

Inspector General

United States
Department *of* Defense



Additional Information and Copies

The Department of Defense Office of the Deputy Inspector General for Auditing, Defense Financial Auditing Service prepared this report. If you have questions or would like to obtain additional copies of the draft report, contact Ms. Lorin T. Pfeil at (703) 325-5568 (DSN 221-5568) or Mr. Dana E. Whiting at (703) 325-6634 (DSN 221-6634).

Suggestions for Audits

To suggest ideas for or to request audits, contact the Office of the Deputy Inspector General for Auditing at (703) 604-9142 (DSN 664-9142) or fax (703) 604-8932. Ideas and requests can also be mailed to:

ODIG-AUD (ATTN: Audit Suggestions)
Department of Defense Inspector General
400 Army Navy Drive (Room 801)
Arlington, VA 22202-4704

DEPARTMENT OF DEFENSE

hotline

To report fraud, waste, mismanagement, and abuse of authority.

Send written complaints to: Defense Hotline, The Pentagon, Washington, DC 20301-1900
Phone: 800.424.9098 e-mail: hotline@dodig.osd.mil www.dodig.mil/hotline

Acronyms

ACI	Advanced Contracting Initiatives
B2B	Business-to-Business
CEFMS	Corps of Engineers Financial Management System
CONUS	Continental United States
DHS	Department of Homeland Security
FAR	Federal Acquisition Regulation
FEMA	Federal Emergency Management Agency
FMR	Financial Management Regulation
IBTS	Internet-Based Tracking System
NRP	National Response Plan
OCONUS	Outside the Continental United States
OIG	Office of Inspector General
TRC	TRC, Incorporated
USACE	United States Army Corps of Engineers



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

February 5, 2007

MEMORANDUM FOR AUDITOR GENERAL, DEPARTMENT OF THE ARMY
CHIEF OF ENGINEERS, UNITED STATES ARMY CORPS
OF ENGINEERS

SUBJECT: Report on Contract Administration of the Water Delivery Contract Between
the Lipsey Mountain Spring Water Company and the United States Army
Corps of Engineers (Report No. D-2007-055)

We are providing this report for your review and comment. We conducted the audit in response to two Congressional requests from Congressmen Christopher Shays and Bennie Thompson. This report is one in a series discussing the use of DoD resources to support the Hurricane Katrina relief efforts. We considered management comments on a draft of this report when preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. The Chief of Engineers, United States Army Corps of Engineers comments were partially responsive. Therefore, we request additional comments on Recommendations A.1, A.2, A.4, B.1.a, B.1.b.1, B.1.b.3, B.2.a, and B.3.c from the Chief of Engineers, United States Army Corps of Engineers by April 5, 2007. In addition, as a result of management comments, we revised draft Recommendations A.5 and C.3.a (Recommendation B.3.a of this report).

If possible, please send management comments in electronic format (Adobe Acrobat file only) to Auddfs@dodig.osd.mil. Copies of the management comments must contain the actual signature of the authorizing official. We cannot accept the /Signed/ symbol in place of the actual signature. If you arrange to send classified comments electronically, they must be sent over the SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the courtesies extended to the staff. Questions should be directed to Ms. Lorin T. Pfeil at (703) 325-5568 (DSN 221-5568) or Mr. Dana E. Whiting at (703) 325-6634 (DSN 221-6634). See Appendix F for the report distribution. The team members are listed inside the back cover.

By direction of the Deputy Inspector General for Auditing:

A handwritten signature in black ink, reading "Paul J. Granetto", is positioned above the printed name.

Paul J. Granetto, CPA
Assistant Inspector General and Director
Defense Financial Auditing Service

Department of Defense Office of Inspector General

Report No. D-2007-055

February 5, 2007

(Project No. D2006-D000FE-0091.001)

Contract Administration of the Water Delivery Contract Between the Lipsey Mountain Spring Water Company and the United States Army Corps of Engineers

Executive Summary

Who Should Read This Report and Why? Members of Congress and United States Army Corps of Engineers contracting officials should read this report. It discusses issues identified in the administration of the water delivery contract used during domestic emergencies.

Background. Congressman Christopher Shays requested that the DoD Office of Inspector General review the award process of the contract between the Lipsey Mountain Spring Water Company and the United States Army Corps of Engineers for the procurement and delivery of emergency water. He also requested a review of the Lipsey Mountain Spring Water Company's ability to meet contract requirements for supplying water in the event of a domestic emergency. In addition, Congressman Bennie Thompson requested a determination on whether the Lipsey Mountain Spring Water Company owed TRC, Incorporated, a subcontractor, several million dollars.

This report is one in a series discussing the use of DoD resources to support the Hurricane Katrina relief efforts. The DoD Office of Inspector General issued Report No. D-2006-109, "Response to Congressional Requests on the Water Delivery Contract Between the Lipsey Mountain Spring Water Company and the United States Army Corps of Engineers," August 29, 2006. The report addresses the award and administration of the water delivery contract between the Lipsey Mountain Spring Water Company and the United States Army Corps of Engineers and discusses whether the Lipsey Mountain Spring Water Company owed TRC, Incorporated several million dollars for water deliveries. This report addresses other matters identified in the administration of the water delivery contract. Specifically, we identified potential issues related to the contractor's performance of water deliveries and supporting documentation for payment to the contractor.

Results. Although the Lipsey Mountain Spring Water Company has delivered emergency water to specific sites throughout the United States since April 2003, it did not consistently meet time performance requirements of the contract. The audit disclosed the following specific contract administration issues.

United States Army Corps of Engineers personnel did not sufficiently document the monitoring of the Lipsey Mountain Spring Water Company's performance on delivering emergency water, and the Lipsey Mountain Spring Water Company might not be capable of functioning as the sole source supplier of water in an emergency outside the continental United States (Finding A).

Mobile and Wilmington District personnel did not always obtain proper supporting documentation for payments made to the Lipsey Mountain Spring Water Company, maintain copies of Federal Emergency Management Agency Task Orders and United States Army Corps of Engineers Delivery Orders, and request copies of the Lipsey Mountain Spring Water Company Water Quality Reports (Finding B).

We identified potential monetary benefits totaling approximately \$8.2 million because the United States Army Corps of Engineers personnel did not obtain documentation to support payments made to the Lipsey Mountain Spring Water Company. See Finding B for detailed recommendations and Appendix E for a summary of the potential monetary benefits.

Strengthening management controls over emergency water distribution and establishing stricter contractor oversight should ensure emergency water supplies are available at a fair and reasonable cost to the Government.

Management Comments and Audit Response. The Chief Audit Executive, Office of Internal Review, United States Army Corps of Engineers concurred with nine of the recommendations, nonconcurred with three of the recommendations, and partially concurred with four recommendations. We request that the Chief of Engineers, United States Army Corps of Engineers provide comments on the final report by April 5, 2007. See Finding A and Finding B for a discussion of management comments and the Management Comments section of the report for the complete text of the comments.

Table of Contents

Executive Summary	i
Background	1
Objectives	2
Findings	
A. Contractor Performance of Water Deliveries	3
B. Water Delivery and Payment Documentation	14
Appendixes	
A. Scope and Methodology	27
B. Prior Coverage	29
C. Congressional Requests	31
D. Wilmington District Delivery Orders DQ07 and DQ11	34
E. Summary of Potential Monetary Benefits	36
F. Report Distribution	37
Management Comments	
United States Army Corps of Engineers	39

Background

This is the second of two reports discussing procurement of water for emergencies. The first report addressed the inquiries made by Congressman Christopher Shays and Congressman Bennie Thompson. See Appendix B for copies of the two Congressional requests. This report will address other issues identified in the administration of the water delivery contract. Specifically, we identified potential issues related to the contractor performance of water deliveries and contract documentation to support payments to Lipsey. Both reports are part of a series of audit reports to be issued by the DoD Office of Inspector General (OIG) discussing the use of DoD resources in support of the Hurricane Katrina recovery efforts.

2004 National Response Plan. The 2004 National Response Plan (NRP) is designed to provide structure for effective and efficient incident management among Federal, state, and local emergency management agencies. The NRP includes 15 emergency support functions, which detail the missions, policies, structures, and responsibilities of Federal agencies for coordinating resource and programmatic support. The United States Army Corps of Engineers (USACE) is primarily responsible for one of the 15 functions, namely Emergency Support Function No. 3, “Public Works and Engineering.” Emergency Support Function No. 3 includes contracting for water in emergency situations.

The 2004 NRP commits all Federal departments to cooperate with the Department of Homeland Security (DHS) in emergency and disaster situations. DHS is the prime Federal agency for responding to emergencies and, under the “Homeland Security Act of 2002” (Public Law 107-296), is allowed to coordinate with personnel from other agencies to accomplish its mission. The Federal Emergency Management Agency (FEMA), part of DHS, is responsible for coordinating the Federal response to emergencies and disasters. In an effort to execute a quick response in these situations, USACE developed the Advanced Contracting Initiatives (ACI). In 1999, USACE developed ACI for ice, water, power, temporary roofing, and debris removal.

Advanced Contracting Initiatives and Issuance of Water Contracts. Under the ACI, requirements contracts are awarded before disasters occur and provide USACE contracting personnel the flexibility to place delivery orders after a disaster at the pre-negotiated rate for these supplies and services. Prior to the development of ACI, USACE procured water after the emergency happened, delaying the response time.

Requirements Contracts. Requirements contracts provide a method of filling the actual needs of the designated activity by placing delivery orders against the contract.

The Federal Acquisition Regulation (FAR) 16.503, “Requirements Contracts,” provided the following guidance for requirements contracts.

- An estimate for goods or services should be included based on past usage or other available information.
- If feasible, the contract should state a maximum purchase requirement and minimum and maximum amount for each delivery order, and a maximum amount to be ordered during a specified time period.

Contract DACW33-03-D-0003. The USACE New England District awarded this firm-fixed-price requirements contract as a small-business set-aside to Lipsey on March 31, 2003. The contract covered a base-year period of April 1, 2003, to March 31, 2004, with 4 Option Years. As of April 1, 2006, USACE had exercised Option Year 3 of the contract, which covers the period from April 1, 2006, to March 31, 2007. This contract was based on the previous 3-year national requirements contract issued by the Wilmington District on July 27, 1999. Five USACE Districts (Jacksonville District, Florida; Mobile District, Alabama; New England District, Massachusetts; Norfolk District, Virginia; and Wilmington District, North Carolina) have obligated approximately \$146 million and had disbursed more than \$81 million against the contract, as of June 23, 2006. The purpose of the contract is to provide bottled water, including transportation, loading/unloading, drayage, and additional ground mileage to locations within the continental United States (CONUS) and outside the continental United States (OCONUS) in response to domestic emergencies.

