

Inspector General

United States
Department of Defense



U.S. Army Corps of Engineers, Civil Works,
Vicksburg, Generally Met the
Recovery Act Requirements

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Acronyms and Abbreviations

FAR	Federal Acquisition Regulation
FBO	Federal Business Opportunities
FPDS	Federal Procurement Data System
J&A	Justification and Approval
MR&T	Mississippi River and Tributaries
O&M	Operation and Maintenance
OMB	Office of Management and Budget
QMAD	Quantitative Methods and Analysis Division
USACE	U.S. Army Corps of Engineers



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
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March 23, 2011

MEMORANDUM FOR COMMANDING GENERAL, U.S. ARMY CORPS OF
ENGINEERS
AUDITOR GENERAL, DEPARTMENT OF THE ARMY
COMMANDER, U.S. ARMY CORPS OF ENGINEERS,
VICKSBURG DISTRICT

SUBJECT: U.S. Army Corps of Engineers, Civil Works, Vicksburg, Generally Met the
Recovery Act Requirements (Report No. D-2011-054)

We are providing this report for your information and use. U.S. Army Corps of Engineers, Civil Works, Vicksburg District (USACE Vicksburg), did not facilitate full transparency of the American Recovery and Reinvestment Act of 2009 projects to the public, and contractors may not have been required to adhere to Recovery Act requirements. We considered management comments on a draft of this report when preparing the final report.

The comments from the Commander, USACE Vicksburg, conformed to the requirements of DoD Directive 7650.3. Therefore we do not require any additional comments.

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 601-5868 (DSN 329-5868).

Patricia A. Marsh

Patricia A. Marsh, CPA
Assistant Inspector General
Financial Management and Reporting



Results in Brief: U.S. Army Corps of Engineers, Civil Works, Vicksburg, Generally Met the Recovery Act Requirements

What We Did

We determined whether U.S. Army Corps of Engineers, Civil Works, Vicksburg District (USACE Vicksburg), adequately planned, funded, initially executed, and tracked and reported eight projects at Yazoo Basin, Enid Lake, Mississippi, and Tensas Basin, Beouf and Tensas Rivers, in Arkansas and Louisiana, to ensure the appropriate use of “American Recovery and Reinvestment Act of 2009” (Recovery Act) February 17, 2009, funds.

What We Found

USACE Vicksburg generally complied with planning and funding requirements for the eight Recovery Act projects, valued at \$6.3 million, we reviewed. Additionally, USACE Vicksburg had procedures in place to track and report on the 8 projects. However, USACE Vicksburg needs to improve its initial execution of contract actions to ensure transparency of Recovery Act projects. Specifically, USACE Vicksburg did not:

- include one required Federal Acquisition Regulation (FAR) clause in one of five contracts reviewed,
- post presolicitation notices for two task orders on the Federal Business Opportunities (FBO) Web site, and
- prepare or post a Justification and Approval (J&A) document to the FBO Web site for a noncompetitively awarded contract.

These conditions occurred because, according to USACE Vicksburg personnel, they did not receive timely guidance from USACE headquarters before they executed contract modifications using Recovery Act funds. In addition, USACE Vicksburg contracting officers stated they were not certain whether they needed to post notices for

task orders and modifications to the FBO Web site. Also, USACE Vicksburg personnel misinterpreted DoD policy to post J&A documents for noncompetitively awarded contract actions to the FBO. As a result, USACE Vicksburg did not facilitate full transparency of its Recovery Act projects to the public, and contractors may not have been required to adhere to Recovery Act requirements.

What We Recommend

The Commander, USACE Vicksburg, should ensure that USACE Vicksburg, personnel:

- modify contract W912EE-05-C-0018, modification P00066, to include the required FAR clause;
- consistently follow policies and procedures to comply with OMB guidance for Recovery Act projects and post presolicitation notices to the FBO; and
- prepare and post J&A documents and other contract actions to the FBO Web site for noncompetitively awarded contract actions in accordance with DoD policy.

Management Comments and Our Response

The Commander, USACE Vicksburg agreed with the recommendations and the comments were responsive. No additional comments are required. Please see the recommendations table on the back of this page.

The Commander did not agree with the report finding that USACE Vicksburg did not prepare or post a J&A for a contract modification to the FBO Web site. We have clarified the report finding to state why a J&A should have been posted to the FBO Web site.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Commander, U.S. Army Corps of Engineers, Vicksburg District		1, 2, 3

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Introduction

Audit Objective

Our objective was to determine whether the U.S. Army Corps of Engineers, Civil Works, Vicksburg District (USACE Vicksburg), implemented Public Law 111-5, “American Recovery and Reinvestment Act of 2009” (Recovery Act), February 17, 2009, in accordance with the requirements in the Act and the Office of Management and Budget (OMB) Memorandum M-09-15, “Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009,” April 3, 2009 (OMB M-09-15). Specifically, we determined whether USACE Vicksburg adequately planned, funded, initially executed, and tracked and reported eight projects at Yazoo Basin, Enid Lake, Mississippi, and Tensas Basin, Beouf and Tensas Rivers, in Arkansas and Louisiana, to ensure the appropriate use of Recovery Act funds. See Appendix A for a discussion of our scope and methodology.

