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Inspector General
United States Department of Defense

U.S. Army Corps of Engineers-Civil Works, Omaha District Generally Met Recovery Act Requirements

Report Documentation Page

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Acronyms and Abbreviations

FAR	Federal Acquisition Regulation
FBO	Federal Business Opportunities
FPDS	Federal Procurement Data System
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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ARLINGTON, VIRGINIA 22202-4704

June 16, 2011

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

SUBJECT: U.S. Army Corps of Engineers–Civil Works, Omaha District, Generally Met Recovery Act Requirements (Report No. D-2011-074)

We are providing this report for your information and use. U.S. Army Corps of Engineers, Civil Works, Omaha District (USACE Omaha), contracting officials generally met Recovery Act requirements for the five projects, valued at $10.8 million, we reviewed. However, they did not fully meet initial project execution requirements of the Recovery Act. As a result, contractors might not have been informed of or required to adhere to the Recovery Act requirements, and potential bidders might not have been made aware of the proposed projects funded by the Recovery Act.

We considered management comments on a draft of this report when preparing the final report. The comments from the Commander, USACE Omaha, 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, Omaha District, Generally Met Recovery Act Requirements

What We Did

Our objective was to determine whether the U.S. Army Corps of Engineers – Civil Works, Omaha District (USACE Omaha), officials implemented Public Law111-5, "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. Specifically, we determined whether USACE Omaha officials properly planned, funded, initially executed, and tracked and reported the five Recovery Act projects with planned funding of $20.3 million, we reviewed.

What We Found

USACE Omaha contracting officials generally met Recovery Act requirements for the four contracts and four task orders, valued at $10.8 million, related to the five projects we reviewed. Specifically, USACE Omaha contracting officials properly planned and funded the projects and had procedures in place to ensure that contractors properly tracked and reported required information to achieve the goals of the Recovery Act. However, they did not fully meet initial project execution requirements of the Recovery Act. Specifically, USACE Omaha contracting personnel:

- did not include a required Federal Acquisition Regulation clause in one of the Recovery Act contracts because they inaccurately completed the Contracting Management Control Checklist; and
- did not include the word "Recovery" in the title field for three of the eight presolicitations, to identify which projects were funded by the Recovery Act, because they were not aware of the Federal Acquisition Regulation requirement or guidance from the Recovery Accountability and Transparency Board.

As a result, contractors might not have been informed of or required to adhere to the Recovery Act requirements, and potential bidders might not have been made aware of the proposed projects funded by the Recovery Act.

What We Recommend

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

- modify contract W9127N-08-C-0011 to include Federal Acquisition Regulation clause 52.212-5, and
- include the word "Recovery" in the title for all future presolicitations for projects funded by the Recovery Act in accordance with Federal Acquisition Regulation 5.704.

Management Comments and Our Response

The Commander, USACE Omaha, 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.

Recommendations Table

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

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Introduction

Audit Objective

Our objective was to determine whether the U.S. Army Corps of Engineers – Civil Works, Omaha District (USACE Omaha), officials 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 (OMB M-09-15), "Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009," April 3, 2009. Specifically, we determined whether USACE Omaha officials properly planned, funded, initially executed, and tracked and reported the five Recovery Act projects reviewed for this audit. See Appendix A for a discussion of our scope and methodology.

Background and Guidance on the Recovery Act and USACE Projects

In passing the American Recovery and Reinvestment Act of 2009, 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 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 purpose, which included commencing expenditures for activities as quickly as possible, consistent with prudent management.

Recovery Act Audit Requirements

The Recovery Act and implementing OMB guidance require projects to be 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 determine whether funds were distributed in a prompt, fair, and reasonable manner. Review of the initial execution phase is to determine whether contracts contained specific Federal Acquisition Regulation (FAR) clauses and that presolicitations were posted to the proper Web sites. Review of the tracking and reporting phase is to determine whether the recipients' use of funds was transparent to the public and 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, 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. For actions expected to exceed $25,000, 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 a Federal Government 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 a Federal Government source of procurement information. Contracting officers enter information, including 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 implementing the Recovery Act changed as OMB issued additional guidance. Also, DoD and the Components issue their own 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 Civil Works 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, 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

Appropriations	**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	25
Total	**$4,600**

USACE Civil Works Mission and Functions

The USACE Civil Works mission is to provide public engineering services in peace and war to strengthen our Nation's security, energize the economy, and reduce risks from disasters. USACE (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. This mission is accomplished through partnerships with other Government agencies and non-Government organizations. USACE executes its regional programs through 8 divisions and 38 district offices. A ninth division and three embedded districts support operations in Iraq and Afghanistan. This report discusses five Recovery Act-funded projects at USACE Omaha.

