



United States Government Accountability Office
Washington, DC 20548

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The Honorable Joseph I. Lieberman
Chairman
Committee on Homeland Security and
Governmental Affairs
United States Senate

The Honorable Jon Tester
Committee on Homeland Security and
Governmental Affairs
United States Senate

Subject: Prior Experience and Past Performance as Evaluation Criteria in the Award of Federal Construction Contracts

Over the last 10 fiscal years, federal agencies have increased their spending on construction contracts, leading to obligations of almost \$54 billion in fiscal year 2010. When awarding contracts, the Federal Acquisition Regulation (FAR) requires agencies to consider firms' performance records to help ensure that taxpayer dollars go to capable contractors. The FAR also provides agencies with broad discretion in deciding how they will consider firms' prior experience, which refers to whether the firms have done similar work before, and past performance, which describes how well they have done that work. As construction firms without prior federal contracting experience seek to gain entry into the federal marketplace, some may regard the consideration of these factors as an impediment.

In response to your request for information on the consideration of prior experience and past performance, we reviewed (1) how selected agencies consider prior experience and past performance in awarding construction contracts and (2) the resources available to assist firms in gaining entry to the federal marketplace.

Our review focused on components of three federal agencies: U.S. Army Corps of Engineers (USACE) at the Department of Defense (DOD), Public Buildings Service (PBS) at the General Services Administration (GSA), and Customs and Border Protection (CBP) at the Department of Homeland Security (DHS). We selected these agencies and components based on our analysis of their fiscal year 2010 obligations for construction contracts, as reported in the Federal Procurement Data System—Next Generation (FPDS—NG).

To understand how agencies are to consider prior experience and past performance, we reviewed the FAR and the three agencies' supplements to the FAR, as well as other agency policies and procedures on source selection and contract award. We then reviewed 29 contracts and orders awarded in fiscal year 2010 by the three agencies, which we judgmentally selected to help illustrate how regulations, policies, and procedures are applied

in different circumstances.¹ The results of our review of these procurements cannot be generalized across USACE, PBS, CBP, or other agencies' construction procurements. In addition, we interviewed policy, contracting, and small business officials from the three agencies; their respective components; and the district, region, or division offices responsible for the selected procurements. Finally, we reviewed 43 GAO bid protest decisions from fiscal years 2009 and 2010 that we identified as involving the consideration of prior experience and past performance to gain additional perspective on how these factors are considered.²

To obtain information on the resources available to assist firms seeking entry to the federal market, we conducted interviews with policy, contracting, and small business officials at the three selected agencies as well as with officials from the Small Business Administration (SBA) and two industry associations. We also reviewed information available to firms through the agencies' websites. For additional details on our scope and methodology, see enclosure I.

We conducted this performance audit from April 2011 to October 2011 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

Agencies consider prior experience and past performance during three key phases in the award of construction contracts: preparing solicitations, evaluating proposals, and making responsibility determinations as to whether firms have the ability and capacity to successfully perform. Agencies have broad discretion under the FAR in deciding the acquisition method, evaluation factors, and their relative weights, as well as what prior experience and past performance they will consider relevant. The consideration of prior experience and past performance varied for the contracts we reviewed. Specifically, these factors were considered to a greater degree in procurements in which agencies weighed price and nonprice selection factors and to a lesser degree in procurements in which price was the determining selection factor. The consideration of prior experience and past performance is not limited to work performed under prior contracts with the government. Instead, agencies are to consider work performed on all contracts: federal, state, local, and private sector. We did not identify any instance in which an agency limited its evaluation of offerors' experience or past performance to only work performed on prior federal government contracts. We found that in almost all procurements we reviewed, the contracts were awarded to the offerors that received the highest rating for nonprice factors, such as prior experience or past performance. We identified only one procurement in which offerors received neutral past performance ratings because they lacked relevant past performance. Prior experience and past performance are also two of the elements considered in the

¹We originally selected 10 contracts from each agency based on data available in FPDS-NG. However, upon review of the files, we excluded one USACE contract as it was not a fiscal year 2010 award.

²Bid protests may be filed at GAO against procurement actions by federal government agencies. A bid protest is a challenge to the award or proposed award of a contract for the procurement of goods and services or a challenge to the terms of a solicitation for such a contract. Protests can also be filed with the agency responsible for the procurement and the U.S. Court of Federal Claims. For the purposes of this report, we only reviewed bid protests filed with GAO that resulted in a decision published in either fiscal year 2009 or 2010.

responsibility determination, which is required for all contracts. All the contract files we reviewed contained evidence of a responsibility determination.

