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U.S. Army Corps of Engineers, Civil Works, Memphis  
District, Has Improved Its Compliance With the  
American Recovery and Reinvestment Act

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## Acronyms and Abbreviations

FAC	Federal Acquisition Circular
FAR	Federal Acquisition Regulation
FBO	Federal Business Opportunities
FPDS	Federal Procurement Data System
HQ	Headquarters
MR&T	Mississippi River and Tributaries
OMB	Office of Management and Budget
QMAD	Quantitative Methods and Analysis Division
USACE	U.S. Army Corps of Engineers



INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
400 ARMY NAVY DRIVE  
ARLINGTON, VIRGINIA 22202-4704

September 30, 2010

MEMORANDUM FOR COMMANDING GENERAL, U.S. ARMY CORPS OF  
ENGINEERS  
COMMANDER, U.S. ARMY CORPS OF ENGINEERS,  
MEMPHIS DISTRICT

SUBJECT: U.S. Army Corps of Engineers, Civil Works, Memphis District, Has  
Improved Its Compliance With the American Recovery and Reinvestment  
Act (Memorandum No. D-2010-RAM-023)

This memorandum provides results from our audit of selected American Recovery and Reinvestment Act projects at the U.S. Army Corps of Engineers, Civil Works, Memphis District (USACE Memphis). Overall, USACE Memphis personnel complied with many of the Recovery Act requirements and took action to address the weaknesses that we found.

We performed this audit in response to the requirements of Public Law 111-5, "American Recovery and Reinvestment Act of 2009," February 17, 2009. We made no recommendations and do not require a written response. Therefore, we are publishing this memorandum in final form.

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  
Defense Business Operations





# Results in Brief: U.S. Army Corps of Engineers, Civil Works, Memphis District, Has Improved Its Compliance With the American Recovery and Reinvestment Act

## What We Did

Our overall objective was to determine whether the U.S. Army Corps of Engineers, Civil Works, Memphis District (USACE Memphis), appropriately planned and implemented projects under the American Recovery and Reinvestment Act of 2009. Specifically, we reviewed the planning, funding, project execution, and tracking and reporting of two Recovery Act projects at USACE Memphis to determine whether its efforts complied with Recovery Act requirements, Office of Management and Budget guidance, and the Federal Acquisition Regulation (FAR). We determined that USACE Memphis complied with many of the Recovery Act requirements and took action to address the weaknesses that we found.

## What We Found

USACE Memphis personnel complied with the planning and funding requirements for the two Recovery Act projects we audited. USACE Memphis personnel also complied with some project execution requirements. However, in some instances, they did not report all required information on the Federal Business Opportunities Web site or include all required contract language and clauses in the contract.

In addition, USACE Memphis personnel substantially complied with the tracking and reporting requirements. However, they did not ensure that the Arkansas State Highway and Transportation Department personnel followed the reporting requirements for the cooperative agreement funded by the Recovery Act. Further, USACE Memphis personnel incorrectly reported a project description on the USACE Headquarters Web site.

These deficiencies occurred because USACE Memphis personnel were not aware of certain Recovery Act transparency requirements and contract requirements. In addition, USACE Memphis personnel mistakenly overlooked implementing guidance for including all required Recovery Act FAR clauses. As a result, USACE Memphis personnel did not fully meet the transparency or solicitation and contract preparation requirements of the Recovery Act.

During the audit, USACE Memphis personnel took corrective action on all the deficiencies identified in the project execution and tracking and reporting areas.

## What We Recommend

This memorandum contains no recommendations.

## Management Comments

We provided our discussion draft memorandum to USACE on August 12, 2010. USACE Memphis personnel provided technical comments, which we incorporated into the final memorandum as appropriate.