Objectives

Our overall audit objectives were to address two congressional requests pertaining to the award and administration of the water delivery contract between Lipsey and USACE and determine whether Lipsey owed TRC, Incorporated (TRC) several million dollars. This second report will address other issues identified in the administration of the water delivery contract. Specifically, we identified potential issues related to the contractor performance of water deliveries and supporting documentation for payment to the contractor. See Appendix A for scope and methodology and Appendix B for prior coverage.

A. Contractor Performance of Water Deliveries

USACE Mobile, New England, and Wilmington District personnel did not sufficiently document the monitoring of Lipsey's performance during the delivery of emergency water supplies nor did they require Lipsey to design and maintain a real-time Internet-Based Tracking System (IBTS) to provide information on the status of water deliveries. USACE did not sufficiently document the monitoring of Lipsey performance because the New England District contracting officer had not designated a district responsible for the task. Lipsey did not design and maintain a real-time IBTS because the Districts did not require conformance to contract terms. Finally, Lipsey may have underestimated OCONUS air transportation costs in its original proposal under the firm-fixed price contract. As a result of not sufficiently documenting the monitoring of Lipsey's performance, USACE was unable to properly evaluate Lipsey's performance or provide feedback for improvement. In addition, USACE will not be able to properly evaluate Lipsey's performance and effectiveness at the time of the contract renewal or re-solicitation. Finally, as a result of Lipsey potentially underestimating OCONUS air transportation costs, Lipsey may incur a substantial loss on OCONUS air shipments and default on the contract.

Criteria

FAR 42.1502.a.

Interim evaluations should be prepared as specified by the agencies to provide current information for source selection purposes, for contracts with a period of performance, including options, exceeding one year. This evaluation is generally for the entity, division, or unit that performed the contract. The content and format of performance evaluations shall be established in accordance with agency procedures and should be tailored to the size, content, and complexity of the contractual requirements.

FAR 49.102.a.

The contracting officer shall terminate contracts for convenience or default only by written notice to the contractor. When the notice is mailed, it shall be sent by certified mail, return receipt requested. When the contracting office arranges for hand delivery of the notice, a written acknowledgement shall be obtained from the contractor.

Defense FAR Supplement 242.15. The Defense FAR Supplement 242.15 references the DoD Class Deviation 99-O0002¹ for contractor performance information.

DoD Class Deviation 99-O0002. The DoD Class Deviation 99-O0002 made no change to the language contained in FAR 42.1502.a.

¹ The Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics issues class deviations when necessary to allow organizations to deviate from the FAR and DFARS.

Contract DACW33-03-D-0003 Section C.2.7.

Reporting on the status of the Contractor's performance is of extreme importance during disaster response and recovery. To ensure the Government has the ability to track production and transportation of water and report on performance in a timely manner, the Contractor shall report on the status of performance under Delivery Orders.

Contract DACW33-03-D-0003 Section C.2.7.1.

The Contractor shall establish and maintain a password protected, internet-based tracking and reporting system accessible to authorized government personnel. This system will contain the information necessary for the Government to coordinate deliveries and track the progress on all Delivery Orders. This system shall be maintained continuously during the performance of Delivery Orders to reflect real-time information.

Contract DACW33-03-D-0003 Section C.3.3.11.

The minimum quantity ordered for any day to a delivery site will be 36,000 liters. The cost of providing bottled water to OCONUS locations could vary greatly depending on the water source and method of transportation. For this reason, bottled water for OCONUS locations is being priced as follows:

- a. Locally procured bottled water and ground transportation;
- b. Bottled water procured outside the specific OCONUS location and air transportation; and
- c. Bottled water procured outside the specific OCONUS location and ocean transportation.

The Government recognizes that there may be limited sources and quantities of locally produced bottled water at some OCONUS locations and that these sources may be unavailable following a major disaster. Availability and quantity of locally produced bottled water will be confirmed with the contractor before issuance of a delivery order for locally procured bottled water and ground transportation. For air deliveries, the contractor shall deliver and unload bottled water at the specified military or commercial airport within the time period specified for the timely delivery.

Contract DACW33-03-D-0003 Section C.3.14.

The Government recognizes that upon receipt of Delivery Orders the Contractor will need time to fully mobilize significant water production and transportation assets to establish a steady flow of Bottled Water into disaster locations. The following delivery requirements recognize that need and reflect substantial performance parameters for delivery of bottled water. Unless different delivery schedules are specified in a Delivery Order, failure to meet the following requirements, except as may be due to MCC (Movement Coordination Center) directed shipment delays in paragraph C.3.3.9 or may be determined excusable under contract Clause 52.249-8, could result in termination of Delivery Orders for default and could further result in a decision not to exercise options described in paragraph C.1.5.

Contract DACW33-03-D-0003 Section C.3.3.16.1.

For orders of more than 198,000 liters of bottled water per day to any delivery site within the Continental United States or to any delivery site, airport or seaport serving Anchorage, Fairbanks, and Juneau, Alaska; Puerto Rico; or the U. S. Virgin Islands, delivery of lesser quantities within the first hours after issuance of a delivery order will be sufficient for substantial performance of the contract requirements. These lesser quantities shall be the greater of 198,000 liters or, in the time periods stated below, the specified percentages of the ordered quantity:

- Within 24 hours from issuance of delivery order, 25% of the quantity scheduled for delivery;
- Within 48 hours from issuance of delivery order, 50% of the quantity scheduled for delivery;
- Within 72 hours from issuance of delivery order, 75% of the quantity scheduled for delivery; and
- Within 96 hours from issuance of delivery order, 100% of the quantity scheduled for delivery.

Performance Evaluations

Mobile, New England, and Wilmington District personnel did not conduct performance evaluations on Lipsey from April 2003 to January 2006. Therefore, they did not comply with the FAR 42.1502.a and DoD Class Deviation 99-O0002. The district personnel did not conduct evaluations because the New England District did not designate in the contract which USACE Districts were responsible for conducting them and reporting on Lipsey's performance. As a result of performance not being evaluated and reported, information on Lipsey's performance was not forwarded to the New England District; nor has the New England District requested such information from other USACE Districts. Lipsey's capacity to correct and improve its performance is limited without proper performance evaluations because USACE District personnel are not identifying weaknesses in Lipsey's operations. The inability to improve Lipsey's performance could result in the United States Government being unable to deliver water as needed in an emergency.

Tracking of Lipsey Deliveries

Mobile, New England, and Wilmington District personnel did not sufficiently document the tracking of water deliveries to monitor the performance by Lipsey in past emergencies. Contract DACW33-03-D-0003 Section C.3.3.16 provides the water delivery parameters for Lipsey. Specifically, for orders greater than 198,000 liters, Lipsey is required to deliver 25 percent of an order within 24 hours of receiving a USACE delivery order; and the remainder of the order is to be evenly distributed within 96 hours of receipt of the delivery order (see Table 1).

Table 1. Contract Delivery Requirements Based on 800,000 Liters		
Hours After Issuance of Delivery Order	Cumulative Percentage Amount to be Delivered	Cumulative Liter Amount to be Delivered
24	25	200,000
48	50	400,000
72	75	600,000
96	100	800,000

USACE Districts were to track and monitor the performance of the water deliveries by Lipsey to provide formal evaluations of Lipsey's performance, as required by DoD Class Deviation 99-O0002. However, USACE supporting documentation and operations demonstrated that:

- USACE District personnel did not sufficiently track Lipsey deliveries,
- USACE District personnel did not prepare formal performance evaluations on Lipsey's performance, and
- Lipsey deliveries to some locations were not always within the defined time parameters of the contract.

We examined water delivery documentation at the USACE Wilmington and Mobile Districts and Lipsey dated between September 2003 and January 2006 along with USACE database systems in support of the 2003 through 2005 hurricane seasons and determined that Lipsey delivered multiple truck loads of water to specific sites. However, Lipsey did not consistently meet the time performance requirements set forth in the contract.

Specifically, Lipsey did not always deliver emergency water supplies within the time limits specified in the contract for Mobile District Delivery Orders CK01, CK02, CK04, CK10, CK14, CK15, and CK32 and Wilmington District Delivery Orders DQ04 and DQ06 (see Table 2).

Table 2. Compliance with Contract Time Delivery Parameters			
Delivery Order	Compliance with Delivery Parameters	Noncompliance with Delivery Parameters	Delivery Order Documentation Not Available
CK01		X	
CK02		X	
CK04		X	
CK10		X	
CK14		X	
CK15		X	
CK16	X		
CK32		X	
DQ01	X		
DQ02	X		
DQ04		X	
DQ06		X	
DQ09			X
DQ10			X

We also noted that the 2005 hurricane season² was significantly more active than predicted when the delivery parameters were established during the contract's initial solicitation. Specifically, during the base year period, the estimated total quantity of bottled water that might need to be delivered under the contract was 2,000,000 liters. However, during the 2003 hurricane season, Wilmington District Delivery Order DQ01 was for only 180,000 liters and Wilmington District Delivery Order DQ06 in 2005 was for initially 18,000,000 liters—a 9,900 percent increase. This increase almost certainly affected Lipsey's overall performance for the 2005 hurricane season.

Section C.2.7.1 of the contract requires Lipsey to “establish and maintain a password protected, internet-based tracking and reporting system accessible to authorized Government personnel.” This system would “contain the information necessary for the Government to coordinate deliveries and track the progress on all Delivery Orders.” The system would also “be maintained continuously during the performance of Delivery Orders to reflect real-time information.” Section C.2.7.1 of the contract required Lipsey to design an Internet-Based Tracking System (IBTS) that included 12 data elements.

² According to the National Oceanic and Atmospheric Administration, the Atlantic hurricane season begins on June 1 and ends on November 30.

However, Table 3 shows that seven data elements were missing from the IBTS.

Table 3. Internet-Based Tracking System		
Required Data Elements	Data Elements	
	Included	Not Included
Contract Number		X
Delivery Order number	X	
Delivery Order Issue Date		X
Quantity or service ordered	X	
Required delivery or performance dates	X	
Names and addresses of water suppliers	X	
Quantity of water to be provided from each supplier	X	
Names and addresses of transportation companies		X
Carrier name and Identification Number for each truck, airplane, and ship		X
Quantity of water transported by truck, airplane, and ship		X
Scheduled delivery location		X
Estimated and actual dates and times of deliveries and quantity delivered		X

In addition, Lipsey:

- did not design an IBTS website as depicted in the Lipsey electronic user guide provided to the New England District;
- designed and marketed another version of the IBTS website for commercial Business-to-Business (B2B) usage for water bottling and transportation companies rather than for USACE's use;
- has not updated or modified their version of the IBTS since 2005; and
- improperly used the official logo of USACE on the IBTS website.