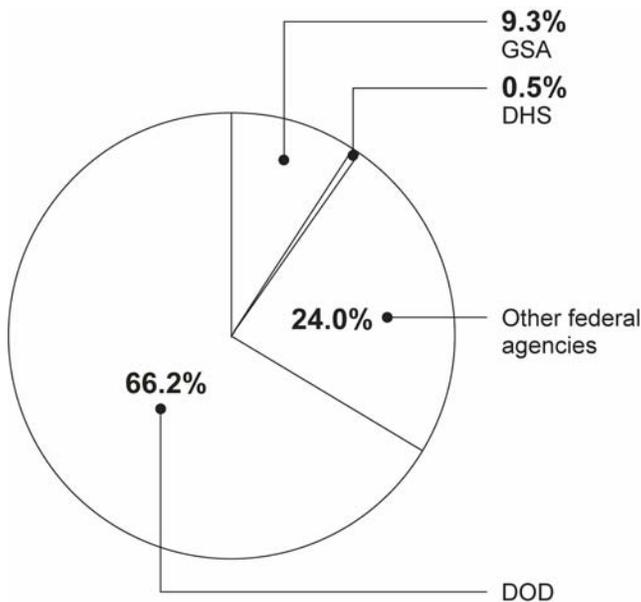
Officials at USACE, PBS, CBP, and SBA told us that the consideration of prior experience or past performance is not an impediment to winning government contracts as offerors generally cite their prior work. However, they noted that small firms seeking to win federal construction contracts face challenges in building up relevant work experience, financial resources, and bonding capacity to compete for large contracts. Various resources are available from federal agencies to help firms without relevant experience or past performance gain entry to the federal marketplace, including outreach and education, subcontracting opportunities, mentor-protégé programs, and SBA programs specifically designed to assist small businesses.

We provided DOD, DHS, GSA, and SBA a draft of this report for their review and comment. In its written comments, DHS noted that it remains committed to awarding contracts in compliance with applicable regulations and continuing efforts to help small firms do business with DHS. SBA provided technical comments that were incorporated into the report, as appropriate, while DOD and GSA informed us they had no comments.

Background

Federal agencies rely on construction contractors to build new structures and facilities as well as to maintain, repair, or improve real property. In fiscal year 2010, federal construction contract obligations totaled almost \$54 billion.³ As shown in figure 1, DOD accounted for the majority of construction obligations, followed by GSA.

Figure 1: Percentage of Construction Contract Obligations by DOD, GSA, and DHS, Fiscal Year 2010



Source: GAO analysis of FPDS-NG data.

³Construction contracts that involve building new structures and facilities can be identified in FPDS-NG as product or service code Y and construction contracts that involve maintenance, repair, or alteration of real property can be identified as product or service code Z.

USACE, which has both a military and civil works program, accounted for approximately 59 percent of DOD’s obligations for construction contracts in fiscal year 2010.⁴ Within GSA, PBS—which acquires space on behalf of the federal government through new construction and leasing and acts as a caretaker for federal properties across the country—accounted for almost all of GSA’s construction contract obligations. For DHS, CBP accounted for almost a quarter of the department’s fiscal year 2010 construction obligations, much of which was for the construction and maintenance of land ports of entry.⁵ Table 1 shows the obligations made by the three components on construction contracts as well as the number of new contracts awarded and orders placed for construction in fiscal year 2010.

Table 1: USACE, PBS, and CBP Construction Contract Obligations and Awards, Fiscal Year 2010

Component	Contract obligations^a	Number of new awards
U.S. Army Corps of Engineers (USACE)	\$ 20,852,953,087	7,534
Public Buildings Service (PBS)	\$ 4,939,934,208	8,183
Customs and Border Protection (CBP)	\$ 68,623,709	95

Source: GAO analysis of FPDS-NG data.

^aContract obligation amounts include obligations on awards made in fiscal year 2010, as well as modifications to contracts awarded in prior fiscal years.

Agencies use two different methods to procure construction services—sealed bidding and negotiated procurements. In sealed bidding, the contract is awarded to the responsible and responsive bidder offering the lowest price.⁶ For negotiated procurements, agencies can use any one or a combination of source selection processes, based on the specific circumstances of the acquisition. Agencies can use a trade-off process, in which they consider nonprice evaluation factors, such as technical capabilities or past performance, as well as price in making the source selection. Alternatively, agencies can use the lowest-price technically acceptable process, in which cost or price will be the determining factor in selecting from among the technically acceptable proposals. The best-value trade-off process generally is used in acquisitions where the requirement is less definitive, more development work is required, or the acquisition has greater performance risk. In contrast, the lowest-price technically acceptable process is generally used in acquisitions where the requirement is clearly definable and the risk of unsuccessful contract performance is minimal.

For negotiated procurements, an agency’s decision to award a contract to a particular offeror is based on the evaluation factors and significant subfactors that represent the key areas of importance and emphasis to be considered in the source selection decision and to support the comparison of offers. The evaluation factors, significant subfactors, and their relative importance are within the discretion of agency officials. However, the FAR requires every source selection to evaluate price or cost to the government, as well as the quality of the product or service through consideration of one or more noncost evaluation factors.