Figure 1. An Aerial View of the Garrison Dam in North Dakota

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

Selected Projects at USACE Omaha

We nonstatistically selected five USACE Omaha projects for review at the Garrison Dam, Lake Sakakawea, North Dakota. From those projects, we selected and reviewed four contracts and four task orders on existing contracts valued at $10.8 million (all eight hereinafter referred to as contracts) awarded or administered by USACE Omaha. Specifically, the projects were:

- **Control and Elimination of Noxious Weeds.** The purpose of the project was to secure services to control and eliminate the spread of noxious weeds in and around Lake Sakakawea. The project was associated with three contracts with a total value of $318,000 that were funded with Recovery Act Operation and Maintenance appropriations.

- **Instrumentation Maintenance and Rehabilitation.** The purpose of the project was to secure services to repair, replace, and install dam safety instrumentation at the Garrison Dam. The project was associated with one contract valued at $389,000 that was funded with Recovery Act Operation and Maintenance appropriations. See Figure 1 for an aerial view of the Garrison Dam.

- **Installation of New Black Start Emergency Diesel Generator.** The purpose of the project was to secure services to install a new diesel generator at the Garrison Dam Hydroelectric Power Plant. The project was associated with one contract valued at $372,000 that was funded with Recovery Act Operation and Maintenance appropriations.

- **Fabrication of Three Transformers**. The purpose of the project was to secure services to fabricate three transformers for the Garrison Hydroelectric Power Plant. The project was associated with one contract valued at $8.95 million that

was funded with Recovery Act Construction appropriations. See Figure 2 for a view of the three transformers.

- **Installation of Transformers.** The purpose of the project was to secure services to redesign, build, and install transformers at the Garrison Dam Hydroelectric Power Plant. The project was associated with two contracts with a total value of $798,000 that were funded with Recovery Act Construction appropriations.

Figure 2. Garrison Dam Power Plant

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

Internal Controls Needed Improvement for the Initial Execution of the Recovery Act

We determined that internal control weaknesses existed as defined by DoD Instruction 5010.40, "Managers' Internal Control (MIC) Program Procedures," July 29, 2010. USACE Omaha lacked controls to ensure that all required FAR clauses were included in all Recovery Act contract actions and that the word "Recovery" was in the title field for all presolicitations to identify which projects were funded by the Recovery Act. We will provide a copy of the final report to the senior official responsible for internal controls at the U.S. Army Corps of Engineers.

Finding. USACE Omaha Contracting Officials Generally Met Recovery Act Requirements

USACE Omaha contracting officials (contracting officials) generally met Recovery Act requirements for the five projects we reviewed. They properly planned and funded the projects and had procedures in place to ensure that contractors properly tracked and reported required information to achieve the goals of the Recovery Act. However, contracting officials did not fully meet initial project execution requirements of the Recovery Act. Specifically, they did not:

- include a required FAR clause in one of the Recovery Act contract actions because personnel inaccurately completed the Contracting Management Control Checklist;[1] and
- include the word "Recovery" in the title field for three of eight presolicitations to identify which projects were funded by the Recovery Act because they were not aware of the FAR requirement.

As a result, contractors might not have been informed of or required to adhere to the Recovery Act requirements, and potential bidders might not have been aware of the proposed projects funded by the Recovery Act.

Contracting Officials Complied With Many of the Recovery Act Requirements

Contracting officials complied with many of the Recovery Act requirements for the five projects selected for review. Specifically, USACE Omaha properly planned and funded the projects and had procedures in place to ensure that contractors properly tracked and reported required information.