Recovery Act Background

In passing the Recovery Act, Congress provided supplemental appropriations to preserve and create jobs; promote economic recovery; assist those impacted by the recession; provide investments to increase efficiency through technological advances in science and health; and invest in transportation, environmental protection, and other infrastructure. The Recovery Act also established unprecedented efforts to ensure the responsible distribution of funds for its purposes and to provide transparency and accountability of expenditures by informing the public of how, when, and where tax dollars were being spent. Further, the Recovery Act states that the President and heads of the Federal departments and agencies were to expend these funds as quickly as possible, in keeping with prudent management.

Recovery Act Audit Requirements

The Recovery Act and implementing OMB guidance require projects to be monitored and reviewed. We grouped these requirements into the following four phases: (1) planning, (2) funding, (3) initial execution, and (4) tracking and reporting. The Recovery Act requires that projects be properly planned to ensure the appropriate use of funds. Review of the funding phase is to ensure the funds were distributed in a prompt, fair, and reasonable manner. Review of the project execution phase is to ensure that contracts awarded with Recovery Act funds were transparent, competed, and contained specific Federal Acquisition Regulation (FAR) clauses; that Recovery Act funds were used for authorized purposes; and that instances of fraud, waste, error, and abuse were mitigated. Review of the execution phase also ensures that program goals were achieved, including specific program outcomes and improved results on broader economic indicators; that projects funded avoided unnecessary delays and cost overruns; and that contractors or recipients of funds reported results. Review of the tracking and reporting phase ensures

that the recipients' use of funds was transparent to the public and that benefits of the funds were clearly, accurately, and timely reported.

Recovery Act Contracting Requirements

The Recovery Act establishes transparency and accountability requirements. Federal Acquisition Circular 2005-32, March 31, 2009, provides policies and procedures for the Government-wide implementation of the Recovery Act and guidance on special contract provisions. Federal Acquisition Circular 2005-32 amended the FAR and provided interim rules that made FAR solicitation provisions and contract clauses immediately available for inclusion in contracts for Recovery Act work.

The specific FAR Recovery Act requirements are for:

- buying American construction material,
- protecting contractor whistleblowers,
- publicizing contract actions,
- reporting, and
- giving the Government Accountability Office and agency Inspectors General access to contracting records.

Federal Government organizations meet requirements for Recovery Act contract actions by posting information on the Federal Business Opportunities (FBO) and Federal Procurement Data System (FPDS) Web sites. FAR Subpart 5.7, "Publicizing Requirements Under the American Recovery and Reinvestment Act of 2009," directs contracting officers to use the Government-wide FBO Web site (<http://www.fbo.gov>) to:

- identify the action as funded by the Recovery Act,
- post pre-award notices for orders exceeding \$25,000,
- describe supplies in a clear narrative to the general public, and
- provide the rationale for awarding any contracting actions that were not both fixed-price and competitive.

FBO is the Federal Government's central source of Federal procurement opportunities. FBO is a Web-based portal that allows agency officials to post Federal procurement opportunities and contractors to search and review those opportunities. Agencies also post contract award notices on FBO. In addition, to provide transparency, FBO has a separate section identifying Recovery Act opportunities and awards.

FPDS is the Federal Government's central source of procurement information. Contracting officers enter information, to include the Treasury Account Symbol, in the FPDS for all Recovery Act contract actions. The Treasury Account Symbol enables FPDS to provide transparency by generating and posting a report containing all Recovery Act contract actions.

OMB Recovery Act Guidance

Criteria for planning and implementing the Recovery Act continue to change as OMB issues additional guidance, and DoD and the Components issue their implementation guidance. OMB M-09-15 provides Government-wide guidance for carrying out programs and activities enacted in the Recovery Act. The guidance states that the President's commitment is to ensure that public funds are expended responsibly and in a transparent manner to further job creation, economic recovery, and other purposes of the Recovery Act. OMB M-09-15 also requires contracting personnel to include appropriate clauses of the FAR in their contract actions. See Appendix B for Recovery Act criteria and guidance.

USACE Recovery Act-Funded Appropriations

Under the Recovery Act, Congress appropriated \$4.6 billion to USACE Civil Works for Operation and Maintenance (O&M), Construction, Mississippi River and Tributaries (MR&T), Formerly Utilized Sites Remedial Action Program, Investigations, and Regulatory Program. Table 1 provides a breakdown of the amount of Recovery Act funds provided for each appropriation.

Table 1. USACE Civil Works Recovery Act Programs

Appropriation	Amount (in millions)
Operation and Maintenance	\$2,075
Construction	2,000
Mississippi River and Tributaries	375
Formerly Utilized Sites Remedial Action Program	100
Investigations	25
Regulatory Program	25
Total	\$4,600

Table 2 shows the allocation of the funds USACE Vicksburg received. See Appendix C for more details.

Table 2. USACE Allocation to the Vicksburg District Office

Appropriation	Amount (in millions)
Operation and Maintenance	\$26.7
Construction	31.6
Mississippi River and Tributaries	125.5
Total	\$183.8

USACE Mission and Functions

USACE Civil Works provides public engineering services in peace and war to strengthen U.S. security, energize the economy, and reduce risks from disasters. USACE Civil Works (1) develops and manages U.S. water resources; (2) protects, restores, and

manages the environment; (3) responds to disasters and aids in recovery; and (4) provides engineering and technical services. According to USACE Civil Works, this multifaceted mission is accomplished in an environmentally sustainable, economically and technically sound manner, through partnerships with other government agencies and nongovernment organizations. USACE executes its programs through 8 regional divisions and 38 district offices. A ninth division and three embedded districts support operations in Iraq and Afghanistan. This report discusses Recovery Act projects at USACE Vicksburg.