⁴USACE’s military program provides, among other things, engineering and construction services to other U.S. government agencies and foreign governments, while the civil works program is responsible for investigating, developing, and maintaining water resource projects.

⁵CBP is the lead component for DHS responsible for implementing the department’s border security mission. Key areas include inspecting travelers at ports of entry, inspecting cargo and goods at ports of entry while facilitating trade, and securing the border between ports of entry, for example to reduce illegal immigration through the use of fencing and technology.

⁶FAR § 14.408-1(a)(3).

Additionally, the FAR requires that agencies consider past performance as an evaluation factor in negotiated competitive procurements, unless the contracting officer documents the reason that past performance is not an appropriate evaluation factor for the procurement. For example, agencies may decide that evaluation of past performance may not be appropriate in lowest-price technically acceptable negotiated procurements, in which the award is based on the technically acceptable proposal with the lowest price. In addition, the FAR provides that prior experience may be considered along with other factors specified in the solicitation.⁷

Agencies use a variety of contract types to procure construction services. These include contracts for known requirements as well as indefinite delivery / indefinite quantity (IDIQ) contracts. An IDIQ contract may be used when an agency does not know the timing or quantity of future deliveries at the time of contract award. After an IDIQ contract is awarded, agencies procure goods and services by placing delivery orders for products or task orders for services for individual requirements. IDIQ contracts may be issued as a single award to one contractor or to several contractors as a multiple-award contract. For multiple-award IDIQ contracts, the FAR requires that each awardee be given a fair opportunity to compete for subsequent orders.⁸

Prior Experience and Past Performance Considered in Three Key Phases of Awarding Construction Contracts

There are three key phases in which agencies consider prior experience and past performance in awarding contracts, including those for construction.

- **Preparing the solicitation:** The contracting officer develops the solicitation, which requests that firms submit offers or bids to the government to fulfill specified requirements and identifies how relevant prior experience and past performance will be considered.
- **Evaluating offers or bids:** Agency officials conduct a comparative assessment of offers against the source selection criteria in the solicitation to select the firm that will win the contract.
- **Making the responsibility determination:** The contracting officer determines whether an offeror has the ability and capacity to successfully perform based upon an analysis of many areas, including financial resources, operational controls, technical skills, and quality assurances.⁹

The degree to which prior experience and past performance are considered in drafting the solicitation and evaluating offers or bids varies primarily based on the method of acquisition—negotiated procurement or sealed bid—being used. The three agencies we reviewed used a variety of methods, ranging from negotiated procurements that weighed technical and cost factors to sealed bids based only on price, all of which involved some consideration of offerors' prior experience and past performance.

⁷FAR § 15.304(c)(2).

⁸FAR § 16.505(b)(1)(i).

⁹FAR § 9.104-1.

Preparing Solicitations

Agency solicitations specify how prior experience and past performance will be considered. The FAR does not limit that consideration only to work performed under prior contracts with federal agencies. Instead, agencies are to consider offerors' efforts on all contracts: federal, state, and local government, as well as private sector contracts. However, contracting officers may specify in their solicitations what they will consider as similar or relevant experience. The bid protest decisions we reviewed reaffirm that agencies have discretion in deciding what prior experience and past performance are considered relevant. For example, a firm protested that limiting relevant past performance references to work with a \$2 million annual minimum value excluded the majority of small firms with the requisite technical and management capabilities from competition. However, GAO denied the protest based on its conclusions that the dollar value required was reasonably related to the agency's needs for a contractor that could design and develop complex enterprise applications.¹⁰

For the negotiated procurements we reviewed, past performance was identified as an evaluation factor in a substantial majority of solicitations. In some solicitations, prior experience was also an evaluation factor, while in others it was a subfactor under another technical factor. For example, in the five CBP solicitations for the construction of land ports of entry, the solicitations specified that the offerors' prior experience, along with their technical solution, project management plan, and project schedule, would be evaluated as part of the technical qualifications factor. All of the solicitations we reviewed stated that offerors could provide prior experience or past performance from any similar efforts. They were not limited to only providing information on their experience or performance on prior federal contracts. Also, some of the solicitations limited the time period from which they would consider relevant experience. For example, on a CBP order to replace flooring in an airplane hangar, the solicitation stated that, in evaluating past performance, the agency would only consider performance information from the past 3 years.

The weights given to prior experience and past performance varied, largely depending on whether the agency used a best-value trade-off or lowest-price technically acceptable process. Significant weight was given to prior experience and past performance for the procurements we reviewed that used the best-value trade-off process. In a substantial majority of the solicitations using a best-value trade-off process, price was weighted less heavily than nonprice evaluation factors, such as prior experience and past performance. Further, of the 14 best-value trade-off procurements we reviewed, 10 solicitations specified that past performance was weighted as the highest evaluation factor. Some of the negotiated procurements we reviewed were conducted in two phases, and there were different evaluation factors for each phase.¹¹ Although both phases utilized a best-value trade-off process, prior experience and past performance were weighed more heavily in the first phase, with price as the more important factor in the second phase.