The terms of the contract required Lipsey to develop and maintain a real-time IBTS. However, USACE did not enforce the terms of the contract and allowed Lipsey to use a website to provide data that were updated every 3 to 4 hours by way of Microsoft Excel spreadsheets on water delivery information.

Lipsey was not compelled to perform to the terms of the contract because USACE District personnel did not enforce the terms of Section C.3.3.16 of the contract, which required tracking water deliveries and ensuring that deliveries were made within established parameters. Also, Lipsey's IBTS website was inadequate because USACE District personnel did not adequately monitor Lipsey's performance to ensure that a real-time IBTS website was developed, updated, and maintained, as required by Sections C.2.7 and C.2.7.1 of the contract.

Failure to sufficiently track and document deliveries rendered USACE unable to properly evaluate Lipsey's performance or to provide feedback for improvement in performance and operations. In addition, USACE will not be able to properly

evaluate Lipsey's performance and effectiveness at the time of contract renewal or re-solicitation. Also, during an actual response and recovery period, USACE District personnel did not have access to or use of an IBTS that provided real-time data on the production and transportation of water to monitor Lipsey's performance. Finally, Lipsey's improper use of the USACE logo on its B2B website may cause Internet users to think the Lipsey B2B website is an official website of the United States Government.

OCONUS Water Deliveries

Because USACE has never tasked Lipsey to deliver emergency bottled water by air to OCONUS under the contract, factual OCONUS air transportation cost data were not available for analysis. However, we were able to establish that Lipsey charged USACE \$4.61 per liter for air shipments of water within CONUS. Specifically, in September 2005, Lipsey delivered 1,782,000 liters of water by air within CONUS. The Wilmington District and Lipsey negotiated a price of \$4.61 per liter for the air shipment because the original contract did not include a firm-fixed price for air shipments within CONUS. Contract Modification P00002 authorized the price negotiation on CONUS air shipments.

If the \$4.61 per liter accurately reflects Lipsey's expenses for CONUS shipments, then a comparison of the CONUS negotiated price of \$4.61 per liter paid in September 2005 to the firm-fixed price of \$1.84 allowable for OCONUS air shipments to Puerto Rico shows Lipsey could potentially lose \$2.77 (\$4.61-\$1.84) on each liter shipped by air to Puerto Rico. During Hurricane Georges in September 1998, the Government shipped nearly 34 million liters of water to Puerto Rico. If a similar emergency arose in Option Year 3 of the Lipsey contract and USACE directed an air shipment of 34 million liters, Lipsey could lose more than \$94 million (34 million liters times \$2.77 per liter) (see Table 4). According to Lipsey, the company has already had to borrow several million dollars. Therefore, this potential loss could cause a financial burden for Lipsey or cause Lipsey to default on the contract.

Table 4. Comparison of 2005 CONUS Negotiated Price to the Contract Option Year 3 2006 OCONUS Cost			
	2005 CONUS Cost	2006 Contract OCONUS Cost	Potential Loss
Quantity	34,000,000	34,000,000	34,000,000
Price per Liter	x \$4.61	x \$1.84	x \$2.77
Total	\$156,740,000	\$62,560,000	\$94,180,000

Lipsev may incur a substantial loss on OCONUS air shipments because the company underestimated air transportation costs in Option Years 3 and 4. During an emergency, such as in Hurricane Georges, Lipsey could potentially default on the contract if tasked to ship similar quantities of water.

Conclusion

USACE Districts need to monitor the water supply contracts and evaluate Lipsey compliance. Because of Lipsey's inability to always deliver water supplies within specified time limits and unpredictable air shipment costs, Lipsey may not be capable of performing as the sole supplier of emergency water to OCONUS emergencies.

Recommendations, Management Comments, and Audit Response

Revised Recommendation. As a result of management comments, we revised draft recommendation A.5 to clarify the nature of the actions needed to improve the administration of the emergency water contract.

A. We recommend that the Chief of Engineers, United States Army Corps of Engineers:

1. Designate which United States Army Corps of Engineers District is responsible for monitoring the Lipsey Mountain Spring Water Company's performance and require that District to conduct an annual performance evaluation.

Management Comments. The Chief Audit Executive, United States Army Corps of Engineers partially concurred and stated that each contracting officer placing a task order under this contract is responsible for monitoring the contractor's performance for that order. This includes the preparation of performance evaluations. The Chief Audit Executive also stated that the New England District is responsible for the overall contract and will review, among other items, performance evaluations prior to the exercise of options in the future.

Audit Response. The Chief Audit Executive's comments are partially responsive. While we agree that each contracting officer placing a task order for this contract is responsible for monitoring the contractor's performance, our observations at the District level indicated that there was confusion as to which United States Army Corps of Engineers District was responsible for monitoring performance and conducting evaluations.

- In the New England District, contracting personnel had informed us that the district had not documented any performance information for this contract.
- In the Mobile District, contracting, operations, and readiness support personnel indicated to us that any performance reports prepared for this contractor would have been the responsibility of the New England District and that the New England District had not requested input for performance evaluations.
- In the Wilmington District, contracting personnel provided two memorandums and an email communication, which discussed specific instances where the Lipsey Mountain Spring Water Company was not performing in accordance to contract standards. We determined that this documentation did not constitute a formal performance appraisal on the Lipsey Mountain Spring Water Company's performance in accordance with Federal Acquisition Regulation 42.1502.

We request that the Chief of Engineers, United States Army Corps of Engineers reconsider the United States Army Corps of Engineers' position on the recommendation and provide additional comments in response to the final report.

2. Require each United States Army Corps of Engineers District to track timeliness for all water delivery orders.

Management Comments. The Chief Audit Executive, United States Army Corps of Engineers partially concurred and stated that a process for tracking timeliness has been in place. Specifically, the contractor used a web-based tracking system from contract inception with continuous system improvements added. The Chief Audit Executive further stated that a system was in place to measure Lipsey's performance and provide letters of correction as needed and that the New England District would review this process in the future to ensure the monitoring of contractor timeliness.

Audit Response. The Chief Audit Executive's comments are partially responsive. Finding A describes insufficiency of the Lipsey Mountain Spring Water Company's internet-based tracking system and its inability to track water deliveries during the hurricane disasters. Furthermore, Mobile District personnel were either unaware of this system during the disasters or used the system only to track initial deliveries. Wilmington District personnel indicated that when they used the Lipsey Mountain Spring Water Company's internet-based tracking system for tracking purposes, the system did not provide real-time data. We disagree with the Chief Audit Executive's assessment of the letters of correction provided to Lipsey Mountain Spring Water Company. As stated in the audit response to management comments on recommendation A.1, we do not consider these letters a formal performance appraisal on the Lipsey Mountain Spring Water Company's performance, in accordance with Federal Acquisition Regulation 42.1502. We request that the Chief of Engineers, United States Army Corps of Engineers reconsider the United States Army Corps of Engineers' position on the recommendation and provide additional comments in response to the final report.

3. Enforce contract time delivery parameters.

Management Comments. The Chief Audit Executive, United States Army Corps of Engineers concurred and stated that the process for tracking timeliness and providing letters of correction is in place. The Chief Audit Executive acknowledged that Lipsey did not meet all time parameters in the contract because of the extraordinary volume of water required in the 2005 hurricane season that made on-time performance impracticable. The Chief Audit Executive further stated that each contracting office and his internal review office would review this process in the future to ensure the enforcement of the contract time delivery parameters.

4. Direct the United States Army Corps of Engineers New England District to require the Lipsey Mountain Spring Water Company to develop, update, and maintain a real-time Internet Based Tracking System website to coordinate and track the progress on all water delivery orders, as required by Sections C.2.7 and C.2.7.1 of the contract. In addition, notify the Lipsey Mountain Spring Water Company not to use the United States Army Corps of Engineers logo on its commercial business-to-business website without prior Government approval.

Management Comments. The Chief Audit Executive, United States Army Corps of Engineers partially concurred and stated that Lipsey used a web-based tracking system and has continuously improved the system as lessons learned from each mission are incorporated. The Chief Audit Executive further stated that the New England District Contracting Officer, in coordination with the Office of Counsel, would instruct Lipsey not to use the Army Corps of Engineers logo as an actual endorsement, or even appearance of endorsement on its website.

Audit Response. The Chief Audit Executive's comments are partially responsive. As stated in our response to the Chief Audit Executive's comment on recommendation A.2, we disagree with his assessment of the Lipsey Mountain Spring Water Company's internet based tracking system and its ability to track water deliveries during the hurricane disasters. We reiterate that Wilmington District personnel indicated that when they used the Lipsey Mountain Spring Water Company's internet-based tracking system for tracking purposes, the system did not provide real-time data. We request that the Chief of Engineers, United States Army Corps of Engineers reconsider the United States Army Corps of Engineers' position on the recommendation and provide additional comments in response to the final report.

5. Terminate the requirement in the contract for OCONUS air deliveries with the Lipsey Mountain Spring Water Company to prevent default, in accordance with Federal Acquisition Regulation 49.401.a.

Management Comments. The Chief Audit Executive, United States Army Corps of Engineers nonconcurred with the original draft recommendation stating that the recommendation was unclear and that the cost of a termination should be taken into consideration. He said that termination for default is a drastic and costly course of action that is available to the Contracting Officer, along with an assortment of other less drastic measures, in the event of actual or anticipated failure by Lipsey to perform its contractual obligations. The Chief Audit Executive further stated that it might not be in the Government's best interest to allow a contractor to terminate a contract because of a potential loss or nonperformance on a firm-fixed-price contract.

Audit Response. The Chief Audit Executive's comments are nonresponsive. We have modified the draft recommendation for the final version of the report and request that the Chief of Engineers, United States Army Corps of Engineers provide comments on it. We disagree with the Chief Audit Executive's assessment that termination of the delivery requirement to sites outside the continental United States may not be in the Government's best interest. We feel that millions of people could be affected in a time of need and left without water if the Lipsey Mountain Spring Water Company were to default on the contract. In addition, significant damage could be done to the United States Army Corps of Engineers' reputation, which could affect future disaster operations. Finally, should the Lipsey Mountain Spring Water Company be forced to default on the contract, it is foreseeable that the United States Army Corps of Engineers would have to negotiate with an outside provider to deliver water at a significantly higher cost to meet mission requirements. We feel that such an outcome would have a greater effect than a preemptive termination and re-solicitation of this provision of the contract. We request that the Chief of Engineers, United States Army Corps of Engineers reconsider the United States Army Corps of Engineers' position on the recommendation and provide additional comments in response to the final report.