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# **Introduction**

## **Audit Objective**

The objective of the audit was to determine whether the U.S. Army Corps of Engineers, Civil Works, Memphis District (USACE Memphis) was planning and implementing the American Recovery and Reinvestment Act of 2009 (Recovery Act) by meeting the requirements in the Recovery Act, Office of Management and Budget (OMB) Memorandum M-09-10, “Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009,” February 18, 2009, and subsequent related guidance. For this audit, we reviewed the planning, funding, project execution, and tracking and reporting of two Recovery Act projects at USACE Memphis to determine whether its efforts complied with the Recovery Act requirements, OMB guidance, and the Federal Acquisition Regulation (FAR). 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 most affected by the recession; provide investments to increase economic efficiency through technological advances in science and health; and invest in transportation, environmental protection, and other infrastructure. The Recovery Act also provided unprecedented efforts to ensure the responsible distribution of funds for the Act’s purposes and to provide transparency and accountability of expenditures so that the public would know how, when, and where tax dollars were spent. Further, the Recovery Act stated that the President and the heads of Federal departments and agencies were to manage and expend the funds made available in the Act to achieve its purposes, which included commencing expenditures for activities as quickly as possible, consistent with prudent management.

## **Recovery Act 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) execution, and (4) tracking and reporting. The Recovery Act guidance 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 and competed and contained specific 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 tracking and reporting phase ensures that the recipients’ use of funds was transparent to the public and that the 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 (FAC 2005-32), March 31, 2009, provides policies and procedures for the Government-wide implementation of the Recovery Act and guidance on special contract provisions. FAC 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 the requirements for Recovery Act contract actions by posting information on the Federal Business Opportunities (FBO) and Federal Procurement Data System (FPDS) Web sites. FBO is a Web-based portal that allows agency officials to post Federal procurement opportunities and contractors to search and review those opportunities. FPDS provides a comprehensive Web-based tool for agencies to report contract actions.

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.

## **OMB Recovery Act Guidance**

Criteria for planning and implementing the Recovery Act continue to change as OMB issues additional guidance. OMB has issued 10 memoranda and 1 bulletin to address the implementation of the Recovery Act. 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, 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 Recovery Act Civil Works Programs**

<b>Appropriations</b>	<b>Amount (in billions)</b>
Operation and Maintenance	\$2.075
Construction	\$2.000
Mississippi River and Tributaries	\$0.375
Formerly Utilized Sites Remedial Action Program	\$0.100
Investigations	\$0.025
Regulatory Program	\$0.025
<b>Total</b>	<b>\$4.600</b>

## **USACE Mission and Functions**

USACE Civil Works provides public engineering services in peace and war to strengthen our Nation's security, energize the economy, and reduce risks from disasters. Specifically, USACE Civil Works (1) contributes to the national welfare and serves the nation with responsive development and management of the nation's water resources, (2) protects, restores, and manages the environment, (3) responds to disasters and aid in recovery, and (4) provides engineering and technical services. This multi-faceted mission is accomplished through partnerships with other government agencies and nongovernment organizations. USACE Civil Works executes its programs through eight regional divisions and 38 district offices. There is a ninth division and three embedded districts that support operations in Iraq and Afghanistan. This report discusses Recovery Act projects at USACE Memphis.

## **Selected Projects at USACE Memphis**

We made a nonstatistical selection of two USACE Memphis projects for review: Mississippi River Revetments and St. Francis River Basin. See Appendix A for specific sample selection criteria. For the two projects, we reviewed a total of four Recovery Act-funded contracts, an in-house labor project, and a cooperative agreement between USACE and the Arkansas State Highway and Transportation Department. USACE Memphis personnel used Recovery Act MR&T appropriations to fund the work we reviewed. Specifically, the two projects were:

**Figure 1. Mississippi River Revetments Project**



**Mississippi River Revetments:** USACE maintains the proper channel alignment and protects nearby levees by preventing bank caving along the Mississippi River by placing Revetments on the river banks. Revetments are small concrete blocks joined together by wires placed on the river bank. USACE Memphis personnel funded additional Revetments areas with Recovery Act funds using in-house labor. In addition, USACE Memphis personnel awarded a Recovery Act contract to renovate boat ramps, which are necessary for executing

the Revetments Project on the Mississippi River during low water conditions.

**St. Francis River Basin:** USACE provides flood control for the rural and urban areas adjacent to the Mississippi River and within the St. Francis River Basin boundaries. USACE Memphis personnel awarded a Recovery Act contract to construct relief wells in the Piggott, Arkansas, sub-area of the St. Francis River. USACE Memphis personnel stated that the relief wells collect seepage from the levee and redistribute the water to another area to avoid flooding.