In the negotiated procurements using the lowest-price technically acceptable source selection process, prior experience and past performance were considered but to a lesser degree than price, which was the most important factor. For the lowest-price technically acceptable procurements we reviewed, prior experience or past performance were

¹⁰SML Innovations, B-402667.2 (Oct. 28, 2010).

¹¹This is referred to as two-phase design-build selection procedures. Under these procedures, which can be used to enter into a contract for the design and construction of a public building, facility, or work, proposals are evaluated in phase one to determine which offerors will submit proposals for phase two. One contract is awarded using competitive negotiations. FAR §§ 36.300 and 36.303.

considered in four of the nine solicitations. For example, in a USACE procurement for designing and building a military training facility, construction experience on similar work was considered, along with management effectiveness and the construction schedule, in deciding which offers were technically acceptable. USACE then awarded the contract to the technically acceptable offeror with the lowest price.

For the 13 orders under IDIQ contracts we reviewed, 9 were placed against multiple-award IDIQ contracts. Prior experience and past performance can be considered when awarding the IDIQ contract, as well as when orders are placed under multiple-award IDIQ contracts. The extent to which prior experience and past performance were considered when orders were placed varied. For example, in a PBS procurement to renovate a playground, the IDIQ contract specified that orders would be placed with the offeror with the lowest price, with no further evaluation of past performance. In contrast, for one USACE order for a parking lot at a training complex, offerors were evaluated, in part, on their performance on prior orders placed under that multiple-award IDIQ contract.

Evaluating Proposals

Under the FAR and as reaffirmed in GAO's bid protest decisions, agencies must evaluate competitive proposals and assess their relative merits in accordance with the procedures and criteria specified in the solicitations. In evaluating proposals, including an offeror's past performance, the FAR allows agencies to use any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings. All of the procurements we reviewed used adjectival ratings. For example, in several procurements we reviewed, past performance was rated as either outstanding, highly satisfactory, satisfactory, or unsatisfactory.

Contracting officers can evaluate offerors' past performance using information from a variety of sources and do not rely solely on past performance information contained in federal databases, such as the Past Performance Information Retrieval System.¹² As we have previously reported, information in these databases is often incomplete and limited to performance on federal contracts. As a result, contracting officers accept a wide range of information to evaluate a firm's past performance but can also take action to verify information submitted by firms. For some of the procurements we reviewed, we saw evidence that offerors submitted and contracting officers evaluated past performance questionnaires that contained information about how the firm performed on prior projects, including both commercial and government projects.

Offerors that were evaluated as having the highest rating for prior experience or past performance won the majority of negotiated procurements we reviewed. For all of these procurements, offerors—including those that were ultimately not successful—submitted proposals indicating they had at least some experience and past performance that they believed to be relevant. However, in some cases, the agencies deemed that the firms' prior experience and past performance were not relevant to the requirements laid out in the solicitation. For example, the prior experience of an offeror for one CBP procurement was deemed not relevant because previous work involved small rehabilitation, renovation, and paving projects that did not require complex phasing and coordination efforts using architectural and engineering designs as specified in the solicitation. In another example, a

¹²Past Performance Information Retrieval System is a system created by the Office of Federal Procurement Policy that is intended to be a repository of performance information on federal contractors. GAO, *Federal Contractors: Better Performance Information Needed to Support Agency Contract Award Decisions*, GAO-09-374 (Washington, D.C.: Apr. 23, 2009).

firm's past performance was rated "unsatisfactory" and "high" risk to the government because while the firm demonstrated it had construction experience, it did not demonstrate that it had experience building in extreme weather conditions or remote locations as specified in the solicitation.

We did not identify any offerors that were evaluated less favorably for not having government contracting experience. However, we identified some evaluations that cited the offerors' prior government contracting experience and positive past performance evaluations for that work. For example, in the explanation as to why six offerors on a CBP land port of entry project received an evaluation of highly satisfactory for past performance, the contracting officer documented in the file that they had successful experience working on prior government contracts for similar projects.

The FAR states that offerors without a record of relevant past performance may not be evaluated favorably or unfavorably on past performance—in other words, they must be given a neutral rating for the past performance evaluation factor. In our review of the three agencies' procurements, we identified only one procurement in which offerors were determined to have no past performance. In that instance, the procurement was being done through an order under a multiple-award IDIQ contract and the only past performance information considered relevant was for work performed on prior orders under that contract. Since no offerors had performed work on other orders under that contract, the contracting officer determined that all four offerors had no relevant past performance information and gave each of them a neutral rating in the evaluation. Consistent with what we found in the procurements we reviewed, the contracting officers we met with from the three agencies stated that firms rarely submit proposals that do not indicate that they have prior experience or past performance. Further, contracting officers explained that when they give offerors' past performance a neutral rating, those offerors will not stand out as much as firms with a highly satisfactory past performance rating.