- **Proper Planning.** USACE Omaha personnel properly planned the five projects we reviewed in accordance with OMB guidance. 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 infrastructure that will provide long-term economic benefits. The OMB M-09-15 also states that agencies should seek to provide equal opportunities for small business enterprises in awarding contracts under the Recovery Act, to the extent allowed by law.

  USACE Omaha personnel 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

[1] This is a mandatory internal checklist (Fragmentary Order No. 22) that USACE contracting officers are required to complete. The answers indicate whether they followed the Recovery Act guidance.

OMB M-09-15. Specifically, personnel developed requirements for the five projects, obtained cost estimates, and appropriately considered small and disadvantaged businesses. In 2003, personnel performed market research on resources available to prevent the continued spread of invasive species and reclaim unusable acreage so that the Garrison Dam could operate as intended. In addition, a USACE evaluation report shows that personnel began planning for the rehabilitation of the Garrison Dam in 1995. The report concluded that existing turbines on all units needed to be replaced.

As a result of personnel's planning efforts, eight contracts were awarded for the five projects. Of the eight contracts, six were awarded to small or disadvantaged businesses in accordance with OMB M-0915.

- **Proper Funding**. USACE Omaha personnel properly distributed and used Recovery Act funds for the five projects in accordance with Public Law 111-5 and OMB M-09-15. For the projects selected, Recovery Act funding authorization documents confirmed that initial funds were transferred from USACE Headquarters to USACE Omaha within 3 months of the Recovery Act's effective date and then properly distributed to the five projects. Personnel also appropriately used the funds for environmental protection and other infrastructure that will provide long-term economic benefits. For example, the intent of the noxious weeds project is to conserve and protect the natural and cultural resources at USACE Omaha flood control projects and meet the needs of present and future generations by providing healthy and sustainable lakes. In addition, the installation of the new black diesel generator will provide reliable hydroelectric power services at the lowest cost possible.

  USACE Omaha personnel appropriately designated and distributed Recovery Act funds for the applicable products and services in their accounting system as well as in their contract solicitations and awards. OMB 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 to Recovery Act funds. On the basis of our review, we concluded that the funding amounts received for the five projects matched the authorized funding and that each funded amount had a Recovery Act designation. In addition, all funding documents used were labeled with the Recovery Act Treasury accounting symbols to aid in their identification.

- **Proper Tracking and Reporting.** USACE Omaha had procedures in place to ensure that contractors properly tracked and reported required information in accordance with OMB M-09-15. Specifically, USACE Omaha contracting officers monitored contractors' input to ensure that required information for the Federal Reporting Web site http://www.federalreporting.gov was posted in accordance with OMB M-09-15. OMB M-09-15 requires contractors to post

information on http://www.federalreporting.gov regarding the funding agency, awarding agency, and project information for Recovery Act projects.

We reviewed the most recent quarterly reports posted by contractors for the eight contracting actions associated with the five projects to be completed at the Garrison Dam, Lake Sakakawea, North Dakota. We determined that the contractors properly reported the funding agency, awarding agency, project status, amount of Recovery Act funds received or invoiced, and number of jobs created for the five projects we reviewed.

Contracting Officials Did Not Fully Meet Initial Project Execution Requirements of the Recovery Act

Contracting officials did not fully meet initial project execution requirements of the Recovery Act. Specifically, they did not include a required FAR clause in one Recovery Act contract action, and did not include the word "Recovery" in the title field for three of eight presolicitations to identify which projects were funded by the Recovery Act.

…contractors might not have been informed of or required to adhere to this Recovery Act requirement.

Required FAR Clause Omitted. Contracting officials did not include required FAR clause 52.212-5, "Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items," in contract W9127N-08-C-0011. This occurred because USACE Omaha personnel inaccurately completed the Contracting Management Control Checklist. Specifically, personnel did not complete line 2d of the checklist, indicating FAR clause 52.212-5 was included in the contract. As a result, contractors might not have been informed of or required to adhere to this Recovery Act requirement. USACE Omaha personnel should modify the contract to include the FAR clause. Appendix C shows the Contracting Management Control Checklist obtained from USACE Omaha personnel.