B. Water Delivery and Payment Documentation

Mobile and Wilmington District personnel did not properly document contract expenditures, a Government delay of work, air transportation costs, and payments made to Lipsey. In addition, Mobile, New England, and Wilmington District personnel did not always maintain copies of FEMA Task Orders and USACE Delivery Orders. Also, Mobile, New England, and Wilmington District personnel did not request copies of the Lipsey Water Quality Reports. Adequate documentation was not maintained because Mobile and Wilmington District personnel did not always hold Lipsey accountable to the terms of the contract and did not always comply with provisions of the FAR and the DoD Financial Management Regulation (FMR). As a result, Mobile and Wilmington District personnel cannot adequately justify all expenditures claimed by and payments made to Lipsey. By obtaining and maintaining proper documentation, USACE personnel can ensure that payments are supported. Also, requiring Lipsey to establish a proper quality inspection system may prevent the delivery of poor quality water to areas affected by natural disasters.

Criteria

FAR 4.801.a. The FAR 4.801.a states, "...the head of each office performing contract administration, or paying functions shall establish files containing the records of all contractual actions."

FAR 4.801.b.

The documentation in the files shall be sufficient to constitute a complete history of the transaction for the purpose of providing a complete background as a basis for informed decisions at each step in the acquisition process; supporting actions taken; providing information for reviews and investigations; and furnishing essential facts in the event of litigation or congressional inquiries.

FAR 32.905.a. The FAR 32.905.a states, "payment will be based on receipt of a proper invoice and satisfactory contract performance."

DoD FMR Volume 10, Chapter 1, Paragraph 0102.B.

No payment is made without evidence of a liability and a determination of entitlement. The nature and extent of procedures vary for financing and invoice payments. Entitlement to financing payments shall be determined by contract terms and conditions, including any required approvals by contracting officers, contract administrators, or contract auditors. Entitlement to invoice payments shall include, as applicable, additional determinations such as proof of receipt and acceptance, receipt of a proper invoice, and verification of all computations.

Contract DACW33-03-D-0003 Section C.2.4.1.

The Contractor must maintain an inspection system that ensures the quality of bottled water to be provided under this contract. This requirement shall be satisfied by the Contractor obtaining copies of applicable certificates, licenses, notifications, permits, appraisals, and inspection reports; annual chemical, physical and radiological analysis of source water; and results of any other testing of source water and bottled water from each bottled water producer from which bottled water is to be purchased under this contract. The Contractor shall maintain these records throughout the term of this contract. The Contracting/Ordering Officer may request the Contractor to provide copies of this data on any or all bottled water subcontractors, at any time during the term of this contract. When requested, the Contractor shall provide this data within six (6) hours of such request by facsimile, email, or other means, unless the Contracting/Ordering Officer authorizes a different time period.

Contract DACW33-03-D-0003 Section C.2.11. Section C.2.11 of the contract states, “the Contracting/Ordering Officer at the ordering District will send a copy of all Delivery Orders to the Contracting Officer at New England District.”

Contract DACW33-03-D-0003 Section C.3.1.

Work under this contract will be ordered by issuance of oral and written DQs to the Contractor by the Contracting/Ordering Officer. When oral orders are issued, the Contracting/Ordering Officer shall issue a written DQ confirming the oral order within twenty-four (24) hours. Written DQs will be provided to the Contractor by electronic mail or facsimile and by regular mail. The Contractor shall perform all work ordered within the time specified in such DQs, in compliance with all terms and conditions of this contract.

Contract DACW33-03-D-0003 Clause 52.232-25.a.3.

The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(3)(i) through (a)(3)(x) of this clause. If the invoice does not comply with these requirements, the designated billing office will return it within 7 days after receipt, with the reasons why it is not a proper invoice.

Contract DACW33-03-D-0003 Clause 52.242-17.

If the performance of all or any part of the work of this contract is delayed or interrupted (1) by an act of the Contracting Officer in the administration of this contract that is not expressly or implicitly authorized by this contract, or (2) by a failure of the Contracting Officer to act within the time specified in this contract, or within a reasonable time if not specified, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this contract caused by the delay or interruption and the contract shall be modified in writing accordingly. Adjustment shall also be made in the delivery or performance dates and any other contractual term or condition affected by the delay or interruption. However, no adjustment shall be made under this clause for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an adjustment is provided or excluded under any other term or condition of this contract.

Support for Contract Expenditures

The Mobile and Wilmington Districts did not maintain proper supporting documentation for the expenses incurred for water deliveries. In fact, the overall quality and condition of supporting documentation regarding water delivery varied significantly among the Mobile and Wilmington Districts and the USACE delivery orders. A review of paid delivery orders at the Mobile and Wilmington Districts showed Lipsey was paid for services when the required supporting documentation was missing, incomplete, or in an unauthorized format.

Delivery Order CK01 for 85 water shipments:

- none had a bill of lading and
- 19 had conflicting water arrival dates.

Delivery Order CK10 for 198 water shipments:

- 52 had no bill of lading and water delivery documents not certified as unloaded by the Government contractor,
- 6 water delivery documents were not signed by a Government representative, and
- 4 had no truck and trailer number.

Delivery Order CK11 (for 88 water shipments) had 20 shipments with stand-by times that were erroneously calculated.

For Delivery Order DQ06, Lipsey did not consistently use Water Delivery Information Appendix A³ and Drayage Information Appendix C⁴ as support for its expenditures.

In addition, although Lipsey used an unauthorized water delivery form, the Mobile and Wilmington Districts accepted it. The Mobile and Wilmington Districts accepted water delivery documentation that contained factual inconsistencies and documentation that was not always approved by authorized United States Government personnel.

³ Appendix A should be used by Lipsey to provide general water delivery information for USACE.

⁴ Appendix C should be used by Lipsey to provide information on drayage for USACE.

Table 5 describes the missing documentation categories and the responsible USACE District.

Table 5. Water Delivery Documentation		
Missing Documentation Categories	Responsible USACE District	
	Mobile	Wilmington
Contract Expenditures		
Water Delivery Forms		
1. Missing		
A. Dates	x	x
B. Liters	x	x
C. Signatures	x	x
D. Proper Signatures	x	x
E. Data Elements	x	x
F. Bill of Lading	x	x
Warehouse		
1. Lease Agreements	x	
2. Expense Justification	x	

Contract DACW33-03-D-0003 Clause 52.232-25.a.3 requires Lipsey to submit a proper invoice with supporting water delivery forms to USACE for payment of services. However, Lipsey has consistently submitted invoices to the Wilmington District requiring a revalidation by USACE personnel to prevent inaccurate or unsupported payments. In effect, Lipsey delegated responsibilities to USACE personnel to determine the amount of water delivered, detect missing documentation, and determine the amount payable to Lipsey. Lipsey would then prepare a new invoice and provide documentation to support payment of services after USACE's validation and consultation. Although the Wilmington District did revalidate Lipsey's invoices and supporting documentation, not all deficiencies were detected.

The payments were not properly supported because Mobile and Wilmington District personnel did not require Lipsey to submit proper documentation, as required by Clause 52.232-25.a.3 of the contract. In addition, the Mobile and Wilmington District personnel did not adequately review billing documentation and water delivery forms submitted by Lipsey to ensure that expenses were properly supported prior to payment, as required by the FAR 32.905.a and the DoD FMR volume 10, chapter 1, paragraph 0102.B. As a result, Mobile and Wilmington District personnel cannot adequately justify all expenditures claimed by and payments made to Lipsey. Lipsey's submission of improper or inaccurate documentation hindered timely payments and required significant oversight by Wilmington District personnel to validate payments. Requiring Lipsey to submit proper and accurate supporting documentation will mitigate the risk of erroneous payments.

Support for Government-Ordered Delay of Work Payments

Wilmington District personnel did not properly support a payment made to Lipsey for Wilmington District Delivery Order DQ12 associated with a Government-ordered delay of work. FEMA directed USACE to curtail all water shipments to the areas affected by Hurricane Katrina during the period of September 10 through September 16, 2005. The Wilmington District then directed Lipsey to delay all water shipments that were not loaded in trucks and enroute to their destinations. Pursuant to Clause 52.242-17 of the contract, Lipsey requested reimbursement for its costs incurred because of the delay of work. Then, the Wilmington District paid nearly \$1.7 million to Lipsey without first obtaining supporting Bills of Lading and water delivery information documents on 334 water delivery order numbers. For example, on all 334 water delivery order numbers, Lipsey did not show the dates for procurement and transportation of the water and method of transportation used. In another 58 instances the Wilmington District paid for Lipsey to use the same truck multiple times to deliver water during the Government-ordered delay of work and 21 instances where the order numbers were not supported with a truck and trailer number. Although Wilmington District personnel paid \$1.7 million, these 79 discrepancies show Lipsey was paid \$881,000 for services that were not supported (see Table 6).

Table 6. Unsupported Services of the Government-Ordered Delay of Work		
Description	Number of Instances	Dollar Amount
Paid for Same Truck Multiple Times to Deliver Water	58	\$774,000.00
Unsupported Truck and Trailer Number	21	107,000.00
Total	79	\$881,000.00

Wilmington District personnel did not follow written procedures for receiving proper invoices prior to payment, as set forth in the FAR 32.905.a; the DoD FMR volume 10, chapter 1, paragraph 0102.B; and Contract DACW33-03-D-0003 Clause 52.232-25.a.3. In addition, Lipsey personnel acknowledged that they did not conduct a review of the billing documentation submitted by its subcontractor for the delay of work. As a result, Wilmington District personnel may have overpaid Lipsey by \$881,000 for unsupported costs (see Appendix E for a summary of the potential monetary benefits). Future overpayments may be prevented by requiring appropriate documentation prior to payment, as required by the FAR, the DoD FMR, and the contract.

Support for Air Transportation Payments

To authorize air transportation costs, the New England District issued Contract Modification P00002 on August 24, 2004, to add a provision for delivery of water within CONUS at a price to be negotiated at the time a task order is issued.