In the 2009 and 2010 bid protest decisions we reviewed, we identified only one protest that involved an offeror receiving a neutral past performance rating. In that case, the firm's protest contended that it deserved a rating higher than neutral for its past performance. However, GAO denied the protest, determining that the agency reasonably concluded that the firm's submitted references for past performance were not relevant to the procurement and that the firm did not demonstrate how work on prior contracts was sufficiently similar to warrant a past performance rating other than neutral.¹³ Additionally, we identified a number of protests filed by offerors on the basis that the agency did not evaluate prior experience or past performance consistently with the criteria specified in the solicitation. GAO sustained those protests in which it agreed that the agency's evaluation deviated from what had been specified in the solicitation, which occurred in 6 of the 43 protests we reviewed. For example, one bid protest decision we reviewed stated that the agency informed offerors that it would consider the experience and past performance of subcontractors performing major aspects of building a radiology imaging center. The protester asserted that the agency did not consider the prior experience of its subcontractor that would perform specialized shielding on the radiology room. GAO agreed and sustained the protest.¹⁴

¹³Frontline Healthcare Workers Safety Foundation, Ltd., B-402380 (Mar. 10, 2010).

¹⁴Brican Inc., B-402602 (June 17, 2010).

Determining Responsibility

Before any contract is awarded—regardless of the acquisition method used—agencies must make a responsibility determination. To be determined responsible, a prospective contractor must have, among other things, adequate financial resources, a satisfactory performance record, and the necessary experience. The determination of responsibility, which is a pass/fail evaluation, differs from the comparative past performance evaluations used in evaluating offers. For all of the procurements we reviewed, we saw evidence of a responsibility determination. In some cases, the files contained documentation that specifically assessed responsibility, including the offerors' prior experience and past performance. For example, for a USACE contract to repair and clean equipment facilities, the file contained a memorandum documenting the contracting officer's assessment of responsibility, which included a review of the contractor's performance records and experience data. However, in most cases the responsibility determination was documented through the signed contract, which is all that is required.

For sealed bids, which constituted 2 of the contracts we reviewed and almost 9 percent of federal construction contracts awarded in fiscal year 2010, the responsibility determination is the only time when an offeror's experience and past performance are considered. For sealed bids, the responsible firm whose low bid, considering only price and price-related factors, is responsive to the solicitation wins the contract. Aside from determining responsibility, no further consideration or evaluation of prior experience or past performance is done or required for sealed bids.

SBA has final authority to determine the responsibility of small business concerns.¹⁵ If a contracting officer determines that a small business, which would otherwise be the successful offeror, is nonresponsible, the case must be referred to SBA. SBA will review the firm's credit, capability, competency, capacity, integrity, and perseverance and determine the business either nonresponsible or issue a certificate of competency. If SBA issues a certificate of competency, it serves as the responsibility determination and the contracting officer must award the contract to that offeror. None of the procurements we reviewed involved situations in which the contracting officer referred the case to SBA for a possible certificate of competency.

Resources Available to Assist Firms Gain Entry to the Federal Marketplace

Officials from USACE, PBS, CBP, and SBA told us that the consideration of prior experience or past performance is not an impediment for winning government contracts as offerors generally cite their prior work. However, one of the industry association representatives we met with explained that based on discussions with firms across the country, it appears that construction firms with commercial sector experience, but no government contracting experience, are disadvantaged when competing for federal contracts. Despite differing views regarding whether the consideration of prior experience or past performance is an impediment, both agency and industry association officials agreed that small firms seeking to win federal construction contracts face a variety of challenges, such as building up relevant work experience, financial resources, and bonding capacity to compete for large contracts. For example, performance and payment bonds are required for construction contracts exceeding \$150,000 to ensure the firms have the financial capacity to perform the project and pay for labor and supplies. The officials explained that many small firms have limited bonding capacity due to their financial condition, which in turn limits their ability to

¹⁵15 U.S.C. § 637(b)(7) and FAR § 9.105-2(a)(2).

compete for contracts that exceed their bond. To help address the challenges that firms with little to no prior construction contracting experience may face in gaining entry into the federal marketplace, agency officials identified a number of federal resources that are available to firms, particularly small businesses. These resources include outreach and education, subcontracting opportunities and mentor-protégé programs, and SBA programs.

Outreach and Education

Officials from all three agencies we met with identified a variety of outreach and educational resources available, particularly for small firms, to help firms do business with the federal government. For example, a contracting officer we met with stated that one challenge new firms face in winning government contracts is understanding the government contracting process. To help address this challenge, the three agencies have small business offices at the headquarters and the regional or division level.¹⁶ Specifically, at the region- and division-level offices we visited, officials explained that they conduct a variety of outreach events with firms seeking assistance in competing for federal construction contracts. These periodic events provide firms with information on marketing to the federal government and preparing proposals, as well as opportunities to meet and network with contracting officers and SBA officials. In addition, each agency provides information about its organizational structure and operations, key contact information, and solicitations and acquisition initiatives on which firms can bid. Information about these and other resources can be found on the agencies' websites, which are listed in enclosure II.