Selected Projects at USACE Vicksburg

We made a nonstatistical selection of eight projects, valued at \$6.3 million, at Yazoo Basin, Enid Lake, Mississippi, and Tensas Basin, Boeuf and Tensas Rivers, in Arkansas and Louisiana, for review. These projects were funded with MR&T Recovery Act funds. The following projects were included. (See Appendix A for details on the scope of our review.)

- **Yazoo Basin, Enid Lake.** Enid Lake is part of the Yazoo Headwater Project, which was designed to help protect the Mississippi Delta from flooding. Enid Lake includes a dam, spillway, and fish hatchery and provides recreational activities such as fishing, boating, and camping. At the time of our site visit, USACE Vicksburg had solicited, awarded, or executed contract actions for 11 projects, valued at \$7.8 million, and planned contract actions for 10 projects, valued at \$4.1 million, for the Yazoo Basin, Enid Lake (shown in Figure 1). We reviewed 7 of the 11 projects, valued at \$5.3 million. Table 3 lists the Yazoo Basin, Enid Lake, projects we reviewed. USACE Vicksburg planned to use Recovery Act funds to dredge ramps to the lake; rehabilitate showers and restrooms at recreation areas; purchase a dump truck and work boat; pave access roads; and upgrade recreation area electrical services and dam safety equipment.

Figure 1. Yazoo Basin, Enid Lake



Source: U.S. Army Corps of Engineers, Vicksburg District

Table 3. Projects Reviewed at Yazoo Basin, Enid Lake

Project Description	Amount
Purchase Dump Truck for Dam Operation	\$111,989
Purchase of Loader for Dam Operation and Maintenance	264,414
Painting, Flooring, 2 Building Additions, and a Recreation Shelter	384,419
Paving for public access to project facilities*	4,053,846
Dredging Ramps to Provide Access to the Lakes	500,000
Total	\$5,314,668

*Three projects under one task order including paving roads to dams, project facilities, and flood control areas.

- Tensas Basin, Boeuf and Tensas Rivers.** Boeuf and Tensas Rivers (shown in Figure 2) provide for channel improvement for flood control and afford adequate outlet drainage for 5,300 square miles in southeast Arkansas and northeast Louisiana. At the time of our site visit, USACE Vicksburg had solicited, awarded, or executed contract actions for three projects, valued at \$2.8 million. We reviewed contract actions for one road paving project, valued at approximately \$1 million. USACE Vicksburg also had planned contract actions for three additional projects, valued at \$2.4 million, for the Tensas Basin, Boeuf and Tensas Rivers, projects.

Figure 2. Tensas Basin, Boeuf and Tensas Rivers



Source: U.S. Army Corps of Engineers, Vicksburg District

Internal Controls Not Effective for Implementing Recovery Act

We determined that internal control weaknesses existed as defined by DoD Instruction 5010.40, "Managers' Internal Control (MIC) Program Procedures," January 4, 2006. USACE Vicksburg lacked controls to ensure that all contract actions obligating Recovery Act funds included all required FAR clauses and that contract actions were always posted to appropriate Government Web sites. We will provide a copy of the report to the senior official responsible for internal controls at the U.S. Army Corps of Engineers.

Finding. USACE Vicksburg Generally Met the Recovery Act Requirements

USACE Vicksburg generally complied with the planning and funding requirements for the eight Recovery Act projects, valued at \$6.3 million, reviewed. Additionally, USACE Vicksburg had procedures in place to track and report on the Recovery Act projects. However, USACE Vicksburg needs to improve its initial execution of contract actions to ensure transparency of Recovery Act projects. Specifically, USACE Vicksburg personnel did not:

- include one required Federal Acquisition Regulation (FAR) clause in one of five contracts reviewed,
- post presolicitations notices for two task orders on the Federal Business Opportunities (FBO) Web site, and
- prepare or post a Justification and Approval (J&A) document to the FBO Web site for one noncompetitively awarded contract.

These conditions occurred because, according to USACE Vicksburg personnel, they did not receive timely guidance from USACE headquarters before they executed contract modifications using Recovery Act funds. In addition, USACE Vicksburg contracting officers stated they were not certain whether they needed to post notices for task orders and modifications to the FBO Web site. Also, USACE Vicksburg personnel misinterpreted DoD policy to post J&A documents for noncompetitively awarded contracts to the FBO. As a result, USACE Vicksburg did not facilitate full transparency of its Recovery Act projects to the public, and contractors may not have been required to adhere to Recovery Act requirements.

USACE Vicksburg Generally Complied With the Recovery Act Requirements

USACE Vicksburg generally complied with the Recovery Act planning and funding requirements and used the Recovery Act funds for the intended purposes. Specifically, we reviewed eight projects, valued at \$6.3 million, that USACE Vicksburg properly planned and funded with Recovery Act funds.

...USACE Vicksburg competitively awarded four firm-fixed-price contracts for seven projects and issued a cost-plus-fixed-fee contract for one project.

Of the eight projects, USACE Vicksburg competitively awarded four firm-fixed-price contracts for seven projects and issued a cost-plus-fixed-fee contract for one project. USACE Vicksburg's rationale for awarding the cost-plus-fixed-fee contract modification was that

uncertainties involved in the contract performance did not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract. This rationale was posted on the FBO Web site, as required by FAR.