**Figure 2. St. Francis River Basin Relief Well**



In addition, we reviewed two Recovery Act funded multiple award contracts and related task orders for levee resurfacing. USACE Memphis personnel stated that the levee resurfacing is maintenance performed atop the levees on roads used for monitoring water levels and the condition of the levees. Further, USACE provided Recovery Act funding to the Arkansas State Highway and Transportation Department in the form of a cooperative agreement to modify an Arkansas State Highway Bridge, a unit of the St. Francis Basin project.

## **USACE Memphis Has Improved Internal Controls**

We determined that internal control weaknesses existed as defined by DOD Instruction 5010.40, “Managers’ Internal Control (MIC) Program Procedures,” January 4, 2006. USACE Memphis personnel did not synopsise Small Business Administration 8(a) Business Development Program projects during pre- or post-award and did not indicate in an FBO pre-solicitation that the contract action used Recovery Act funds. During the audit, USACE Memphis personnel took action to synopsise all 8(a) projects on the FBO Web site. For new solicitations, USACE Memphis personnel stated that they will ensure

that FBO announcements state that task orders may be issued pursuant to the Recovery Act.

Further, USACE Memphis personnel did not indicate on four contracts which products or services they funded under the Recovery Act and did not update their cooperative agreement between USACE and the Arkansas State Highway and Transportation Department to accurately reflect that they were using Recovery Act appropriations. During the audit, USACE Memphis personnel took action to identify which task orders and contracts are subject to Recovery Act funding and have updated their cooperative agreement to appropriately reflect the Recovery Act appropriations.

USACE Memphis personnel also did not adequately implement guidance listing the FAR clauses required for Recovery Act contracts. During the audit, USACE Memphis personnel stated that they have provided the FAC 2005-32 to all contracting specialists and continue to review and reinforce the Recovery Act requirements.

In addition, USACE Memphis personnel did not ensure that the Arkansas State Highway and Transportation Department personnel followed the Recovery Act reporting requirements for their cooperative agreement funded by the Recovery Act. During the audit, USACE Memphis personnel provided documentation stating that the USACE project manager would ensure that Arkansas State Highway and Transportation Department personnel complied with the Recovery Act Reporting requirements.

Finally, USACE Memphis personnel did not have controls to accurately report project descriptions and estimates on the USACE Headquarters (HQ) Recovery Act Web site. During the audit, USACE Memphis personnel provided USACE HQ with the corrected information and updated the Web site with the correct project descriptions and project estimates.

We did not make recommendations because USACE Memphis personnel took the corrective actions stated above.

# **USACE Memphis Generally Met the Implementation Requirements of the Recovery Act but Some Improvement Was Needed**

USACE Memphis personnel complied with the Recovery Act planning and funding requirements. USACE Memphis personnel also complied with project execution requirements related to competition, small business, and use of firm-fixed-price contracts. However, in some instances they did not report all required information on the FBO Web site or include all required language and clauses in the contracts. Further, USACE Memphis personnel complied with Recovery Act tracking and reporting requirements that they include FAR Clause 52.204-11, “Recovery Act Reporting Requirements,” and that they prepare a quality assurance plan for each contract. However, USACE Memphis personnel did not ensure that the Arkansas State Highway and Transportation Department personnel followed the Recovery Act reporting requirements for the cooperative agreement funded by the Recovery Act. Further, USACE Memphis personnel did not properly report all project descriptions on the USACE HQ Web site.

These deficiencies occurred because USACE Memphis personnel were not aware of certain Recovery Act transparency requirements and contract requirements. In addition, USACE Memphis personnel mistakenly overlooked implementing guidance for including all required Recovery Act FAR clauses. As a result, USACE Memphis personnel did not fully meet the transparency requirements or solicitation and contract preparation requirements of the Recovery Act. USACE Memphis personnel have taken action to correct all the weaknesses that we identified, and we are not recommending any further actions.