Presolicitations Not Properly Identified as Recovery Act. Contracting officials did not include the word "Recovery" in the title for three of eight presolicitations, which would identify the projects that were funded by the Recovery Act. This occurred because they were not aware of this FAR requirement. FAR 5.704, "Publicizing-preaward," states contracting officers are to identify proposed contract actions funded in whole or in part by the Recovery Act. As a result, potential bidders might not have been aware that the proposed projects were funded by the Recovery Act. USACE Omaha personnel should modify the presolicitations to include the word "Recovery" in future presolicitations for projects funded by the Recovery Act.

Recommendations, Management Comments, and Our Response

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

1. Modify contract W9127N-08-C-0011 to include Federal Acquisition Regulation clause 52.212-5, "Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items."

USACE Omaha District Comments

The Commander, USACE Omaha, agreed with the recommendation and stated that a contract modification will be issued to incorporate FAR Clause 52.212-5, "Contract Terms and Conditions Required to Implement Statutes or Executive Orders -- Commercial Items," into the contract.

2. Include the word "Recovery" in the title for all future presolicitations for projects funded by the Recovery Act in accordance with Federal Acquisition Regulation 5.704.

USACE Omaha District Comments

The Commander, USACE Omaha, agreed with the recommendation and stated that any future presolicitations notices funded by the Recovery Act will contain the word "Recovery."

Our Response

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

Appendix A. Scope and Methodology of Audit

We conducted this audit from January 2010 to February 2011 in accordance with generally accepted government auditing standards**.** Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our audit objective.

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

- adequately planned selected projects to ensure the appropriate use of Recovery Act funds (Planning);
- awarded and distributed funds in a prompt, fair, and reasonable manner (Funding);
- adequately performed initial execution of the projects selected to ensure that contracts contained required Recovery Act FAR clauses and that presolicitations were posted to the proper Web sites (initial Project Execution); and
- had procedures in place to ensure that contractors tracked and reported contracts
- in accordance with OMB guidance (Tracking and Reporting).

We met with USACE Omaha personnel to evaluate the type of work performed under the Recovery Act and how this work was funded. We reviewed funding documents that interface with the Corps of Engineers 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 Omaha personnel were implementing the Recovery Act and OMB requirements.

Use of Computer-Processed Data

We used computer-processed data from Web sites such as FBO, FPDS, and Recovery.org. We validated data from these computer systems by comparing the data to hard-copy documentation related to the projects selected for review. Specifically, we determined whether contractors reported data in these systems as required by the contracts we reviewed. 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 data we obtained from these systems were sufficiently reliable for our purposes.

Use of Technical Assistance

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.

Garrison Dam, Lake Sakakawea. We initially selected 16 USACE Omaha projects with planned funding of over $38.2 million at Garrison Dam, Lake Sakakawea, ND. We then nonstatistically selected five of those projects with planned funding of over $20.3 million for review. From those projects, we selected and reviewed four contracts and four task orders on existing contracts that were valued at over $10.8 million. All the contracts were awarded or administered by USACE Omaha contract officials.

Prior Coverage of Recovery Act Projects

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:

- 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[1]

- 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[2]

- 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[2]

- 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[2]

- OMB Memorandum M-10-14, "Updated Guidance on the American Recovery and Reinvestment Act," March 22, 2010[2]

- White House Memorandum, "Combating Noncompliance with Recovery Act Reporting Requirements," April 6, 2010[2]

- OMB Memorandum M-10-17, "Holding Recipients Accountable for Reporting Compliance under the American Recovery and Reinvestment Act," May 4, 2010[2]

Notes

[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. Contracting Management Control Checklist

ARRA CHECKLIST

Directions: All District Contracting Offices will perform this checklist. All answers that indicate that ARRA guidance was followed require additional information in the comment field. Comments should state why an action was or was not taken and if necessary provide the corrective action taken to resolve the deficiency for either the current contract or future contracts.