Proper Planning

USACE Vicksburg properly developed or obtained cost estimates, determined qualified sources and competition requirements, and completed market research to allow for small-business participation in accordance with OMB M-09-15. OMB M-09-15 states that departments and agencies should support projects that have a demonstrated or potential ability to achieve long-term public benefits by investing in an improved quality of life, environmental protection, and other infrastructure that will provide long-term economic benefits. USACE Vicksburg developed requirements and obtained cost estimates from local dealers before sending requests for quotes to four service-disabled veteran-owned companies to purchase dam safety equipment. In addition, USACE Vicksburg selected backlogged maintenance projects that allowed for quick execution of funds, in keeping with the intent of the Recovery Act.

Work package justification reports also showed that USACE Vicksburg began planning for the projects we reviewed in FY 2005 and planning for the requirements 19 years ago. For example, in 1991, USACE Vicksburg conducted a dam safety inspection and concluded that “all projects visited had the bare minimum on-site equipment with which to respond quickly to a dam safety emergency.” The inspection also concluded that the equipment had exceeded its normal life expectancy and needed replacement. Consequently, USACE Vicksburg purchased dam safety equipment to maintain the required level of dam safety.

In addition, USACE Vicksburg properly used Recovery Act funds for road paving, dredging, erecting a shelter, and constructing additional office space and storage bays to existing buildings. These were within the scope of work for the eight projects we reviewed. Figure 3 shows bays funded by the Recovery Act at Yazoo Basin, Enid Lake.

Figure 3. Bays at Yazoo Basin, Enid Lake



Source: U.S. Army Corps of Engineers, Vicksburg District

Proper Distribution of Recovery Act Funds

USACE Vicksburg personnel properly distributed funds to projects in accordance with Recovery Act requirements and OMB M-09-15. Specifically, the Work Allowance Documents reviewed showed that USACE Vicksburg suballocated the funds promptly to the Yazoo Basin, Enid Lake; and Tensas Basin, Boeuf and Tensas Rivers, projects. The five contracts and other obligation documents reviewed also cited the appropriate Recovery Act Treasury account fund symbols.

Proper Tracking and Reporting

USACE Vicksburg had procedures in place to track and report the Recovery Act projects we reviewed and to ensure that contractors properly tracked and reported required information in accordance with OMB M-09-15.¹ Specifically, USACE Vicksburg used spreadsheets to track and compare monthly scheduled obligations to actual obligations and expenditures per appropriation. USACE Vicksburg personnel also tracked funding and scheduling of each Recovery Act project, and funding documents properly identified the Recovery Act designation. USACE Vicksburg procedures also required contracting officers to perform quarterly reviews of contractor reporting to the Federal Reporting Web site <http://www.federalreporting.gov>. The quarterly reviews ensured that the contractors posted accurate information to the Web site in accordance with OMB M-09-15.

USACE Vicksburg Omitted One Required FAR Clause in One Contract Modification

USACE Vicksburg personnel did not include a required FAR clause in one of the five contracts we reviewed. Specifically, modification P00066 to contract W912EE-05-C-0018, valued at \$384,419, did not include FAR 52.225-21, “Buy American Act.” The

... USACE headquarters did not provide guidance before the execution of the contract modification, and personnel had to go back and modify contract actions.

contract modification was awarded on July 29, 2009. According to USACE Vicksburg personnel, USACE headquarters did not provide guidance before the execution of the contract modification, and personnel had to go back and modify contract actions.

In addition, USACE Vicksburg personnel stated that they did not include the Buy American Act clause in modification P00066 because it was an in-scope modification to a base service contract and not to a construction contract. However, the requirements of modification P00066 included the “construction of a new, on grade, 40’ x 100’ pre-engineered structure.” FAR 25.1102 requires that construction contracts using Recovery Act funds should include the FAR 52.225-21 clause. As defined in FAR 52.225-21, “construction materials include material or supplies brought to the construction site.” Because a service contract was modified to include a construction project, as defined in

¹ The DoD Office of Inspector General is conducting a separate audit, Project No. D2009-D000FH-0182.010, and will issue a separate report on USACE Civil Works recipient reporting of Recovery Act funds.

FAR 52.225.21, USACE Vicksburg personnel should have included the Buy American Act in modification P000666.

Because the clause was not included, contractors may not have been required to adhere to Recovery Act requirements. USACE Vicksburg personnel should modify existing Recovery Act contracts or task orders to include the required FAR clause. See Appendix D for a summary of FAR clauses in USACE Vicksburg contracts we reviewed.

USACE Vicksburg Did Not Post Presolicitation Notices to the FBO Web Site

USACE Vicksburg did not post presolicitation notices for two task orders issued on contracts W912EE-09-D-0005 and W912EE-09-D-0008, valued at about \$5.1 million, on the FBO Web site. In addition, USACE Vicksburg did not timely post the modification award notice to the FBO Web site. Contracting officers stated they were not certain whether they needed to post notices for task orders and modifications. However, FAR sections 5.704 and 5.705 require that pre-award and post-award contract actions for orders of \$25,000 or more, issued under task or delivery order, be publicized to enhance transparency to the public. Also, on the “Contract Quarterly ARRA [American Recovery and Reinvestment Act] Management Control Check List – V1,”² USACE Vicksburg personnel checked “Yes” to a question indicating that both task orders were posted to the FBO Web site as required by FAR 5.704(a)(2). USACE Vicksburg personnel should post contract actions to facilitate full transparency of their Recovery Act projects to the public.