## **USACE Memphis Personnel Properly Planned Their Recovery Act Projects**

USACE Memphis personnel selected work for the two Recovery Act projects in accordance with OMB guidance. OMB Memorandum M-09-15, “Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009,” April 3, 2009, is consistent with a memorandum from the President, March 20, 2009, which 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 Memphis personnel properly selected the Recovery Act projects. For example, they selected the Revetments Project to stabilize the navigation channel, protect flood control structures, and increase the flood-carrying capacity of the Mississippi River. Therefore, this project would achieve long-term public benefits by investing in infrastructure that would provide long-term economic benefits, improve quality of life,

and support environmental protection efforts in accordance with the OMB guidance. USACE Memphis personnel also selected the St. Francis River Basin project in accordance with the OMB guidance. Specifically, they used Recovery Act funds to support flood control for the rural and urban areas adjacent to the Mississippi River and within the St. Francis River Basin boundaries.

## **USACE Memphis Personnel Appropriately Distributed and Designated Recovery Act Funds**

USACE Memphis personnel appropriately distributed and designated Recovery Act funds for the applicable products and services in its accounting system. OMB Memorandum M-09-15, section 1.2, states that agencies should award and distribute funds in a prompt, fair, and reasonable manner. USACE Memphis personnel complied with OMB guidance. Specifically, they stated that USACE Memphis received initial Recovery Act funding in May 2009 for the two projects, a few months after implementation of the Recovery Act. As described in the project execution section, they competitively awarded three of the four contracts. Further, they stated that after the initial funding, they performed weekly and monthly reviews to determine whether the contracts needed incremental Recovery Act funds.

OMB Memorandum M-09-15, section 4.3, states that agencies must not co-mingle Recovery Act funds with other funds. In addition, agencies must establish an internal fund code within their financial systems and separately track apportionments, allotments, obligations, and gross outlays of Recovery Act funds. USACE Memphis personnel complied with this OMB requirement. Specifically, the funding amounts received for the two projects matched the Funding Authorization Documents and Work Allowances, and each had a Recovery Act designation. These controls helped USACE Memphis personnel to appropriately track the Recovery Act funding.

## **USACE Memphis Personnel Met Some Project Execution Requirements and Made Needed Improvements**

USACE Memphis personnel complied with some of the initial project execution requirements of the Recovery Act projects. Section 6.1 of OMB Memorandum M-09-15 states that because of the critical importance of the Recovery Act and the funds it will make available to stimulate the American economy, heightened management attention on acquisition planning is required to mitigate schedule, cost, and performance risks. USACE Memphis personnel helped mitigate these risks by awarding all four contracts reviewed as firm-fixed-price contracts. A fixed-price contract places maximum risk upon the contractor and full responsibility for all costs and resulting profit or loss, thereby allowing the Government to lessen its schedule, cost, and performance risks in accordance with the OMB requirement.

Section 6.1 of OMB Memorandum M-09-15 also states that agencies should obtain maximum practicable competition and maximize opportunities for small businesses to compete for agency contracts and to participate as subcontractors. USACE Memphis personnel met these OMB requirements. Specifically, they competed three of the four

contracts and awarded the other contract using the Small Business Administration 8(a) Business Development Program. In this program, the Small Business Administration accepts offers on behalf of 8(a) contractors and selects the eligible contractor to complete the work. USACE Memphis personnel verified that all of the winning contractors for the four contracts were registered on the Central Contractor Registration Web site and the Excluded Parties List System did not include them as a debarred contractor. Appendix C lists the criteria tested and the results of tests.

**Recording of Contract Actions Needed Improvement.** USACE Memphis contracting personnel did not always record contract actions in accordance with OMB Memorandum M-09-15, which describes requirements for reporting Recovery Act-funded actions in FPDS and publicizing actions on FBO. Specifically, they did not announce the contract award for boat ramp renovations on the FBO Web site as required by FAR 5.705, “Publicizing-post-award.” This occurred because USACE Memphis personnel did not typically synopsise non-Recovery Act 8(a) projects during pre- or post-award and were not aware that Recovery Act requirements were different. Therefore, they did not meet the transparency requirements of the Recovery Act. USACE Memphis personnel stated that they are now synopsizing all 8(a) projects and that they have provided training slides and guidance to the contracting staff. We did not recommend any further actions because USACE Memphis personnel addressed this weakness.