CONTRACT NUMBER:
_____

CONTRACT TITLE (Include City, State):
_____

Contract Action Reviewed: _____
Date of Performance of ARRA Check: _____of ____ Quarter of FY_____
Printed Name of USACE Individual Performing Quarterly Check: _____

ARRA PRE-AWARD CHECKLIST	Yes	No	N/A
1. Does the solicitation or award indicate which products or services are funded under the Recovery Act?	☐	☐	☐
2. Does the solicitation/award include the required FAR clauses relating to:			
a. Whistleblower Protection (FAR clause 52.203-15)?	☐	☐	☐
b. Contracting Reporting Requirements (FAR clause 52.204-11)?	☐	☐	☐
c. Special Buy America Act requirements FAR clauses (52.225-21, 52.225-22, 52.225-23, or 52.225-24?	☐	☐	☐
d. Expanded GAO/OIG access to contractor records FAR clauses 52.212-4, 52.212-5, 52.214-26, 52.215-2?			
e. Publicizing Contract Actions (FAR 5.704-2 – 5.705)?	☐	☐	☐
3. ARRA contract actions must contain a separate Contract Line Item Number (CLIN). Do the ARRA contract actions contain a separate Contract Line Item Number (CLIN) in the contract, delivery order, or modification?	☐	☐	☐
4. Were all authorized small business contracting programs considered in order to provide small business with maximum opportunities to participate as prime and subcontractors?	☐	☐	☐
5. Does the solicitation/award comply with the environmental requirements of FAR PART 23?	☐	☐	☐
6. Was a pre-solicitation announcement posted on ASFI/FBO (required for both contracts and orders issued under task or delivery order contracts (See FAR Subpart 5.7(a)(2))?	☐	☐	☐
7. Is the ASFI/FBO pre-solicitation announcement appropriately identified by including the word “RECOVERY” as the first word in the Title field (if notices are submitted electronically via FTP/e-mail)?	☐	☐	☐
8. By selecting “yes” for the field “Is this a Recovery and Reinvestment Act action” on the Notice Detail for (in Step 2)	☐	☐	☐

ARRA PRE-AWARD CHECKLIST	Yes	No	N/A
located below the NAICS code field?			
9. If the pre-solicitation announcement was for an order under a task or delivery order contract, did it include the following statement in the Description filed in ASFI/FBO preceding the actual description? THIS NOTICE IS PROVIDED FOR INFORMATIONAL PURPOSE ONLY THIS OPPORTUNITY IS AVAIALBE ONLY TO CONTRACTOR UNDER (CONTRACTING OFFICER INSERT PROGRAM/CONTRACT NAME) _____	☐	☐	☐
10. Is the description of the supplies and services (including construction) in the ASFI/FBO notice clear and unambiguous to the public?	☐	☐	☐
11. Does the Grants or the Cooperative Agreement spell out the assignment of agency roles and responsibilities to fulfill the unique requirements of the Recovery Act.?	☐	☐	☐
12. Were competitive grants opportunity announced (i.e., synopses) on Grants.gov?	☐	☐	☐
Reminder: • Any Recovery Act funded action that is not both competitive **and** fixed price must be supported by a "rationale" posted on ASFI/FBO for other than a competitive and/or fixed price approach. See Award Checklist (over) and FAR 5.705(b) for more details. • This requirement applies regardless of dollar value or whether the action is funded in whole or in or in part by the Recovery Act. It also applies to contracts, orders, or modifications to an existing contract or order. • This requirement does not relieve you of your obligations to document the file and obtain approvals of other than competitive or fixed price actions required elsewhere in the FAR or by your agency.			