USACE Vicksburg Did Not Prepare or Post Justification and Approval Document to the FBO Web Site

USACE Vicksburg did not prepare or post a J&A document for noncompetitively awarded modification P00066 to contract W912EE-05-C-0018 to the FBO Web site.

However, USACE Vicksburg did not prepare or post the J&A document, as required by a DoD policy memorandum.

USACE Vicksburg posted a rationale explaining the use of noncompetitive procedures on the FBO Web site. In addition to the rationale, the FBO posting stated, “See posted J&A for further information.” However, USACE Vicksburg did not prepare or post the J&A document, as required

by a DoD policy memorandum. USACE Vicksburg personnel stated that J&A, as stated in FAR 6.303, was not required because it was a modification to a base contract. Personnel also stated that “see posted J&A for further information” is system-populated language and they had no control over it.

²This is a mandatory internal checklist (Fragmentary Order 22) that all USACE contracting offices are required to perform. Answers to the questions on the checklist indicate whether USACE Vicksburg followed the Recovery Act guidance.

In a memorandum to DoD Components,³ the Director, Defense Procurement and Acquisition Policy, required that in addition to documenting the rationale for new contract awards or modifications, entities should ensure that the appropriate J&A document is posted on the FBO Web site. The posting of the J&A was a DoD requirement, and by not posting the J&A to the FBO Web site and stating that it has been posted, USACE Vicksburg did not ensure full transparency of its contracting process for noncompetitive and other-than-fixed-price contracts that used Recovery Act funds. USACE Vicksburg personnel should prepare and post J&A documents to the FBO Web site for noncompetitively awarded contract actions.

Management Comments on the Finding and Our Response

Management Comments

The Commander, USACE Vicksburg, did not agree with the report finding that J&A for modification P00066 to contract W912EE-05-C-0018 should have been posted to the FBO Web site. The Commander stated that the modification did not add “new work” to the original contract as required by the Under Secretary of Defense for Acquisition, Technology, and Logistics memorandum. Instead, the Commander stated that the modification incorporated Recovery Act funding (accounting and appropriation data) to an existing contract and that it was an administrative modification to ensure accountability and visibility of work funded by the Recovery Act.

Audit Response

We agree that, generally, J&A for “in-scope” modifications that do not add “new work” to existing contracts need not be posted to the FBO Web site. However, modification P00066 added “new work” to contract W912EE-05-C-0018. The statement of work for contract W912EE-05-C-0018 required the contractor to “furnish all labor, equipment, fuel, supplies, transportation, supervision, and management to provide inspection, operation, maintenance, repair, reconstruction and rehabilitation of project facilities and features managed by the U.S. Army Corps of Engineers.” The contract modification included a requirement for the contractor to furnish and install a “pre-engineered steel building addition with three 20 feet bays at building number 657.” In addition, the modification included “construction of a new, on grade, 40 [feet] by 100 [feet] pre-engineered steel structure, with finished wall/ceiling office space, break area, restroom/shower, finished storage areas and unfinished storage areas.” This is construction, and it was not in the scope of the original contract. As defined in FAR 52.225-21, “construction materials include material or supplies brought to the construction site.” Therefore, USACE Vicksburg, should have prepared and posted a J&A for the contract modification to the FBO Web site.

³ Under Secretary of Defense for Acquisition Technology, and Logistics memorandum, “Updated Instructions for Posting Pre-Solicitation and Award Notices; Reporting Contract Actions; and Reporting Performance Assessment for Actions Funded by the American Recovery and Re-Investment Act of 2009,” April 21, 2009.

Recommendations, Management Comments, and Our Response

We recommend that the Commander, U.S. Army Corps of Engineers, Vicksburg District, ensure that USACE Vicksburg personnel:

- 1. Modify contract W912EE-05-C-0018, modification P00066, and other Recovery Act contracts or task orders as necessary to include the required Federal Acquisition Regulation clauses.**

Management Comments

The Commander, USACE Vicksburg, agreed with the recommendation and stated that the contracted work funded with the modification has been completed and the contract was about to expire (on February 28, 2011) and a new contract was awarded to replace W912EE-05-C-0018. The Commander also stated that should USACE Vicksburg receive future Recovery Act funds, the district officials would ensure that the new contract was modified to include the required FAR clauses. The Commander also noted that contract W912EE-05-C-0018 was a service contract, not a supply contract, as stated in the draft copy of the report.

Our Response

The Commander, USACE Vicksburg, comments are responsive, and no additional comments are required. We have also changed the report to indicate that contract W912EE-05-C-0018 is a service contract.

- 2. Consistently follow policies and procedures to comply with Office of Management and Budget guidance for Recovery Act projects and post presolicitation notices to the Federal Business Opportunities Web site.**

Management Comments

The Commander, USACE Vicksburg, agreed with the recommendation and stated that the Vicksburg District failed to post two pre-opportunity notices for paving task orders funded by Recovery Act and issued on an indefinite-delivery, indefinite-quantity contract. The Commander stated that these two task orders were issued early in the Recovery Act efforts and that the requirements to post a pre- and post-award notice was included on all other task orders. In addition, although USACE Vicksburg officials were unable to provide any corrective actions for having failed to provide a pre- and post-award notice on the FBO Web site, the Commander stated that if the Vicksburg District received future Recovery Act funds, officials would prepare pre- and post-award notices on all proposed work.