In September 2004, Mobile District personnel determined that Lipsey would need to transport water by air. However, Mobile District personnel did not properly support their basis to justify a \$3.30 per liter cost for air transportation. Lipsey billed USACE \$6.5 million for air transportation costs related to Mobile District Delivery Orders CK05 and CK17, dated September 8, 2004, and September 25, 2004, respectively. However, Lipsey paid a subcontractor \$4.9 million for the same work. On this transaction, Lipsey netted approximately \$1.6 million (a 26-percent gross profit margin), an amount we consider excessive when compared to a similar air transportation transaction that occurred for delivery orders DQ07 and DQ11 in October 2005. In this case, the Wilmington District authorized and paid a 7 percent gross margin above actual air transportation costs to Lipsey, which was considered a reasonable profit margin. The Mobile District did not protect the best interest of the United States Government by not questioning the 19-percent difference in gross profit margin on delivery orders CK05 and CK17.

Furthermore, Mobile District personnel authorized a total payment of \$6.5 million to Lipsey for delivery orders CK05 and CK17, which was split between payments on January 24, 2005; March 15, 2005; and March 28, 2005. Mobile District personnel did not first obtain a billing invoice and air cargo manifest from a Lipsey subcontractor to support the air shipment. In addition, Wilmington District personnel authorized an \$8.2 million payment for delivery orders DQ07 and DQ11 on November 15, 2005, without first obtaining an air cargo manifest from a Lipsey subcontractor. During our site visit to Lipsey in March 2006, Lipsey provided copies of billing invoices to support the \$6.5 million payment but still did not provide copies of the airline cargo manifests for the work performed under CK05 and CK17. Lipsey provided air cargo manifests to support all but \$778,000 of the \$8.2 million payment for work performed under DQ07 and DQ11.

Using the provisions of Modification P00002, the Wilmington District, through delivery orders DQ07, dated September 3, 2005, and DQ11, dated November 1, 2005, directed Lipsey to procure 1,800,000⁵ liters of bottled water for air shipment during Hurricane Katrina relief efforts. When DQ07 was issued, the Wilmington District contracting officer unilaterally designated the price of \$3.60 per liter for the water shipment by air with a contractual agreement that a cost per liter would be negotiated after Lipsey submitted documentation to support costs. However, Lipsey did not provide documentation to support actual costs for procuring and trucking the water. See Appendix D for the delivery orders and requirements.

Instead of providing documents to support his costs, Lipsey and the Wilmington District renegotiated a cost increase from \$0.39 to \$0.49 to procure the 1,782,000 liters of water for shipment by air. Lipsey then procured and trucked the water from bottling facilities located in Medley, Florida; Fort Worth, Texas; and Hamilton, New York, all in close proximity to nearby airports. However, Lipsey was already contractually obligated to deliver the water at \$0.39 per liter, adding \$178,200 (1,782,000 liters times \$0.10) to the purchase price. Wilmington District personnel did not consider this factor when they renegotiated the increase to \$0.49 per liter, which allowed Lipsey to claim the additional profit of \$178,200 and also did not require Lipsey to provide its costs to procure and transport the water, as required by the two USACE Delivery Orders.

⁵ Lipsey actually delivered and billed USACE for 1,782,000 liters of bottled water.

Overpayments may have been made because the Mobile and Wilmington District personnel did not properly review Lipsey's supporting documentation to ensure that expenses were supported prior to payment, as required by the FAR 32.905.a; the DoD FMR volume 10, chapter 1, paragraph 0102.B; and Contract DACW33-03-D-0003 Clause 52.232-25.a.3. Wilmington District personnel may have overpaid Lipsey by \$778,000, and Mobile District personnel may have overpaid Lipsey by \$6.5 million for unsupported costs associated with the air transportation of bottled water. By obtaining and reviewing the required supporting documentation for air shipment payments, USACE can prevent future improper payments to Lipsey.

Support for Payments

Wilmington District personnel did not properly support and accurately compute payments of water transportation costs. Specifically, Wilmington District personnel paid drayage⁶ to Lipsey (when the payment of stand-by time⁷ and additional ground mileage⁸ would have been more appropriate according to the terms of the contract) which increased the cost to the Government. We noted the following deficiencies related to the payment of drayage, stand-by time, and additional ground mileage.

On Invoice Number DQ06 Bill 6, dated January 10, 2006, Lipsey billed the Wilmington District \$149,399.93 for drayage on 16 load numbers. However, Lipsey paid its subcontractor \$72,403.25 for stand-by time and additional ground mileage. Table 7 illustrates that on this transaction, Lipsey's gross profit margin for the transaction was \$76,996.68 (52 percent). FEMA authorized the entitlement for drayage, which is payable in accordance with the terms of the contract with USACE. Although we could not determine what the normal gross profit margin percentage should be, the 52 percent gross profit margin percentage paid to Lipsey on DQ06 seems excessive and indicates a need for improvement in the administration of the contract.

Table 7. Invoice Number DQ06 Bill 6 for 16 Load Numbers		
Payment From/To	Payment Terms	Dollar Amount
Wilmington to Lipsey	Drayage	\$149,399.93
Lipsey to Subcontractor	Stand-By Time and Ground Mileage	72,403.25
Difference:		\$76,996.68

⁶ Drayage is the timeframe that the contractor provides tractor power units, with fifth wheel capability, and drivers for 24 hours of service in accordance with Section C.3.10 of the contract.

⁷ Stand-by time is the reimbursable wait time to a contractor for remaining at a water delivery site at the direction of the Ordering Officer for more than 4 hours, in accordance with Section C.3.6 of the contract.

⁸ Additional ground mileage is the mileage traveled between the original delivery site and any additional delivery site other than that defined in the Delivery Order per Section C.3.5 of the contract.

On Invoice Number 050212 1006 DQ06⁹ Bill 1, dated December 14, 2005, the Wilmington District overpaid Lipsey by \$41,145.99. The Wilmington District paid Lipsey \$90,461.75 for drayage related to truck detention days when payment for stand-by hours and truck ground mileage was authorized. Our calculation shows Lipsey was entitled to a payment of \$49,315.76 (see Table 8). USACE authorized the entitlement for drayage under DQ06, which is payable in accordance with the terms of the contract. Although the amount billed and paid to Lipsey is not illegal, we consider it excessive and indicative of the need for improved USACE administration of the contract.

Table 8. Invoice Number 050212 1006 DQ06 Bill 1					
Lipsey Detention Days	Lipsey Drayage @ \$1,532.15 per Day	DoD OIG Determined Stand-By Time in Hours	Stand-By Time @ \$63.84 per Hour	DoD OIG Determined Ground Mileage	Ground Mileage @ \$1.81 per Mile
59.0425	\$90,461.75	496	\$31,664.64	9,752	\$17,651.12
Lipsey: \$90,461.75		DoD OIG Determined: \$49,315.76			
Difference: \$41,145.99					

Wilmington District personnel issued delivery orders authorizing payment of drayage to the contractor when FEMA authorized an entitlement to payment of drayage by way of e-mail communications on September 5, 2005, and September 26, 2005. As a result, in cases like the previous examples, payment of mileage and stand-by time would have been the appropriate reimbursement to the contractor, instead of drayage payments at a higher cost to the United States Government. Obtaining and reviewing the required supporting documentation for payments will prevent improper payments.

Task and Delivery Orders

Mobile, New England, and Wilmington District personnel did not always maintain copies of FEMA Task Orders and delivery orders in accordance with the FAR 4.801.a and 4.801.b. The Mobile District did not maintain FEMA Task Orders for 3 of the 20 Mobile District Delivery Orders issued (15 percent), while the Wilmington District did not maintain FEMA Task Orders for 2 of the 12 Wilmington District delivery orders issued (17 percent). The New England District contracting office did not maintain any copies of Delivery Orders and Delivery Order Amendments issued by other USACE Districts. Also, in 5 of 12 instances (42 percent), a written Delivery Order was not issued by Wilmington District personnel to support a verbal Delivery Order within 24 hours, in accordance with Section C.3.1 of the contract.

District personnel did not always maintain FEMA Task Orders and USACE Delivery Orders because they had not established effective procedures governing maintenance of the documents. In addition, Mobile, New England, and Wilmington District personnel did not comply with the provisions of:

⁹ The Wilmington District issued DQ06 on September 2, 2005, directing the procurement and distribution of emergency bottled water during the period of September 11 through 21, 2005.

-
- FAR Part 4.801.a and 4.801.b; and
 - Sections C.2.11 and C.3.1 of the contract.

By obtaining and maintaining proper documentation, Mobile, New England, and Wilmington District personnel can ensure that the procurement and delivery of millions of liters of water and corresponding payments are supported. In addition, maintaining adequate files and issuing written delivery orders within 24 hours will commit Lipsey to delivering emergency water supplies as tasked.

Water Quality Reports

Mobile and Wilmington District personnel did not request that Lipsey provide copies of its water quality reports and inspection system data for any bottled water that subcontractors provided at any time during the term of the contract. Moreover, Mobile, New England, and Wilmington District personnel did not require Lipsey to maintain an inspection system for the duration of the contract to ensure the quality of bottled water being provided. Lipsey provided supporting documentation during our site visit for 32 out of the 49 water companies noted on their list of vendors. Eight folders contained documentation that had printer/fax dates ranging from March 24, 2006, to March 29, 2006, which coincided with our site visit to Lipsey. When asked why these eight folders had printer/fax dates that coincided with our site visit, Lipsey personnel stated that they had properly obtained the inspection system data prior to conducting business with these companies; however, the majority of the documentation was filed in their storage area, which was not readily accessible.

Lipsey personnel said they attempted to recreate and consolidate their records by reprinting stored files and having the water bottling companies fax their documentation. Additionally, Lipsey informed us that they were replacing existing water quality reports with more current water quality inspection reports. By not maintaining copies of water quality reports and inspection system data for any bottled water that subcontractors provide for the duration of the contract, Lipsey is not in compliance with Section C.2.4.1 of the contract.

Requiring Lipsey to establish a proper quality inspection system and maintain copies of the necessary water quality reports, as defined by the contract, will help prevent the delivery of poor quality water to areas affected by natural disasters during times of great need.

Recommendations, Management Comments, and Audit Response

Revised and Renumbered Recommendations. As a result of management comments, we revised draft recommendation C.3.a (recommendation B.3.a of this report) to clarify the nature of the reimbursement for the unsupported \$6,530,000 payment made to Lipsey for air transportation costs associated with Mobile District Delivery Orders CK05 and CK17. In addition, as a result of management comments and additional audit work, we deleted draft finding B and corresponding recommendations. Draft recommendations C.1, C.2, and C.3 have been renumbered as Recommendations B.1, B.2, and B.3 respectively.

B.1. We recommend that the Chief of Engineers, United States Army Corps of Engineers direct the United States Army Corps of Engineers Districts to:

a. Establish effective procedures to ensure that all payments for water deliveries are properly supported and reviewed prior to payment, as required by the Federal Acquisition Regulation, the DoD Financial Management Regulation, and Contract DACW33-03-D-0003.