Additionally, the three agencies' small business offices told us that they conduct monthly meetings through which business owners can meet one-on-one with the agency's small business liaison and contracting officers. PBS officials also hold regular meetings with representatives from different socioeconomic business groups, such as service disabled veteran-owned small businesses, to provide counseling and assistance on gaining entry into the federal marketplace. Officials from PBS's small business office stated that they recently started holding access forums that allow small firm owners one-on-one meetings to market their services to potential customer agencies. While one of the industry association officials we met with recognized that the agencies have a number of outreach and education efforts, he explained that it would be helpful if they could do more, particularly in terms of holding events that are tailored to specific projects.

Officials from USACE, PBS, and CBP small business offices told us that when a firm requests assistance with preparing an offer in response to a specific solicitation, they refer the firm to the Procurement Technical Assistance Centers.¹⁷ These centers provide firms assistance on how to write a proposal, perform market research to determine which contracts they are best suited for, position their firms to compete for contracts, and bid on current federal procurement opportunities.

¹⁶At headquarters, the Office of Small and Disadvantaged Business Utilization (called Office of Small Business Programs at the Department of the Army and other DOD components) advocates for small businesses within the agency. At the regional or division level, staff assigned to work on small business issues (small business specialists) coordinate with the Office of Small and Disadvantaged Business Utilization on their agencies' small business programs. For more information on Offices of Small and Disadvantaged Business Utilization, see GAO, *Small Business Contracting: Action Needed by Those Agencies Whose Advocates Do Not Report to Agency Heads as Required*, GAO-11-418 (Washington, D.C.: June 3, 2011).

¹⁷Procurement Technical Assistance Centers are administered by DOD as a result of the creation of the Procurement Technical Assistance Program by the Congress to help firms compete successfully in federal, state, and local government contracting arenas.

For firms that lose a competition, one way they can gain additional insights into the federal contracting process is to request a debriefing from the agency. A representative from one industry association we spoke with explained that debriefings are an important tool for helping firms understand how they can improve their competitiveness but noted that debriefings are not offered uniformly across agencies and are sometimes not timely or thorough. DHS officials explained they are training their contracting officers on how to provide debriefings and encouraging debriefings to all unsuccessful offerors as a matter of practice.

Subcontracting Opportunities and Mentor-Protégé Programs

Officials from USACE, PBS, and CBP stated that one effective method for new firms to enter the federal marketplace, particularly for construction, is to work as a subcontractor for a prime contractor. Working as a subcontractor enables a firm to build up relevant work experience, establish a past performance record, become more familiar with the federal contracting process, and increase its financial capacity. Additionally, officials at all three agencies cited industry days as networking events that can help firms find subcontracting opportunities. These events are designed to help established firms that contract with the federal government team up with new firms seeking to enter the federal marketplace. Such arrangements not only provide opportunities for the new firms, but larger contractors have a vested interest in teaming up with small firms because a key element to winning certain large federal construction contracts can involve the submission of a subcontracting plan that specifies that a certain percentage of the work will be performed by small businesses.¹⁸

Another method for firms to enter the federal marketplace is participating in mentor-protégé programs. A mentor-protégé program is an arrangement in which mentors—typically experienced prime contractors—provide technical, managerial, and other business development assistance to eligible small firms, or protégés. The protégés can then cite the work they performed under such an arrangement when competing for future federal contracts. In return, the programs provide incentives for mentor participation, such as credit toward subcontracting goals, additional evaluation points toward the awarding of contracts, and in some cases, cost reimbursement. Overall, mentor-protégé programs seek to enhance the ability of small firms to compete more successfully for federal government contracts by furnishing them with assistance to improve their competitiveness.¹⁹

Small Business Programs

There is a range of resources available to assist small firms through SBA, which was created as an independent agency of the federal government to aid, counsel, assist, and protect the interests of small firms and to preserve free competitive enterprise. SBA Procurement Center Representatives and Commercial Market Representatives provide counseling to small firms to help them compete for work with federal agencies and ensure that small businesses receive a fair and equitable opportunity to participate in federal prime

¹⁸Subcontracting plans are generally required for construction contracts (or modifications to contracts) that are expected to exceed \$1.5 million and that have subcontracting possibilities. FAR § 19.702(a).

¹⁹In June 2011, we issued a report on the federal mentor-protégé programs at 13 agencies, including controls the agencies used to help ensure that the programs are beneficial to program participants. See GAO, *Mentor-Protégé Programs Have Policies That Aim to Benefit Participants but Do Not Require Postagreement Tracking*, GAO-11-548R (Washington, D.C.: June 15, 2011).

contracts and subcontracts.²⁰ SBA also works directly with federal agencies' small business utilization offices across the country to increase small businesses' share of federal procurement awards.