Our Response

The Commander, USACE Vicksburg, comments are responsive, and no additional comments are required.

3. Prepare and post Justification and Approval documents and other contract actions to the Federal Business Opportunities Web site for noncompetitively awarded contract actions in accordance with the Federal Acquisition Regulation and DoD policy.

Management Comments

The Commander, USACE Vicksburg, agreed with the recommendation and stated that J&A documents and other contract actions would be prepared and posted to the FBO Web site for noncompetitively awarded contract actions “that add new work to an existing contract using Recovery Act funds.”

Our Response

The Commander, USACE Vicksburg, comments are responsive, and no additional comments are required.

Appendix A. Scope and Methodology

We conducted this performance audit from December 2009 through December 2010 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. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our audit objectives.

To accomplish our objective, we audited the planning, funding, initial execution, and tracking and reporting of Recovery Act projects to determine whether efforts of USACE Vicksburg complied with Recovery Act requirements, OMB's guidance, the FAR, and DoD implementing guidance. Specifically, we determined whether:

- the selected projects were adequately planned to ensure the appropriate use of Recovery Act funds (Planning);
- funds were awarded and distributed in a prompt, fair, and reasonable manner (Funding);
- contracts contained required Recovery Act FAR clauses (Initial Execution); and
- USACE Vicksburg had procedures in place to track and report Recovery Act projects and to ensure that contractors properly tracked and reported required information in accordance with OMB guidance (Tracking and Reporting).

The Quantitative Methods and Analysis Division (QMAD) of the DoD Office of Inspector General selected most Recovery Act projects and locations using a modified Delphi technique, which allowed us to quantify the risk based on expert auditor judgment and other quantitatively developed risk indicators.

QMAD used additional predictive analytic techniques for public works Recovery Act projects funded directly through USACE. QMAD factored in workload volume, proposed costs, geographic districts, and USACE districts and regions in evaluating the relative risk of problems with oversight and completion.

QMAD did not use classical statistical sampling techniques that would permit generalizing results to the total population because there were too many potential variables with unknown parameters at the beginning of this analysis. The predictive analytic techniques employed provided a basis for logical coverage not only of Recovery Act dollars being expended but also of public works projects managed by USACE.

Yazoo Basin

There were 21 projects for Yazoo Basin, Enid Lake, with a planned funding of over \$11.1 million. We made a nonstatistical selection of 11 projects, with a planned funding of about \$6.6 million, for review. However, we reviewed only 7 of the 11 projects, valued at \$5.3 million. We did not review the remaining four planned projects because USACE Vicksburg had not awarded contracts for those projects at the time of our site visit.

The seven projects we reviewed were executed under four contracts, which included an indefinite-delivery, indefinite-quantity contract; a contract modification; an order against a blanket purchase agreement; and a new contract. The contracts were for road paving, dam safety equipment purchase, operation and maintenance, and ramp dredging. We reviewed the solicitation and award documents for compliance with FAR and OMB guidance.

We reviewed funding documents to ensure that the projects were funded with Recovery Act funds. We viewed selected Web sites to verify contractor self-certifications and reporting of other Recovery Act information. We also accessed selected Recovery Act projects for physical inspection and observation.

Tensas Basin

There were six projects for Tensas Basin, with a planned funding of over \$4.7 million. We made a nonstatistical selection of two projects, with a planned funding of \$2.5 million for review. However, we only reviewed one project, valued at over \$1 million. At the time of our site visit, USACE Vicksburg had not awarded a contract for the other project, valued at \$1.5 million. The contract we reviewed was an indefinite-delivery, indefinite-quantity contract for road paving. We reviewed the solicitation and award documents for compliance with FAR and OMB guidance. We reviewed funding documents to ensure that the projects were funded with Recovery Act funds. We accessed several Web sites to verify contractors' self-certifications and the reporting of other Recovery Act information.

Use of Computer-Processed Data

We used computer-processed data from FBO, FPDS, and Online Representations and Certifications Application Web site. We validated data from these computer systems by comparing the data to hard-copy documentation related to the projects selected for review. We also interviewed program officials responsible for reporting on Recovery Act contract actions and for managing Recovery Act funding. From these procedures, we concluded that the USACE Vicksburg data were sufficiently reliable for our purposes.

Prior Audit Coverage

The Government Accountability Office, the DoD OIG, and the Military Departments have issued reports and memoranda discussing DoD projects funded by the Recovery Act. You can access unrestricted reports at <http://www.recovery.gov/accountability>.

Appendix B. Recovery Act Criteria and Guidance

The following list includes the primary Recovery Act criteria and guidance (notes appear at the end of the list).

