch PRISM.¹² The Bureau converted to FBMS in fiscal year 2014 and uses it for its acquisition management functions. Officials added that, currently, when a statement of work or product specification(s) is developed and funding has been identified, the program office is to create a purchase request in FBMS. When the purchase request has been approved, the funds are to be committed in the system. The approved request is to go to the contracting office via electronic workflow for procurement, and is to be assigned by a manager to a contract specialist or contracting officer. The contract specialist or contracting officer is to work in PRISM to prepare the necessary public announcement and solicitation documents for transmission through FedConnect.net, a web portal, to, according to officials, enable paperless contracting, and then to FedBizOpps.gov, as required. After award, the contractor is to submit an invoice to the Department of the Treasury's Invoice Processing Platform, which is linked to FBMS. On receipt of the goods or services, the

¹¹FedBizOpps is the single point of entry for federal buyers to publish and for vendors to find federal business opportunities over \$25,000 across departments and agencies.

¹²PRISM is a commercial-off-the-shelf software product that provides full procurement life cycle support, including all phases from advanced acquisition planning through contract closeout.

program office is required to complete a goods receipt or a service entry sheet in FBMS to document acceptance. Once approved, the invoice is processed in FBMS for payment.

Capabilities of the Electronic Bid Submission Processes at the Corps and Bureau Are Consistent with Relevant Requirements of Key Statute

As previously discussed, section 850 of Public Law 105-85 requires agency heads to use electronic solutions in procurement; however, it provides agencies with discretion in meeting electronic commerce goals and does not specifically mandate the implementation of an electronic bid submission capability.¹³

To this end, the Corps and Bureau use procurement systems owned and operated by their parent organizations. As discussed in the next section, these systems are commonly used and maintained within the federal government and are consistent with section 850 requirements.

Regarding how the Corps provides for the use of electronic submissions in its procurement process, there is no Defense-wide, Army-wide, or Corps-wide tool to accept bid submissions electronically. However, according to officials, the Corps provides options outside of these procurement systems to enable vendors to submit bids electronically. In particular, the Corps can accept bid submissions on a compact disc or by e-mail if the bid does not exceed agency e-mail size limits and provision is made in the solicitation for such a method of submission. For example, an October 2014 solicitation instructed vendors to provide submissions by mailing five hard copies and submitting one electronic copy in PDF format. Corps officials stated that challenges associated with implementing full use of electronic submissions include security, volume of drawings, and potential significant cost to implement a uniform capability throughout the agency. It could also cost contractors to implement such a capability. Corps officials further added that the agency regularly seeks industry feedback from the Associated General Contractors of America and the Dredging Contractors of America. These industry groups have reported to the Corps that the inability to always submit bids electronically has not been a concern. Finally, some vendors have indicated to Corps officials that they prefer the flexibility of having different options for submitting bids.

Because section 850 and FAR provide agencies discretion and flexibility in implementing electronic commerce capabilities, the Corps's capability to collect bid submissions electronically is consistent with section 850, which does not mandate electronic bid submissions.¹⁴ Further, the Corps's use of the Army Single Face to Industry portal is consistent with the relevant requirements of section 850 because of uniform implementation throughout the Corps, and use of an existing system and infrastructure.

Concerning how the Bureau provides for the use of electronic bid submissions in its procurement process, the Bureau uses existing department-wide infrastructure for electronic submissions. Further, the Bureau is not aware of any technical limitations in these systems that would prevent certain bids from being received in this manner. Bureau officials stated that currently, the Bureau uses FBMS PRISM to prepare and issue solicitations, and posts them to

¹³Section 850 provides that the electronic commerce capability is to be implemented within the Department of Defense by the Under Secretary of Defense for Acquisition, Technology, and Logistics. 10 U.S.C. § 2302c(a). Accordingly, overall implementation responsibility was neither with the Army nor the Corps.

¹⁴As described, section 850 replaced earlier statutory language for the proposed FACNET system that required such a capability with more general and flexible language.

FedConnect.net and FedBizOpps.gov. The Bureau also uses the General Services Administration's eBuy system¹⁵ to issue selected requests for quotations and receive responses. According to officials, the Bureau receives approximately 54 percent of its bids or proposals electronically, which is about 42 percent of its contract obligations. These officials stated that the Bureau has no apparent constraints or issues with receiving electronic responses, including those that may contain large files or technical drawings.

The Bureau's approach of using standard and common federal tools to enable electronic bid submissions is consistent with the discretion and flexibility provided by section 850. Further, the Bureau's use of FBMS PRISM is consistent with the relevant requirements of section 850 because of uniform implementation throughout the agency and use of an existing system and infrastructure.

Agency Comments and Our Evaluation

We provided a draft of this report to the Corps and the Bureau. The Corps' Chief of Staff for the Directorate of Contracting and the Department of Interior's Director of the Office of Acquisition and Property Management provided oral comments. Both stated that they agreed with the report and provided technical comments that were incorporated appropriately.

We are sending copies of this report to interested congressional committees. We will also send copies to the Secretaries of the Departments of Defense and the Interior and other interested parties. In addition, this report will be available at no charge on the GAO web site at <http://www.gao.gov>.

If you or your staff has any questions about this report, please contact me at (202) 512-4456 or ChaC@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 Eric Winter, assistant director, Nancy Glover, and Niti Tandon.



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¹⁵An electronic request for quotations/request for proposals system designed to allow government buyers to request information, find sources, and prepare requests for quotations/proposals online for services and products offered through the General Services Administration's Multiple Award Schedule and technology contracts.

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