In addition, SBA administers a number of programs designed to help small firms, including the 8(a) Business Development Program and initiatives targeted toward service-disabled veteran-owned, women-owned, and HUBZone small businesses.²¹ For example, the 8(a) program was created to help small and disadvantaged businesses compete in the federal marketplace. Once a firm becomes an 8(a) certified contractor,²² SBA works with federal agencies to match the small firm's qualifications with appropriate opportunities where they can obtain federal contracts through competitive and noncompetitive processes limited to 8(a) firms. For example, PBS issued the three purchase orders we reviewed for building maintenance and office renovations on a sole-source basis to 8(a) firms. Participation in the 8(a) program is subject to a 9-year program term.²³

Agency Comments

We provided a draft of this report to DOD, DHS, GSA, and SBA for review and comment. DHS provided written comments, which are reproduced in enclosure III, that noted the department remains committed to awarding contracts in compliance with the Federal Acquisition Regulation, obtaining fair and reasonable prices, and conducting outreach and education efforts to help small firms do business with DHS. SBA provided technical comments that were incorporated in the report, as appropriate. DOD and GSA informed us that they had no comments on the report.

²⁰In June 2011, we issued a report on the Small Business Administration's Procurement Center Representatives and Commercial Market Representatives, including options for improving their effectiveness. See GAO, *Improvements Needed to Help Ensure Reliability of SBA's Performance Data on Procurement Center Representatives*, GAO-11-549R (Washington, D.C.: June 15, 2011).

²¹The Historically Underutilized Business Zones (HUBZone) program provides federal contracting assistance to qualified small businesses in historically underutilized business zones to increase employment opportunities, investment, and economic development in such areas.

²²To participate in the 8(a) program, a firm must be a small business as defined by SBA, be unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of the United States, and show potential for success.

²³GAO, *Small Business Administration: Steps Have Been Taken to Improve Administration of the 8(a) Program, but Key Controls for Continued Eligibility Need Strengthening*, GAO-10-353 (Washington, D.C.: Mar. 30, 2010).

We are sending copies of this report to the Secretaries of Defense and Homeland Security, the Administrator of General Services, and the Administrator of the Small Business Administration, as well as interested congressional committees. In addition, the report is available at no charge on GAO's website at <http://www.gao.gov>. If you or your staff have any questions about this report, please contact me at (202) 512-4841 or woodsw@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in enclosure IV.



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Enclosures – 4

Enclosure I: Scope and Methodology

Our review focused on selected components from three federal agencies:

- Department of Defense's (DOD) U.S. Army Corps of Engineers (USACE),
- General Services Administration's (GSA) Public Buildings Service (PBS), and
- Department of Homeland Security's (DHS) Customs and Border Protection (CBP).

We selected these agencies and components based on their fiscal year 2010 obligations, as reported in the Federal Procurement Data System—Next Generation (FPDS—NG), for construction contracts, which includes the construction of structures and facilities and real property maintenance. In fiscal year 2010, DOD's construction contract obligations were greater than all other federal agencies combined, while GSA had the highest civilian agency construction contract obligations. USACE and PBS had the highest fiscal year 2010 construction contract obligations of the components within their respective agencies. We included DHS and CBP, which accounted for a quarter of DHS's fiscal year 2010 construction obligations, in our review even though they obligated significantly less on construction contracts so we could obtain insights into how other agencies and components consider prior experience and past performance when awarding construction contracts.

To understand how agencies are to consider prior experience and past performance, we reviewed the Federal Acquisition Regulation (FAR) and the three agencies' FAR supplements, as well as other agency policies and procedures on source selection and contract award. We then reviewed 29 competitive and noncompetitive contracts awarded in fiscal year 2010 by the three agencies to help illustrate how regulations, policies, and procedures were applied.²⁴ The competitive procurements include 12 contracts and 13 orders under indefinite delivery / indefinite quantity (IDIQ) contracts, which were selected in a nongeneralizable manner so our sample would contain a wide diversity of characteristics, such as method of acquisition, type of construction project, and dollar value. The noncompetitive procurements include one contract and three purchase orders. For each procurement, we reviewed documents from the agencies' files pertaining to their acquisition plan, solicitation, source selection decision, and other documents related to the consideration of prior experience and past performance. For the 13 procurements made by placing orders under IDIQ contracts, we reviewed the documentation associated with the selected orders and the 9 contracts the orders were made against.²⁵ The results of our review of these procurements cannot be generalized across USACE, PBS, CBP, or other agencies' construction procurements. In addition, we interviewed policy, contracting, and small business officials from the three agencies; their respective components; and the district, region, or division offices responsible for the selected procurements to obtain their perspectives on how prior experience and past performance are considered when awarding contracts. Finally, we reviewed 43 bid protest decisions issued by GAO in fiscal years 2009 and 2010 that we identified as involving the consideration of prior experience and past performance to gain additional perspective on how these factors are considered.²⁶ These 43 bid protests were associated with a range of procurements, including 14 that were

²⁴We originally selected 10 contracts from each agency based on data available in FPDS-NG. However, upon review of the files, we excluded one USACE contract from our review as it was not a fiscal year 2010 award.