Management Comments. The Chief Audit Executive, United States Army Corps of Engineers nonconcurred and stated that effective procedures are currently in place. The Chief Audit Executive further stated that the New England District would defer to the comments provided by the other United States Army Corps of Engineers Districts on specific situations discussed in this report.

Audit Response. The Chief Audit Executive's comments are nonresponsive. We do not agree with the Chief Audit Executive's assessment that USACE procedures ensure that all payments for water deliveries are properly supported and reviewed prior to payment. Our report acknowledges that procedures are in place at the United States Army Corps of Engineers Districts. However, these procedures are not sufficient to ensure every delivery payments is properly supported and reviewed, as discussed in Finding B. We also note that the Chief Audit Executive did not provide additional comments by United States Army Corps of Engineers Districts. We request that the Chief of Engineers, United States Army Corps of Engineers reconsider the United States Army Corps of Engineers' position on the recommendation and provide additional comments in response to the final report.

b. Require the Lipsey Mountain Spring Water Company to:

(1) Use documentation depicted in the contract in order to track and deliver emergency water deliveries.

Management Comments. The Chief Audit Executive, United States Army Corps of Engineers concurred and stated that the web-based tracking system used by Lipsey has been improved since the contract's inception but is still affected by the Federal Emergency Management Agency continuously changing the water delivery locations. Because of mission demands during an emergency event, the Chief Audit Executive concedes that there will be some missteps; however, he states that After Action Reviews and immediate performance feedback assists in the tracking and delivery of water. The Chief Audit Executive also stated that a

Performance Assessment Report is prepared after physical completion of the delivery order by the issuing contracting office.

Audit Response. Although the Chief Audit Executive concurred with the recommendation, his comments did not address our recommendation regarding the use of specific water delivery documentation as discussed in the contract. We request that the Chief of Engineers, United States Army Corps of Engineers provide additional comments in response to the final report identifying specific actions that will ensure that the Lipsey Mountain Spring Water Company uses the appropriate water delivery documentation.

(2) Provide accurate and properly supported invoices to the Districts.

Management Comments. The Chief Audit Executive, United States Army Corps of Engineers concurred and stated that payment should not be made until accurate and properly supported invoices are presented. The Office of the Principal Assistant Responsible for Contracting will issue guidance reminding the Field Operating Activities of contract requirements for properly supported invoices.

(3) Obtain and maintain the required water quality reports and provide copies to USACE Districts as requested.

Management Comments. The Chief Audit Executive, United States Army Corps of Engineers concurred and stated that, if there is a need to request water quality reports, Lipsey will be directed to produce the reports in accordance with the contract.

Audit Response. Although the Chief Audit Executive concurred with the recommendation, his comments did not address our recommendation to instruct the Lipsey Mountain Spring Water Company to obtain and maintain water quality documentation as required by the contract. We request that the Chief of Engineers, United States Army Corps of Engineers provide additional comments in response to the final report identifying specific actions that will ensure that the Lipsey Mountain Spring Water Company establishes a proper quality inspection system and maintains copies of all water quality reports.

c. Establish effective procedures to ensure that all FEMA Task Orders and USACE Delivery Orders are maintained.

Management Comments. The Chief Audit Executive, United States Army Corps of Engineers concurred and stated that each contracting officer placing an order under the nationwide contract is required to maintain the contract administration files for that order. Contracting officers should ensure that the contractor is following the requirements of the contract in maintenance of their task order documentation. The Office of the Principal Assistant Responsible for Contracting will issue guidance reminding the Field Operating Activities of contract requirements for Advanced Contracting Initiatives contracts and the need to ensure that proper documentation is maintained by the contractor.

B.2. We recommend that the Chief of Engineers, United States Army Corps of Engineers direct the United States Army Corps of Engineers Wilmington District to:

a. Recoup the \$881,000 overpayment associated with the United States Army Corps of Engineers Wilmington District Delivery Order DQ12 for the Government-ordered delay of work.

Management Comments. The Chief Audit Executive, United States Army Corps of Engineers nonconcurred and stated that the issue was addressed with Lipsey and that the Wilmington District determined that the amount was not an overpayment. The Wilmington District researched this matter before payment was made and had obtained supporting documentation for all delay-of-work claims from the subcontractor and received adequate explanation for the duplication of truck numbers.

Audit Response. The Chief Audit Executive's comments are nonresponsive. The Wilmington District paid nearly \$1.7 million, of which \$881,000 was an overpayment, to the Lipsey Mountain Spring Water Company on December 2, 2005. We first disclosed this issue to Wilmington District personnel during our site visit in January 2006. Prior to our disclosure, the Wilmington District was unaware of the overpayment. We disagree with the Chief Audit Executive's comment that the explanation from the Lipsey Mountain Spring Water Company's subcontractor was adequate. We found evidence that the truck numbers were more than just reference numbers but were, in fact, actual truck numbers used to make water deliveries. Thus, we consider the subcontractor's statement to be an improper assessment of the actual situation. We request that the Chief of Engineers, United States Army Corps of Engineers reconsider the United States Army Corps of Engineers' position on the recommendation and provide additional comments in response to the final report.

b. Pay future payments of drayage, stand-by time, and additional ground mileage to Lipsey in accordance with the terms of the contract.

Management Comments. The Chief Audit Executive concurred and stated that a process has always been in place at the Wilmington District to pay according to the terms in the contract. The Wilmington District Internal Review will review this process to ensure that payments are made in accordance to contract terms.

c. Recoup the unsupported payment of \$778,000 made to the Lipsey Mountain Spring Water Company for air transportation costs associated with the United States Army Corps of Engineers Wilmington District Delivery Orders DQ07 and DQ11.

Management Comments. The Chief Audit Executive concurred and stated that the Wilmington District agreed that an error was made resulting in overpayment, and it will take action to recoup it.

B.3. We recommend that the Chief of Engineers, United States Army Corps of Engineers direct the United States Army Corps of Engineers Mobile District to:

a. Recoup the unsupported \$6,530,000 payment made to the Lipsey Mountain Spring Water Company for air transportation costs associated

with the United States Army Corps of Engineers Mobile District Delivery Orders CK05 and CK17 because air cargo manifests were not provided.

Management Comments. The Chief Audit Executive, United States Army Corps of Engineers partially concurred and stated that the recommendation did not follow from the audit findings. However, the district will review the delivery orders and pursue appropriate action to recoup any profit deemed excessive.

Audit Response. The Chief Audit Executive's comments are partially responsive. The comments attempt to address two separate issues as if they were one. Specifically, the comments combined the fact that Lipsey was able to legally obtain a 26 percent gross profit margin on an air transportation order and that the air transportation order itself was not thoroughly supported by appropriate documentation. While we consider the legality of the 26 percent gross profit margin amount to be excessive, we did not take this into consideration when determining the appropriateness of the air transportation expense. We question the validity of the expense amount if it is not supported by appropriate documentation, such as air cargo manifests as explained in Finding B. We request that the Chief of Engineers, United States Army Corps of Engineers reconsider the United States Army Corps of Engineers' position on the recommendation and provide comments on the final report.

b. Revalidate the supporting documentation for air transportation costs associated with the United States Army Corps of Engineers Mobile District Delivery Order CK05, verify the amount paid, and issue an amendment to Mobile District Delivery Order CK05.

Management Comments. The Chief Audit Executive, United States Army Corps of Engineers concurred and stated that the Mobile District has revalidated the supporting documentation for air transportation cost and will issue an administrative modification for Delivery Order CK05.

c. Determine the continental United States "per unit" price for all air transportation costs prior to actual delivery and maintain adequate support for this price.

Management Comments. The Chief Audit Executive, United States Army Corps of Engineers concurred and stated that, based on the experience gained from the previous year's hurricanes, the United States Army Corps of Engineers has better information to determine the cost for air transportation.

Audit Response. Although the Chief Audit Executive concurred with the recommendation, the response does not provide a detailed approach to addressing the issue presented in the recommendation. We request that the Chief of Engineers, United States Army Corps of Engineers reconsider the United States Army Corps of Engineers' position on the recommendation and provide comments on the final report.

Appendix A. Scope and Methodology

At the request of Congressmen Christopher Shays and Bennie Thompson, we conducted a review of the contract between Lipsey and USACE for the procurement and delivery of water to determine Lipsey's ability to meet contract requirements for supplying water in the event of a domestic emergency and to determine whether Lipsey owed TRC several million dollars.

We reviewed FAR Part:

- 3 "Improper Business Practices and Personal Conflicts of Interest,"
- 4 "Administrative Matters,"
- 5 "Publicizing Contract Actions,"
- 6 "Competition Requirements,"
- 9 "Contractor Qualifications,"
- 14 "Sealed Bidding,"
- 15 "Contracting by Negotiating,"
- 16 "Types of Contracts,"
- 19 "Small Business Programs,"
- 32 "Contract Financing,"
- 42 "Contract Administrative and Audit Services,"
- 43 "Contract Modifications," and
- 49 "Termination of Contracts."

We also reviewed the "2004 National Response Plan," the "Emergency Support Function #3—Public Works and Engineering Annex," Engineering Federal Acquisition Regulations pertaining to "Federal Acquisition Regulations System," and DoD regulations.

We reviewed contract DACW33-03-D-0003 awarded on March 31, 2003, to determine whether USACE properly awarded and administered the contract, and properly solicited to small or minority-owned businesses. We obtained and reviewed the acquisition plan, request for proposal, source selection and evaluation documentation, cost estimates, and proposals from other solicitors.

We conducted a site visit to the USACE New England District in Concord, Massachusetts, to respond to Congressman Shays' first inquiry. We also visited the USACE Wilmington District in Wilmington, North Carolina, and the USACE Mobile District in Mobile, Alabama, to respond to Congressman Shays' second inquiry and Congressman Thompson's inquiry. These two Districts were responsible for approximately \$135 million out of the \$146 million (92 percent) obligated against this contract. Further, we visited the Lipsey Mountain Spring Water Company in Norcross, Georgia, and one of Lipsey's subcontractors, TRC, Incorporated in New Plymouth, Idaho. Finally, we conducted data calls with the USACE Finance Center in Millington, Tennessee, and with seven of Lipsey's subcontractors. We also conducted interviews with USACE, Lipsey, and TRC personnel. We reviewed FEMA Task Orders, USACE Delivery Orders, and supporting documentation to support our conclusions.

We performed this audit from November 2005 through July 2006 in accordance with generally accepted government auditing standards. The audit scope was limited to the two congressional requests.