- U.S. House of Representatives Conference Committee Report 111-16, “Making Supplemental Appropriations for Job Preservation and Creation, Infrastructure Investment, Energy Efficiency and Science, Assistance to the Unemployed, and State and Local Fiscal Stabilization, for the Fiscal Year Ending September 30, 2009, and for Other Purposes,” February 12, 2009
- Public Law 111-5, “American Recovery and Reinvestment Act of 2009,” February 17, 2009
- OMB Memorandum M-09-10, “Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009,” February 18, 2009
- OMB Bulletin No. 09-02, “Budget Execution of the American Recovery and Reinvestment Act of 2009 Appropriations,” February 25, 2009
- White House Memorandum, “Government Contracting,” March 4, 2009
- White House Memorandum, “Ensuring Responsible Spending of Recovery Act Funds,” March 20, 2009
- OMB Memorandum M-09-15, “Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009,” April 3, 2009¹
- OMB Memorandum M-09-16, “Interim Guidance Regarding Communications With Registered Lobbyists About Recovery Act Funds,” April 7, 2009
- OMB Memorandum M-09-19, “Guidance on Data Submission under the Federal Funding Accountability and Transparency Act (FFATA),” June 1, 2009
- OMB Memorandum M-09-21, “Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009,” June 22, 2009²
- OMB Memorandum M-09-24, “Updated Guidance Regarding Communications with Registered Lobbyists About Recovery Act Funds,” July 24, 2009
- OMB Memorandum M-09-30, “Improving Recovery Act Recipient Reporting,” September 11, 2009

- OMB Office of Federal Procurement Policy, “Interim Guidance on Reviewing Contractor Reports on the Use of Recovery Act Funds in Accordance with FAR Clause 52.204-11,” September 30, 2009²
- OMB Memorandum M-10-08, “Updated Guidance on the American Recovery and Reinvestment Act – Data Quality, Non-Reporting Recipients, and Reporting of Job Estimates,” December 18, 2009²
- OMB Memorandum M-10-14, “Updated Guidance on the American Recovery and Reinvestment Act,” March 22, 2010²
- White House Memorandum, “Combating Noncompliance With Recovery Act Reporting Requirements,” April 6, 2010²
- OMB Memorandum M-10-17, “Holding Recipients Accountable for Reporting Compliance under the American Recovery and Reinvestment Act,” May 4, 2010²

¹ Document provides Government-wide guidance for carrying out programs and activities enacted in the American Recovery and Reinvestment Act of 2009. The guidance states that the President’s commitment is to ensure that public funds are expended responsibly and in a transparent manner to further job creation, economic recovery, and other purposes of the Recovery Act.

² Document provides Government-wide guidance for carrying out the reporting requirements included in section 1512 of the Recovery Act. The reports will be submitted by recipients beginning in October 2009 and will contain detailed information on the projects and activities funded by the Recovery Act.

Appendix C. USACE Allocation to the Vicksburg District Office by Appropriation

Type of Funding	Project Name	Amount (in thousands)
O&M	Bayou Bodcau Reservoir	\$2,110
O&M	Blakely Mt Dam, Lake Ouachita	954
O&M	Caddo Lake	94
O&M	Claiborne County Port	59
O&M	Degray Lake	7,117
O&M	J Bennett Johnston Waterway	5,726
O&M	Lake Providence Harbor	423
O&M	Madison Parish Port	80
O&M	Mouth Of Yazoo River	55
O&M	Narrows Dam, Lake Greeson	2,247
O&M	Quachita and Black Rivers	6,791
O&M	Rosedale Harbor	581
O&M	Wallace Lake	219
O&M	Yazoo River	99
O&M	Yellow Bend Port	160
O&M Total		26,715
Construction	Mississippi Environmental Infrastructure	31,599
Construction Total		31,599
MR&T	Collection and Study of Basic Data	3,965
MR&T	Dikes	6,809
MR&T	Dredging	1,553
MR&T	Greenville Harbor	549
MR&T	Lower Arkansas River, North Bank	2,708
MR&T	Lower Arkansas River, South Bank	333
MR&T	Mississippi River Levees	6,388
MR&T	Revetment Operations	6,246

Appendix C. USACE Allocation to the Vicksburg District Office by Appropriation (cont'd)

Type of Funding	Project Name	Amount (in thousands)
MR&T	Revetments	19,222
MR&T	Tensas Basin, Boeuf and Tensas Rivers	5,934
MR&T	Tensas Basin, Red River Backwater	1,144
MR&T	Vicksburg Harbor	535
MR&T	Yazoo Basin - Upper Yazoo Projects	11,980
MR&T	Yazoo Basin, Arkabutla Lake	9,306
MR&T	Yazoo Basin, Big Sunflower River	7,949
MR&T	Yazoo Basin, Enid Lake	11,093
MR&T	Yazoo Basin, Grenada Lake	11,220
MR&T	Yazoo Basin, Main Stem	2,651
MR&T	Yazoo Basin, Sardis Lake	11,298
MR&T	Yazoo Basin, Tributaries	1,446
MR&T	Yazoo Basin, Yazoo Backwater Area	2,190
MR&T	Yazoo Basin-Greenwood	964
MR&T Total		125,483
Total Vicksburg		\$183,797

Legend

O&M – Operation & Maintenance

MR&T – Mississippi River and Tributaries

Appendix D. Required FAR Clauses for Recovery Act Contracts

	Yazoo Basin, Enid Lake				Tensas Basin, Boeuf and Tensas Rivers
FAR Clauses Required for the Recovery Act	Purchase of Dump Truck/ Front End Loader	Modification to Existing O/M Contract	Task Order for Road Paving	Dredging Diameter	Task Order for Road Paving
FAR 52.203-15 Whistleblower Protection	Y	Y	Y	Y	Y
FAR 52.204-11 Recovery Act Reporting Requirements	Y	Y	Y	Y	Y
FAR 52.212-4 Contract Terms and Conditions – Commercial Items	Y	N/A	N/A	N/A	N/A
FAR 52.212-5 Alt II Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items	Y	N/A	N/A	N/A	N/A
FAR 52.214-26 Alt I Audit and Records – Sealed Bidding	N/A	N/A	Y	Y	Y
FAR 52.215-2 Alt I Audit and Records – Negotiation	Y	Y	N/A	Y	Y
FAR 52.222-6 Davis-Bacon Act	N/A	N1	Y	Y	Y
FAR 52.225-21 and 52.225-22 Use of American Iron, Steel, and Manufactured Goods	N/A	N	Y	Y	Y
FAR 52.244-6 Subcontracts for Commercial Items and Commercial Components	N/A	Y	Y	Y	Y
FAR 52.213-4 Terms and Conditions – Simplified Acquisitions	N/A	N/A	N/A	N/A	N/A