²⁵Five orders in our sample were placed under the same IDIQ contract.

²⁶Bid protests may be filed at GAO against procurement actions by federal government agencies. A bid protest is a challenge to the award or proposed award of a contract for procurement of goods and services or a challenge to the terms of a solicitation for such a contract. Protests can also be filed with the agency responsible for the procurement and the U.S. Court of Federal Claims. For the purposes of this report, we only reviewed bid protests filed with GAO that resulted in a decision published in either fiscal year 2009 or 2010.

construction-related, and various federal agencies, including the three that were the focus of our review.

To obtain information on the resources available to assist firms, we conducted interviews with policy, contracting, and small business officials at the three selected agencies as well as officials from the Small Business Administration and two industry associations—the U.S. Chamber of Commerce and the Associated General Contractors of America. We also reviewed information available to firms through the agencies' websites.

We conducted this performance audit from April 2011 to October 2011 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.

Enclosure II: Resources Available to Assist Firms

Federal agencies' websites have dedicated sections to help firms, particularly small businesses, learn how to market their services. The sites provide a variety of resources available to help firms including information on how to do business with the federal government and tools for identifying potential contracting opportunities, as well as information on upcoming training and networking opportunities offered by the agencies. Listed below are links to the resources available on the websites of selected agencies and components.

Small Business Administration

Website: <http://www.sba.gov/category/navigation-structure/contracting>

- Provides small businesses with information on basic steps to get started in government contracting, working with the government, contracting opportunities, and links to government contracting policies and documents, such as the Federal Acquisition Regulation.

Department of Defense

Website: <http://www.acq.osd.mil/osbp/>

- Provides information on departmentwide programs and resources available to small businesses, including links to Procurement Technical Assistance Centers that provide training and counseling assistance at no cost.

U.S. Army Corps of Engineers

Website: <http://www.usace.army.mil/about/Pages/Locations.aspx>

- Provides firms with information to locate contracting opportunities in a particular district.
 - For example, to find opportunities in the Fort Worth District, click on the "Fort Worth District" link.
 - On the Fort Worth District website, select the "Business" tab, then the "Office of Small Business" tab to display the district's small business resources. Website: <http://www.swf.usace.army.mil/pubdata/SBO/index.asp>.
 - The small business office page for each district, such as Fort Worth, displays the district's upcoming projects along with tools and resources.

General Services Administration

Website: <http://www.gsa.gov/portal/content/105221>

- Provides small businesses with agencywide contracting information on selling to the government and researching potential business opportunities, as well as training and counseling sessions.

Public Building Service

Website: <http://www.gsa.gov/portal/content/103328>

- Provides firms with information on bidding for federal construction projects.

Department of Homeland Security

Website: <http://www.dhs.gov/xopnbiz/smallbusiness/>

- Provides small businesses with departmentwide contracting information on getting started, doing research, networking, business opportunities, and opportunities for teaming with larger firms.

Customs and Border Protection

Website: http://www.cbp.gov/xp/cgov/toolbox/contacts/contracting/bus_pro.xml

- Provides information on small-business opportunities and events, such as industry days.

Enclosure III: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

October 12, 2011

William T. Woods
Director, Acquisition and Sourcing Management
441 G Street, NW
U.S. Government Accountability Office
Washington, DC 20548

Re: Draft Report GAO-12-102R, "Prior Experience and Past Performance as Evaluation Criteria in the Award of Federal Construction Contracts"

Dear Mr. Woods:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's work in planning and conducting its review and issuing this report.

The Department is pleased to note the report's positive acknowledgement that the agencies reviewed, including U.S. Customs and Border Protection, appropriately considered experience and past performance as evaluation criteria in the award of federal construction contracts. Although the report does not contain any recommendations for DHS, the Department remains committed to:

- soliciting, evaluating, and awarding contracts in compliance with the Federal Acquisition Regulation,
- obtaining fair and reasonable prices, and
- conducting outreach and educational efforts to help small firms do business with DHS.

Again, thank you for the opportunity to review and comment on this draft report. We look forward to working with you on future Homeland Security issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim H. Crumpacker".

Jim H. Crumpacker
Director
Departmental GAO-OIG Liaison Office

Enclosure IV: GAO Contact and Staff Acknowledgments

GAO Contact

William T. Woods, (202) 512-4841, woodsw@gao.gov

Staff Acknowledgments

In addition to the contact named above, Johana R. Ayers, Assistant Director; Morgan Delaney Ramaker; Kristine Hassinger; Julia Kennon; John Lack; and Leigh Ann Nally made key contributions to this report.

(120988)

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