Use of Computer-Processed Data. We relied on computer-processed data to perform this audit. Specifically, we obtained and analyzed USACE computer-processed data originating from the Corps of Engineers Financial Management System (CEFMS) and compiled by the USACE Finance Center and the USACE Wilmington and Mobile Districts. We did not assess the reliability of the CEFMS information used nor the general and application controls of CEFMS during this audit. We compared obligations and disbursements recorded in CEFMS to USACE delivery orders and Lipsey invoices provided by the USACE Wilmington and Mobile Districts. Our comparison of CEFMS data to the information provided by the two USACE Districts precluded the need for testing CEFMS general and application controls and, therefore, not testing the general and application controls did not affect the results of our audit.

Government Accountability Office High-Risk Area. The Government Accountability Office (GAO) has identified several high-risk areas in DoD. This report provides coverage of the DoD Contract Management high-risk area.

Appendix B. Prior Coverage

During the past 5 years, GAO has published three reports and four testimonies, the DoD IG has issued four reports, the Army Audit Agency has published one report, and the Naval Audit Service has issued one report relating to the contracts for Hurricane Katrina recovery efforts. Unrestricted GAO reports and testimonies can be accessed at <http://www.gao.gov>. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil>. Unrestricted Army Audit Agency Reports can be obtained by contacting the Freedom of Information Officer at (703) 681-3306. Unrestricted Naval Audit Service reports can be obtained by contacting the Freedom of Information Act Coordinator at (202) 433-5525.

GAO

GAO Report No. GAO-06-834, “Governmentwide Framework Needed to Collect and Consolidate Information to Report on Billions in Federal Funding for the 2005 Gulf Coast Hurricanes,” September 6, 2006

GAO Testimony No. GAO-06-808T, “Better Plans and Exercises Needed to Guide the Military’s Response to Catastrophic Natural Disasters,” May 25, 2006

GAO Report No. GAO-06-643, “Better Plans and Exercises Needed to Guide the Military’s Response to Catastrophic Natural Disasters,” May 15, 2006

GAO Testimony No. GAO-06-746T, “Factors for Future Success and Issues to Consider for Organizational Placement,” May 9, 2006

GAO Report No. GAO-06-454, “Army Corps of Engineers Contract for Mississippi Classrooms,” May 1, 2006

GAO Testimony No. GAO-06-714T, “Improving Federal Contracting Practices in Disaster Recovery Operations,” May 4, 2006

GAO Testimony No. GAO-06-622T, “Planning for and Management of Federal Disaster Recovery Contracts,” April 10, 2006

DoD IG

DoD IG Report No. D-2007-006, “Hurricane Katrina Disaster Recovery Efforts Related to Army Information Technology Resources,” October 19, 2006

DoD IG Report No. D-2006-118, “Financial Management of Hurricane Katrina Relief Efforts at Selected DoD Components,” September 27, 2006

DoD IG Report No. D-2006-116, “Ice Delivery Contracts Between International American Products, Worldwide Services and the U.S. Army Corps of Engineers,” September 26, 2006

DoD IG Report No. D-2006-109, "Response to Congressional Requests on the Water Delivery Contract Between the Lipsey Mountain Spring Water Company and the United States Army Corps of Engineers,"
August 29, 2006

Army Audit Agency

Army Audit Agency Report No. A-2006-0198-FFD, "Contracts for the Hurricane Protection System in New Orleans," August 22, 2006

Naval Audit Service

Naval Audit Service Report No. N2006-0047, "Cash Accountability of Department of Navy Disbursing Officers for Hurricane Katrina Relief Funds," September 22, 2006 (For Official Use Only)

Naval Audit Service Report No. N2006-0015, "Chartered Cruise Ships,"
February 16, 2006

Appendix C. Congressional Requests

TOM DAVIS, VIRGINIA
CHAIRMAN

CHRISTOPHER SHAYS, CONNECTICUT
DAN BURTON, INDIANA
LEANNA ROS-LEHTINEN, FLORIDA
JOHN M. McHUGH, NEW YORK
JOHN L. MICA, FLORIDA
GIL GUTKNECHT, MINNESOTA
MARK E. SOUDER, INDIANA
STEVEN C. LATOURETTE, OHIO
TODD RUSSELL PLATTIS, PENNSYLVANIA
CHRIS CANNON, UTAH
JOHN J. DUNCAN, JR., TENNESSEE
CANDICE MILLER, MICHIGAN
MICHAEL R. TURNER, OHIO
DARRRELL ISSA, CALIFORNIA
VIRGINIA BROWN-WHITE, FLORIDA
JON C. PORTER, NEVADA
KENNY MARCHANT, TEXAS
LYNN A. WESTMORELAND, GEORGIA
PATRICK T. McHENRY, NORTH CAROLINA
CHARLES W. DENT, PENNSYLVANIA
VIRGINIA FOXX, NORTH CAROLINA

ONE HUNDRED NINTH CONGRESS

Congress of the United States House of Representatives

COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAUCHITT (202) 225-5074
FACSIMILE (202) 225-3974
MAUCHITT (202) 225-5551
TTY (202) 225-6652

<http://reform.house.gov>

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

TOM LANTOS, CALIFORNIA
MAJOR R. OWENS, NEW YORK
EDOLPHUS TOWNS, NEW YORK
PAUL F. KANJORSKI, PENNSYLVANIA
CAROLYN B. MALONEY, NEW YORK
ELIJAH E. CUMMINGS, MARYLAND
DEANIS J. KUCINICH, OHIO
DANNY K. DAVIS, ILLINOIS
Wm. LACY CLAY, MISSOURI
DANIE E. WATSON, CALIFORNIA
STEPHEN F. LYNCH, MASSACHUSETTS
CHRIS VAN HOLLEN, MARYLAND
LYDIA T. SANCHEZ, CALIFORNIA
C. A. DUTCH RUPPERSBERGER, MARYLAND
BRIAN HIGGINS, NEW YORK
ELEANOR HOLMES NORTON, DISTRICT OF COLUMBIA

BERNARD SANDERS, VERMONT,
INDEPENDENT

SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS,
AND INTERNATIONAL RELATIONS

Christopher Shays, Connecticut
Chairman

Room B-372 Reborn Building
Washington, D.C. 20515
Tel: 202 225-2548
Fax: 202 225-2382

November 9, 2005

The Honorable Thomas F. Gimble
Acting Inspector General
Department of Defense
400 Army Navy Drive
Arlington, Virginia 22202

Dear Mr. Gimble:

The Subcommittee on National Security, Emerging Threats and International Relations of the House Committee on Government Reform has received a complaint dated September 6, 2005 (copy enclosed) regarding how Lipsey Mountain Spring Water Company was selected as the sole source contractor for emergency supplies of water. The complaint raised concerns regarding the company's ability to meet contract requirements for supplying water in the event of a domestic emergency.

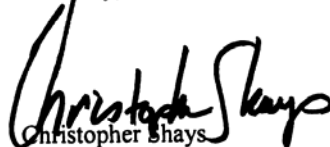
On September 12, 2005, the Subcommittee requested document's from the Army Corps of Engineers regarding the selection of Lipsey Mountain Spring Water Company. Attached please find the Corps' response and computer diskettes containing the documents requested by the Subcommittee.

The contract gives one company the responsibility "to continue developing its strategic plan for the supply of bottled water in natural

disasters and emergencies,” and to provide “all bottled water, nationwide in the event of Presidential declared emergencies.” The Subcommittee requests Office of Inspector General assess the contracting process and the capability of this contractor.

If you have questions regarding this request, please contact Lawrence Halloran or Vincent Chase of the Subcommittee staff at 202-225-2548.

Sincerely,


Christopher Shays
Chairman

cc:

Hon. Dennis J. Kucinich, Ranking Minority Member
Hon. Kenny Marchant, Vice Chairman

Mansfield, Brett A., OIG DoD

From: Olcott, Jacob [Jacob.Olcott@mail.house.gov]
Sent: Thursday, November 17, 2005 10:34 AM
To: 'brett.mansfield@dodig.mil'
Subject: Lipsey Mountain Spring Water - complaint
Attachments: Lipsey Overview.doc

Brett, thank you for your call yesterday. I hope you can pass this on to the investigator who is tracking Lipsey Mountain Spring Water.

As we discussed, a Hurricane Katrina contractor in Idaho, TRC, has expressed to me over several weeks of correspondence that he has not received several million dollars owed to him by the U.S. Army Corps of Engineers primary contractor on emergency bottled water, Lipsey Mountain Water. Lipsey also has ice contracts with several southern states. In a previous hurricane, TRC had contracted with a federal prime to deliver ice and water. They were contacted by Lipsey to assist in the efforts post-Katrina.

After receiving several emails from Scott Moscrip at TRC, I spoke to Joe Lipsey III directly on Wed. Nov. 9, 2005 to get an idea about what the hold-up was on the payments. Lipsey told me that the main problem with the payment was that TRC had not provided him with proofs of delivery. Lipsey told me that Lipsey had not received any money from either FEMA or the Army Corps. Regardless, Lipsey claimed that as long as TRC provided him with the proofs of delivery, he would pay them.

TRC claims that they have provided Lipsey with proofs of delivery on three separate occasions. They are having a hard time understanding why they are not getting their money. Scott Moscrip has raised specific allegations that Lipsey is unfit to do business with the federal government, and requested that Lipsey's federal contract be reviewed. TRC alleges that there are many businesses who now refuse to do business with Lipsey because of his failure to pay them on time. This would pose serious problems during future disasters where bottled water must be delivered in a timely fashion. Lipsey is apparently trying to settle claims with subcontractors at a rate less than the contract demands (for instance, they offered TRC 80% of what was owed to TRC as a settlement).

I am attaching a list of correspondence that I have had with Scott Moscrip, Kelly Rhinehart, and Joe Lipsey III. It is in chronological order. Please use this information as you see fit in your investigation.

TRC has offered to come to Washington to provide you with information on this situation. You can reach them at (208) 278-5097. Scott Moscrip is the President; Kelly Rhinehart is the VP. Both are eager to talk to somebody about their experiences. Joe Lipsey III at Lipsey Water can be reached at (770) 449-0001.

Please contact me if I can provide more information. Please advise me if DOD IG will be investigating this matter. Thank you.

Sincerely,

Jacob Olcott
House of Representatives
Homeland Security Committee (Democrats)
(202) 226-2623

Appendix D. Wilmington District Delivery Orders DQ07 and DQ11

DACW33-03-D-0003

DQ07

Page 2 of 5

Section B - Supplies or Services and Prices

SUPPLIES/SERVICE

CONTRACTOR SHALL PROVIDE BOTTLED DRINKING WATER FOR THE KATRINA MISSION, IN ACCORDANCE WITH THE INSTRUCTIONS PROVIDED ON THE ATTACHED THREE PAGES TO DELIVERY ORDER DQ07.