In addition, USACE Memphis personnel did not fully comply with the requirements of FAR 5.704, “Publicizing-preaward.” Specifically, the FBO pre-solicitation for the levee resurfacing multiple award contract did not indicate that the contract action was funded by the Recovery Act. This occurred because USACE Memphis personnel incorrectly concluded that they did not need to include this information because they were not using this contract vehicle solely for the Recovery Act. Thus, they did not meet the transparency requirements of the Recovery Act. For new solicitations that could use Recovery Act funding, USACE Memphis personnel stated that they will ensure that the FBO announcement states that task orders may be issued pursuant to the Recovery Act. We did not recommend any further actions because USACE Memphis personnel addressed this weakness.

**Contracts Did Not Always Indicate the Recovery Act-Funded Products or Services.** USACE Memphis personnel did not fully comply with the requirements of FAR 4.1501(a). Specifically, the four Recovery Act contracts did not indicate which products or services USACE funded under the Recovery Act. USACE Memphis personnel mistakenly concluded that the single accounting number with the correct Recovery Act Treasury account symbol and the appropriate Recovery Act clauses were sufficient. However, for any contract action funded in whole or in part by the Recovery Act, the FAR specifically requires that the contracting officer indicate that the contract action is Recovery Act-related and indicate which products or services are Recovery Act-funded. Without the proper language, there is a risk that the selected contractors would not follow the Recovery Act reporting requirements because they were unaware that the contracts were funded with Recovery Act funds. USACE Memphis personnel agreed to take action to improve contract language and comply with FAR 4.1501(a). Specifically, USACE

Memphis personnel began identifying which task orders and contracts were subject to Recovery Act funding. We did not recommend any further actions because USACE Memphis personnel addressed this weakness.

In addition, USACE Memphis personnel did not update an ongoing cooperative agreement between USACE and the Arkansas State Highway and Transportation Department to modify an Arkansas State Highway Bridge to reflect the use of the MR&T Recovery Act appropriation. The agreement at the time of our audit listed a non-Recovery Act appropriation. Without revision, USACE personnel could have difficulty holding the Arkansas State Highway and Transportation Department accountable for all Recovery Act requirements. To address this oversight, USACE Memphis personnel updated the agreement to appropriately reflect the MR&T Recovery Act appropriation. We did not recommend any further actions because USACE Memphis personnel addressed this weakness.

**Solicitations or Contracts Needed to Include All Required FAR Clauses.** USACE Memphis personnel did not always include all required FAR clauses in the solicitation or contract. Specifically, they excluded 7 of 24 required FAR clauses from the four solicitations or contracts. This occurred because they mistakenly overlooked implementing FAC 2005-32 guidance, which lists the required Recovery Act FAR clauses. Without certain clauses, there is a risk that auditors would be denied access to Recovery Act contracts and subcontracts, or the ability to interview contractor and subcontractor personnel could be limited. Appendix D lists the specific FAR clauses that USACE Memphis personnel did or did not include.

To address this weakness, USACE Memphis personnel added these clauses through contract modifications. In addition, they stated that they have provided the FAC 2005-32 to all contracting specialists and continue to review and reinforce the Recovery Act requirements. We did not recommend any further actions because USACE Memphis personnel addressed this weakness.

## **USACE Memphis Personnel Met Some Tracking and Reporting Requirements and Made Needed Improvements**

USACE Memphis personnel complied with some of the tracking and reporting requirements of the Recovery Act. Specifically, USACE Memphis contracting personnel included FAR 52.204-11, “Recovery Act Reporting Requirements,” in all awarded contracts. FAR 52.204-11 requires contractors for Recovery Act projects to report project information at <http://www.federalreporting.gov>. USACE Memphis personnel also established quality assurance plans, which specified work requiring surveillance and the method of surveillance for the Recovery Act contracts.

However, USACE Memphis personnel did not ensure that the Arkansas State Highway and Transportation Department personnel followed the Recovery Act reporting requirements for the cooperative agreement funded by the Recovery Act. This occurred

because although the USACE HQ reporting guidance states that contracting officers are responsible for ensuring that Recovery Act contractors submit recipient reports and for reviewing the recipient reports for errors and omissions, it did not address who is responsible for performing Recovery Act recipient reporting oversight for cooperative agreements.

