

**RECORD VERSION**

**STATEMENT BY**

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**BEFORE THE**

**SUBCOMMITTEES ON BORDER SECURITY AND ENFORCEMENT AND  
OVERSIGHT, INVESTIGATIONS, AND ACCOUNTABILITY  
COMMITTEE ON HOMELAND SECURITY  
UNITED STATES HOUSE OF REPRESENTATIVES**

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**ON CONTRACTING FOR THE BORDER BARRIER SYSTEM AT THE SOUTHWEST  
BORDER**

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COMMITTEE ON HOMELAND SECURITY**

Chairman Higgins, Chairman Bishop, Ranking Member Correa, Ranking Member Ivey, and distinguished Members of the Subcommittees, thank you for the opportunity to address you today on behalf of the U.S. Army Corps of Engineers (USACE).

The Contracting Activity for USACE is entrusted with executing contracts to manage complex infrastructure projects. We understand the significance of an efficient and transparent contracting process to ensure the successful execution of our nation's priorities, and take this responsibility seriously.

USACE has a proud history of delivering critical infrastructure projects with the highest standards of quality, cost-effectiveness, and integrity. We recognize that the border wall project has garnered substantial attention, both in terms of its nationally prominent mission and the associated challenges it presented.

USACE plays a critical role in the planning, design, and construction of various infrastructure projects across the United States, including those related to border security. In the context of the border wall, USACE has a long-standing relationship with the Department of Homeland Security (DHS), Customs and Border Protection (CBP). From 2003 until 2018, USACE partnered with CBP to complete approximately 653 miles of border barrier, which included approximately 353 miles of pedestrian barrier and 300 miles of vehicular barrier. Our efforts associated with this work included real estate planning, environmental mitigation, and design and construction. These efforts were under various authorities including the Secure Fence Act of 2006. In 2017, USACE assisted CBP by providing engineering subject matter expertise to assist with the solicitation of prototype border barriers and the evaluation of prototype construction methods proposed by CBP contractors. In relation to border wall construction, three distinct authorities guided USACE's involvement; support under the Economy Act to CBP utilizing CBP appropriations, and later, USACE's support to the Department of Defense (DoD) under 10 U.S.C. §284 and §2808. Regardless of the authorities and appropriations used, USACE acted solely as the design and construction agent for CPB

and DoD/Army, meaning USACE provided design and construction services, to include contract award and oversight and acceptance of the contracted work. In performing duties under these authorities, USACE ensured that the contracting process was conducted fairly, transparently, and in accordance with applicable laws and regulations.

Transparency and accountability are fundamental principles within the Federal Acquisition system and guide USACE's contracting practices. Throughout the procurement process, we prioritized open competition to the maximum extent practicable given program requirements.

Over the past several years, there has been significant interest in our border barrier procurements, including from the U.S. Government Accountability Office (GAO). The GAO found that USACE conducted its acquisitions consistent with applicable laws and regulations.

On January 25, 2017, the President of the United States issued Executive Order 13767, titled, "Border Security and Immigration Enforcement Improvements," requiring the Secretary of DHS to take all appropriate steps to immediately plan, design, and construct a physical wall along the southern border. USACE received the mission to support DHS' Border Infrastructure Program under the Economy Act. The program anticipated approximately \$20 billion of border infrastructure construction to be executed over a ten-year period, using both Design-Build and Design-Bid-Build delivery methods to execute various requirements such as fence, wall, patrol roads, access roads, lights, gates for access to border monuments, maintenance, and for Border Patrol operational use, drainage improvements, levee walls, and other miscellaneous improvements, repairs, and alterations. USACE used a mix of existing contracting tools to execute immediate and near-term actions, while completing the acquisition planning process to create two to four separate Design Build Multiple Award Task Order Contracts targeted for award in 2019.

On February 15, 2019, the President of the United States declared a national emergency on the southern border making available certain emergency authorities to include 10 U.S.C. §284 and §2808.

On February 25, 2019, pursuant to 10 U.S.C. §284, DHS, through CBP, requested that DoD assist DHS in its efforts to secure the southern border.

On March 25, 2019, the Acting Secretary of Defense designated USACE as the Construction Agent for these programs and directed that construction begin by the end of the fiscal year. In response, USACE immediately proceeded with the development, solicitation, evaluation, and award of contracts for construction under the §284 program, while simultaneously continuing execution of contracts under DHS annual appropriations. On September 3, 2019, the Secretary of Defense provided guidance for undertaking Military Construction Projects pursuant to 10 U.S.C. §2808. USACE awarded contracts in response to this guidance beginning in November 2019.

On January 20, 2021, the President of the United States terminated the national emergency declaration with respect to the southern border of the United States and directed the Secretaries of DHS and DoD to create an implementation plan for redirecting funding and repurposing contracts.

On January 23, 2021, the Deputy Secretary of Defense directed implementation of the pause of construction pursuant to the Presidential proclamation. USACE subsequently issued suspension of work letters to pause all construction until USACE received applicable implementation plans.

On April 30, 2021, the Secretary of the Army directed USACE to take immediate action to cancel all construction undertaken pursuant to 10 U.S.C. §284 and §2808. USACE then terminated those contracts pursuant to Federal Acquisition Regulation Clause 52.249-2, Termination for Convenience of the Government, by May 1, 2021. The termination for convenience process has numerous steps including, making work sites

safe, disposing of excess materials, receiving a termination settlement proposal from affected contractors, auditing proposals by the Defense Contract Audit Agency, and negotiating final contract settlement amounts. This process is on-going and is projected to continue through 2024.

On September 17, 2021, DHS directed USACE to begin the process for partially cancelling the DHS border wall program while completing certain life safety activities for levee and non-levee projects as directed in the DHS Secretary's exception memo dated April 30, 2021, and the subsequent Decision Memo signed July 24, 2021. In October of 2021, USACE began the Termination for Convenience process for the affected contracts under the DHS program. USACE follows all applicable laws, regulations, policies throughout the contract termination process.

Thank you for the opportunity to present this testimony about USACE's contracting support to border wall construction operations before your combined Subcommittees, and for your continued support for the soldiers and civilians of USACE.