Legend

- “Y” – means contract appropriately included the clause
- “N1” – means the clause was included in a base contract
- “N” – means the contract inappropriately excluded the clause
- “N/A” – indicates a clause that does not apply to the contract

USACE Vicksburg District Comments



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
WASHINGTON, D.C. 20314-1000

CEIR

11 February 2011

MEMORANDUM FOR U.S. Department of Defense, Office of the Inspector General
400 Army Navy Drive,
Arlington, Virginia 22202-4704

SUBJECT: DODIG Draft Report, U.S. Army Corps of Engineers, Civil Works,
Vicksburg Generally Met the Recovery Act Requirements (Project No. D2009-D000FH-
0182.005), dated 11 January 2011.

1. Reference DODIG report, subject as above.
2. USACE comments are attached.
3. If you have additional questions, please contact the undersigned or my point of contact,
[REDACTED]

Encl


BRENDA L. MAYES
Deputy Chief
HQ Internal Review Office

VICKSBURG DISTRICT COMMAND REPLY

DODIG ARRA Draft Report D-2009-FH-0182.005

Recommendation 1. Modify contract W912EE-05-C-0018, modification P00066, and other Recovery Act contracts or task orders as necessary to include the required Federal Acquisition Regulation clauses.

Vicksburg District Response: Concur. However, the contracted work funded by modification P00066 is complete and contract W912EE-05-C-0018 will expire on 28 February 2011 (less than 20 days). A new services contract has been awarded to replace W912EE-05-C-0018 and should the Vicksburg District receive future ARRA funds, which are used on the new contract, we will ensure the required FAR clauses (i.e., 52.225-21, Buy American Act) is included by modification to support these efforts.

NOTE: For clarification purposes, contract W912EE-05-C-0018 is not a supply contract (see last paragraph, page nine of the draft report); it is a services contract with an original scope of work that allowed for construction type work).

Revised

Recommendation 2. Consistently follow policies and procedures to comply with Office of Management and Budget guidance for Recovery Act projects and post presolicitation notices to the Federal Business Opportunities Web site.

Vicksburg District Response: Concur. The Vicksburg District failed to post two pre-opportunity notices for ARRA funded paving task orders issued on an IDIQ contract. The post award notices were posted to the FBO web site and all other task orders had a pre and post award notice on the FBO web site. We are unable to provide any corrective action for failing to provide the pre-opportunity notices on the FBO web site for the two task orders identified in the DODIG report. The post award notices were posted to the FBO web site as required. These two task orders were issued early on in our ARRA efforts and the requirement to post a pre-notice and a post award notice was accomplished on all other task orders. If the Vicksburg District receives future ARRA funds, we will ensure a pre and post award notice is accomplished on all proposed work.

Recommendation 3. Prepare and post Justification and Approval documents and other contract actions to the Federal Business Opportunities Web site for noncompetitively awarded contract actions in accordance with the Federal Acquisition Regulation and DOD Policy.

Vicksburg District Response: Concur. Justification and Approval documents and other contract actions will be prepared and posted to the FBO web site for noncompetitively awarded contract actions (which add new work to an existing contract using ARRA funds).

Additional Management Comments (Unedited):

We do not concur with the DODIG finding concerning the requirement to process and then post a Justification & Approval for work performed under contract W912EE-05-C-0018, modification P00066.

Our rationale is as follows: Based on the DODIG's specified requirement identified on page 11 of the Draft Report "memorandum to DOD Components," the Director, Defense Procurement and Acquisition Policy, required that in addition to documenting the rationale for new contract awards or modifications, entities should ensure that the appropriate J&A document is posted on the FBO Web site." We disagree with the DoDIG's position that a J&A is required for modification P00066, contract W912EE-05-C-0018.

The subject memorandum referred to in footnote 3, dated April 21, 2009 issued by the Under Secretary of Defense for Acquisition Technology, and Logistics, states on page 4, paragraph 3 "that the contracting officer should ensure for ...modifications that add new work that the appropriate J&A document is posted on FedBizOpps in accordance with FAR Part 6.305 requirements. Vicksburg District did not issue a modification to add new work, but instead issued a modification to incorporate ARRA funding (accounting and appropriation data) to an existing contract for work already contemplated for accomplishment by the incumbent contractor and within the scope of the existing contract. Issuing modification P00066 in essence is an administrative modification to ensure accountability and visibility of the ARRA funded work making available the required specific descriptive identification for tracking in the federal reporting system as required by the Act.

Additionally, FAR 6.001 (c) states that the competition requirements are not applicable to contract modifications...that are within the scope and under the terms of an existing contract. Therefore, a Justification and Approval (J&A) document was not required for P00066's ARRA funded work.



Inspector General Department of Defense