Neither the USACE Memphis contracting office nor the project manager was aware that USACE had the responsibility to ensure that the Arkansas State Highway and Transportation Department complied with the Recovery Act reporting requirements. Therefore, USACE Memphis personnel did not meet the transparency requirements of the Recovery Act. During the audit, they determined that the project manager had the responsibility to ensure that proper reporting occurred. They provided documentation stating that the project manager would ensure that Arkansas State Highway and Transportation Department personnel complied with the Recovery Act reporting requirements. We did not recommend any further actions because USACE Memphis personnel addressed this weakness.

In addition, USACE Memphis personnel did not fully meet Recovery Act transparency requirements because they incorrectly reported a project description for Mississippi River Revetments on the USACE HQ Web site. Specifically, they provided USACE HQ with the description “repair upper bank paving, via construction contract, at various locations on the Mississippi River.” However, the correct description should have referred to the maintenance work being performed under the Revetments Project. As a result, they did not provide accurate information to USACE HQ. After we raised this concern, USACE Memphis personnel provided USACE HQ with the corrected information and updated the Web site with the correct project descriptions and project estimates. We did not recommend any further actions because USACE Memphis personnel addressed this weakness.

## Appendix A. Scope and Methodology

We conducted this audit from February 2010 through September 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 conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our audit objective.

Our overall audit objective was to evaluate USACE's implementation of plans for the Recovery Act of 2009. To accomplish our objective, we audited the planning, funding, project execution, and tracking and reporting of Recovery Act projects to determine whether the efforts of USACE Memphis personnel complied with Recovery Act requirements, OMB guidance, and the FAR. 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 (project execution); and
- recipients' use of funds was transparent to the public and the benefits of the funds were clearly, accurately, and timely reported (reporting).

Before selecting DOD Recovery Act projects for audit, the DOD OIG Quantitative Methods and Analysis Division (QMAD) analyzed all DOD agency-funded projects, locations, and contracting oversight organizations to assess the risk of waste, fraud, and abuse associated with each. Division personnel selected most audit 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. Division personnel used information collected from all projects to update and improve the risk assessment model. Division personnel selected 83 projects with the highest risk rankings; auditors chose some additional projects at the selected locations.

QMAD used additional predictive analytic techniques for 2 other special cases: (1) projects performed jointly with State National Guard units in the 50 States, and (2) public works projects funded directly through USACE. Division personnel 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 provided a basis for logical coverage not only of Recovery Act dollars being expended, but also of types of projects and types of locations across the Military Services, Defense agencies, State National Guard units, and public works projects managed by USACE.

## **Selected Projects at USACE Memphis**

We made a nonstatistical selection of the Mississippi River Revetments and St. Francis River Basin projects from USACE Memphis using the QMAD high-risk rating. USACE Memphis personnel used MR&T appropriations for the two projects.

Under the Mississippi River Revetments Project, we selected two items of work for review. We selected the boat ramp renovation work because USACE Memphis personnel did not competitively award this contract. We also selected additional Revetments work, because USACE Memphis used in-house labor instead of a contract award.

Under the St. Francis River Basin project, we selected four items of work for review based on the high-dollar award amounts and the variety of work. These four items included a relief well construction contract, two contracts for levee resurfacing, and a cooperative agreement to modify an Arkansas State Highway Bridge.

We met with USACE Memphis personnel to evaluate the type of work performed and funding under the Recovery Act. We reviewed funding documents that interface with the USACE Financial Management System to trace back to the initial Recovery Act funding. Further, we reviewed such documentation as solicitations, Federal procurement Web sites, bid submittals, and contracts to determine whether USACE Memphis personnel implemented the Recovery Act and OMB requirements.

## **Use of Computer-Processed Data**

We used computer-processed data obtained from FPDS, Excluded Parties List System, Central Contractor Registration System, and the FBO Web site. To assess the reliability of the data, we compared USACE Memphis contract information (such as contract selection criteria or description of supplies and services) to the data contained in these systems. We did not find any discrepancies between the data sets. We determined that the computer-processed data were sufficiently reliable for the purposes of this audit.