ARRA AWARD CHECKLIST	Yes	No	N/A
1. If an award was not competitive, was it documented in the contract file as required by the FAR and Agency policy	☐	☐	☐
2. Was the contractor determined to be responsible and was verification conducted to ensure the contractor was not listed in the Excluded Parties List System at www.epls.gov?	☐	☐	☐
3. Was the award announced on ASFI/FBO?	☐	☐	☐
4. Is the ASFI/FBO award announcement appropriately identified by:			
a. Including the word "Recovery" as the first word in the Title field (if notices and submitted electronically via ftp/e-mail)?	☐	☐	☐
b. Selecting "yes" for the field "Is this a Recovery and Reinvestment Act action" on the Notice Detail form (Step 2) located below the NAICS Code filed?	☐	☐	☐
5. Was a summary of the action, including a clear, plain language description of the required products or services (including construction), posted on ASFI/FBO?	☐	☐	☐
6. Regardless of Dollar Value, if the contract action, including all modifications and order issued under task or delivery order contracts, is not both fixed prices and competitive, does the description on the ASFI/FBO award notice announcement include a rational for using other than a fixed price and/or competitive approach?	☐	☐	☐
7. Was the action reported in FPDS-NG?	☐	☐	☐
8. Did the FPDS-NG entry include the Treasury Accounting Symbol (TAS) in the Description of Requirement filed in the proper format?	☐	☐	☐
9. Was the contract action approved and release in SPS?	☐	☐	☐
10. Was the TAS confirmed with Resource Management in reference to the program	☐	☐	☐

ARRA AWARD CHECKLIST	Yes	No	N/A
description (e.g., HAP, FSRM, MR&T, R&D, IIS etc.)?			
11. Have all field contract actions been entered in SPS, approved and released in FPDS-NG (if applicable)?	☐	☐	☐
Reminder: • All transactions under the micro-purchase threshold both purchase and paid for using the government –wide purchase card, all DoD contract action using Recover Act funds are required to be reported individually to FPDS-NG regardless of dollar value. This include any order place using electronic catalog tools (e.g. GSA Advantage!, DoD EMALL, AFWAY) using the GPC as a methods for payment. Excluding classified procurements. • "Micro-purchase threshold" is set at $3,000, except for: • For acquisitions of construction subject to the Davis-Bacon Act, then it is set at $2,000. • For acquisitions of services subject to the Service Contract Act, then set to $2,500.			
NOTES (provide item number and comments for any item answered No): P2 Activity Code: Recovery Project No's: Contract No.: Delivery Order No.: Program Name: Brief Description: Place of Performance: Award Date: Contractor: Award Amount: Contract Type (A/E, Services, Construction, etc): Competitive (Yes/No): Set-Aside (Small, 8a, etc.): Completion Date: ADDITIONAL NOTES:			

Note: ARRA = American Recovery and Reinvestment Act of 2009.

U.S. Army Corps of Engineers, Omaha District Management Comments

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
1616 CAPITOL AVENUE
OMAHA NE 68102-4901

REPLY TO
ATTENTION OF

CENWO-DE

10 MAY 2011

MEMORANDUM FOR Program Director, Financial Management and Reporting, Department Of Defense, Inspector General

SUBJECT: U.S. Army Corps of Engineers, Omaha District, Civil Works, Generally Met Recovery Act Requirements (Project No. D2009-D000FH-0182.006)

1. The following management comments are provided for the two recommendations listed in the subject audit report:

a. Recommendation 1: modify contract W9127N-08C-0011 to include Federal Acquisition Regulation clause 52.212-5.

(1) Concur: A contract modification will be issued to incorporate FAR Clause 52.212-5 "Contract Terms and Conditions Required to Implement Statutes or Executive Orders -- Commercial Items" into the contract. It should be noted that FAR clause 52.212-5 does not itself contain any Recovery Act requirements. Rather it only incorporates FAR Clauses 52.203-15 "Whistleblower Protections under the American Recovery and Reinvestment Act of 2009" and 52.204-11 "American Recovery and Reinvestment Act—Reporting Requirements". These two clauses were in the contract in full text and are the relevant Recovery Act clauses that provide the contractor specific guidance and instruction. Consequently, the contractor was aware of the Recovery Act requirements and there were no adverse consequences to the omission of FAR Clause 52.212-5.

b. Recommendation 2: include the word "Recovery" in the title for all future presolicitations for projects funded by the Recovery Act in accordance with Federal Acquisition Regulation 5.704.

(1) Concur: Any future pre-solicitations notices funded by the Recovery Act will contain the word "Recovery". However, no future Recovery Act solicitations are anticipated unless the authorization language is revised. Recovery Act contracts could only be awarded in fiscal years 2009 and 2010.

2. Please direct any questions or concerns to me or [redacted].

ROBERT J. RUCH
Colonel, EN
Commanding

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Inspector General
Department of Defense