We also relied on computer-processed data obtained from the Corps of Engineers Financial Management System and the P2 Oracle Financial Analyzer. To assess the reliability of the data, we compared source documentation (Funding Authorization Documents and Work Allowances we received from USACE Memphis personnel) to the computer-processed data in these systems. We did not find any discrepancies between the data sets. We determined that the computer-processed data were sufficiently reliable for the purposes of this audit.

## **Prior Audit Coverage**

The Government Accountability Office, the Department of Defense Inspector General, 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, 2009<sup>1</sup>
- 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, 2009<sup>2</sup>
- 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, 2009<sup>2</sup>
- 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, 2009<sup>2</sup>
- OMB Memorandum M-10-14, “Updated Guidance on the American Recovery and Reinvestment Act,” March 22, 2010<sup>2</sup>
- White House Memorandum, “Combating Noncompliance With Recovery Act Reporting Requirements,” April 6, 2010<sup>2</sup>
- OMB Memorandum M-10-17, “Holding Recipients Accountable for Reporting Compliance under the American Recovery and Reinvestment Act,” May 4, 2010<sup>2</sup>

## Notes

<sup>1</sup> 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.

<sup>2</sup> 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: Results of Our Tests of Project Execution

Criterion	Mississippi River Revetments	St. Francis River Basin		
	Boat Ramps	Relief Wells	Resurface Levee - Elk Chute	Resurface Levee - Tulot
Contract awarded at fixed price	Y	Y	Y	Y
Competed contract	N	Y	Y	Y
Set-aside contract award to Small Business/HUBZone	Y	Y	Y	Y
Contractors were registered on the Central Contractor Registration Web site	Y	Y	Y	Y
Verified contractor was not listed on the Excluded Parties List System	Y	Y	Y	Y

“Y” means it occurred.

“N” means it did not occur.

## Appendix D: Our Review of Inclusion of FAR Clauses

FAR Clauses Required for the Recovery Act	Mississippi River Revetments	St. Francis River Basin	
	Boat Ramps	Relief Wells	Resurface Levees <sup>1</sup>
<b>FAR 52.203-15</b> Whistleblower Protection	Y	Y	N <sup>2</sup>
<b>FAR 52.204-11</b> Recovery Act Reporting Requirements	Y	Y	Y
<b>FAR 52.214-26 Alt I</b> Audit and Records – Sealed Bidding		N <sup>2</sup>	
<b>FAR 52.215-2 Alt I</b> Audit and Records – Negotiation	N <sup>2</sup>		Y
<b>FAR 52.222-6</b> Davis-Bacon Act	Y	Y	Y
<b>FAR 52.225-21</b> Required Use of American Iron, Steel, and Manufactured Goods – Buy American Act – Projects under \$7,443,000	Y	Y	Y
<b>FAR 52.225-22</b> Notice of Required Use of American Iron, Steel, and Manufactured Goods – Buy American Act – Projects under \$7,443,000	N <sup>2</sup>	Y	N <sup>2</sup>
<b>FAR 52.225-23</b> Required Use of American Iron, Steel, and Manufactured Goods – Buy American Act – Projects of \$7,443,000 or more	Y	Y	N <sup>2</sup>
<b>FAR 52.225-24</b> Notice of Required Use of American Iron, Steel, and Manufactured Goods – Buy American Act – Projects of \$7,443,000 or more		Y	N <sup>2</sup>
<b>FAR 52.244-6</b> Subcontracts for Commercial Items and Commercial Components	Y		

<sup>1</sup>The “Resurface Levees” column included two task orders that were awarded off a multiple award contract solicitation. We reviewed the solicitation for the required FAR clauses.

<sup>2</sup>We informed USACE Memphis personnel of the FAR clauses that were not included. USACE Memphis personnel added these clauses to the contract modifications during the audit.

“Y” means the contract or base contract appropriately included the clause.

“N” means the contract or base contract inappropriately excluded the clause.

A blank cell indicates a clause that does not apply to the contract or base contract.





# Inspector General Department of Defense