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
3001	OPTION YEAR 2 FFP CONTINENTAL UNITED STATES (CONUS) OPTION YEAR 2 PURCHASE REQUEST NUMBER: W81LJ8-5247-0620		Dollars, U.S.		
NET AMT					\$0.00
Funded Amount					\$0.00
FOB: Destination					

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
3001AJ	BOTTLED WATER DELIVERED AND UNLOADED FFP BY AIR TRANSPORTATION WITHIN CONUS (The Contracting Officer unilaterally determined the price of \$3.60 per liter for this line item. Upon submittal by the Contractor of supporting documentation to support costs, a cost per liter will be neogitated.)	1,800,000	Liter	\$3.60	\$6,480,000.00
NET AMT					\$6,480,000.00
ACRN AA Funded Amount					\$6,480,000.00
FOB: Destination					

Section B - Supplies or Services and Prices

ITEM NO	SUPPLIES/SERVICES	ESTIMATED QUANTITY	UNIT	UNIT PRICE	ESTIMATED AMOUNT
3001	Continental United States (CONUS)FFP Option Year 2				
ESTIMATED NET AMT					\$0.00
Funded Amount					\$0.00
FOB: Destination					

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
3001AK	Bottled Water Delivered and Unloaded by Air Transportation within CONUS (Total Price = \$4.61 liter (\$3.60 per DQ07 plus \$1.01 per DQ11) (Due to PD2 computer problems - these two (2) line items (3001AJ and 3001JA are added together for the total cost of the air transported water.)	1,782,000	Liter	\$1.01	\$1,799,820.00
PURCHASE REQUEST NUMBER: W81LJ8-5301-3254					

FOB: Destination

Appendix E. Summary of Potential Monetary Benefits

This audit has identified potential monetary benefits totaling \$8,189,000 in questioned costs because Mobile and Wilmington District personnel did not obtain proper documentation to support payments made to Lipsey. The exact amount cannot be determined until the USACE Districts obtain the supporting documentation from Lipsey. See Table E-1 for the costs.

Table E-1. Questioned Costs United States Corps of Engineers Flood Control and Coastal Emergencies Civil Works Appropriation 96X3125			
Category	Amount of Benefit	Reason: Unsupported	Recommendation Reference
Delay of Work	\$881,000	X	B.2.a
Air Transportation			
Delivery Order DQ7 and DQ11	778,000	X	B.2.c
Delivery Order CK5 and CK17	6,530,000	X	B.3.a
Total		\$8,189,000	

Appendix F. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition, Technology, and Logistics
Under Secretary of Defense (Comptroller)/Chief Financial Officer
Deputy Chief Financial Officer
Deputy Comptroller (Program/Budget)
Director, Program Analysis and Evaluation

Department of the Army

Auditor General, Department of the Army
Chief of Engineers, United States Army Corps of Engineers

Department of the Navy

Auditor General, Department of the Navy

Department of the Air Force

Auditor General, Department of the Air Force

Non-Defense Federal Organization

Office of Management and Budget
Government Accountability Office

Congressional Committees and Subcommittees, Chairman and Ranking Minority Member

Senate Committee on Appropriations
Senate Subcommittee on Defense, Senate Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Homeland Security and Governmental Affairs
House Committee on Appropriations
House Subcommittee on Defense, Committee on Appropriations
House Committee on Armed Services
House Committee on Homeland Security
House Committee on Oversight and Government Reform
House Subcommittee on Government Management, Organization, and Procurement,
House Committee on Oversight and Government Reform
House Subcommittee on National Security and Foreign Affairs, House Committee on
Oversight and Government Reform

United States Army Corps of Engineers' Comments



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

CEIR

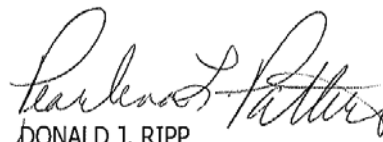
NOV 29 2006

MEMORANDUM FOR THE INSPECTOR GENERAL, DEPARTMENT OF
DEFENSE, 400 Army Navy Drive, Arlington, VA 22202-4704

SUBJECT: Audit of Contract Administration of the Water Delivery Contract Between the
Lipsey Mountain Spring Water Company and the USACE -- RESPONSE

Attached is the official USACE response to subject AAA audit.

FOR THE COMMANDER:


for DONALD J. RIPP
Chief Audit Executive
Office of Internal Review

**Contract Administration of the Water Delivery Contract Between the Lipsey
Mountain Spring Water Company and the USACE
Project No. D2006-D000FE-0091.001**

Recommendation A.1. Designate which United States Army Corps of Engineers District is responsible for monitoring the Lipsey Mountain Spring Water Company's performance and require that District to conduct an annual performance evaluation.

Partially Concur. Each Contracting Officer placing a task order under the nationwide contract is responsible for monitoring the contractor performance for that order, including preparation of performance evaluations. New England District is responsible for the overall contract and will review, among other items, performance evaluations prior to the exercise of options in the future. Target Completion Date 31 March 2007.

Recommendation A.2. Require each USACE District to track timeliness for all water delivery orders.

Partially Concur. A process for tracking timeliness has been in place. The contractor used a web-based tracking system from contract inception with continuous system improvements added. There was a system in place to measure Lipsey's performance and provide letters of correction as needed. Attachments 1, 2 and 3 from Wilmington District provide examples of those letters. As the lead Contracting Office for this contract, CENAE will review this process in the future to ensure timeliness continues to be tracked. Target Completion Date 31 March 2007.

Recommendation A.3. Enforce contract time delivery parameters.

Concur. Process for tracking timeliness and providing letters of correction is in place. It is true that Lipsey did not meet all time parameters in the contract, but the report itself acknowledges that the extraordinary volume of the water required in the 2005 hurricane season made on-time performance impracticable, if not impossible. Each contracting office and their internal review offices will review this process in the future to ensure enforcement of contract time delivery parameters. Target Completion Date 31 March 2007.

*Attachments were omitted because of length. Copies will be provided upon request.

Contract Administration of the Water Delivery Contract Between the Lipsey Mountain Spring Water Company and the USACE, Project No. D2006-D000FE-0091.001
Page 2

Recommendation A.4. Direct the United States Army Corps of Engineers New England District to require the Lipsey Mountain Spring Water Company to develop, update, and maintain a real-time Internet Based Tracking System website to coordinate and track the progress on all water delivery orders, as required by Sections C.2.7 and C.2.7.1 of the contract. In addition, notify the Lipsey Mountain Spring Water Company not to use the United States Army Corps of Engineers logo on its commercial business-to-business website without prior Government approval.

Partially Concur. The ACI Contractor used a web-based tracking system and has continuously improved the system as lessons-learned from each mission are incorporated. The New England District Contracting Officer, in coordination with Office of Counsel, will notify Lipsey that they are not to use the Army Corps of Engineers logo as an actual endorsement, or even appearance of endorsement, on their website. Target Completion Date 31 March 2007.

Recommendation A.5. Terminate Section C.3.3.11 of the contract for OCONUS air deliveries with the Lipsey Mountain Spring Water Company to prevent default, in accordance with Federal Acquisition Regulation 49.401.1.

Nonconcur. Recommendation A.5, which concerns OCONUS water deliveries, is unclear. The recommendation reads "Terminate Section C.3.3.11 of the contract with the Lipsey Mountain Spring Water Company to prevent default, in accordance with Federal Acquisition Regulation 49.401a." The FAR provision referenced is the introductory statement in the Section concerning Termination for Default; it provides that, "[t]ermination for default is generally the exercise of the Government's contractual right to completely or partially terminate a contract because of the contractor's actual or anticipated failure to perform its contractual obligations." It is not clear whether the IG is recommending modification of the contract to delete the provision, a partial termination for convenience, or a partial termination for default. The costs of a termination should also be taken into consideration. Termination for default is a drastic and costly course of action not to be undertaken lightly. It is available to the Contracting Officer along with an assortment of other less drastic measures in the event of actual or anticipated failure by Lipsey to perform its contractual obligations. It may not however be in the government's best interest to allow a contractor to be bailed out of a potential lost profit position or to non-perform on a firm-fixed price contract.

Revised

Deleted

Renumbered
to B.1.a

Contract Administration of the Water Delivery Contract Between the Lipsey Mountain Spring Water Company and the USACE, Project No. D2006-D000FE-0091.001
Page 3

Recommendation B. We recommend that the Chief of Engineers, United States Army Corps of Engineers require the United States Army Corps of Engineers New England District to comply with the provisions of the Changes-Fixed Price Clause 52.243-1 and contract case law to ensure that any future modification made to a contract is properly conducted and within the general scope of the original solicitation and contract.

Partially Concur. It is a truism that the Changes Clause and case law interpreting the FAR dictate compliance. Any modifications outside the scope of the original competition must be competed or justified as a sole source. The original solicitation adequately advised offerors of the potential for the type of change that was added by Modification P00002 and that modification did not change the field of competition. Given the broad range of potential services to procure water identified in the scope of work, including a 5-day trailer storage item, as well as the fact that the storage of procured water was only a miniscule portion of the value of the entire contract, storage of water reasonably would have been anticipated by potential offerors and therefore did not fall outside the scope of the ID/IQ contract. Target Completion Date 31 March 2007.

Recommendation C.1.a. Establish effective procedures to ensure that all payments for water deliveries are properly supported and reviewed prior to payment, as required by the Federal Acquisition /Regulations, the DoD Financial Management Regulations, and Contract DACW33-03-D-003.

Nonconcur. Effective procedures are currently in place. CENAE will defer to the comments provided by other Districts on specific situations discussed in the report.

Contract Administration of the Water Delivery Contract Between the Lipsey Mountain Spring Water Company and the USACE, Project No. D2006-D000FE-0091.001
Page 4

Recommendation C.1.b. Require the Lipsey Mountain Spring Water Company to:

(1) Use documentation depicted in the contract in order to track and deliver emergency water deliveries.

Renumbered
to B.1.b (1)

Concur. The web-based tracking system used by Lipsey has been improved since contract inception but it too is impacted by the constant re-directions by FEMA. Due to the mission demands during an emergency event, there will be some missteps. However, After Action Reviews (AARs) and immediate performance feedback assist in the tracking and delivery of water. A Performance Assessment Report (PAR) is prepared after physical completion of the delivery order by the issuing contracting office.

Recommendation C.1.b.

(2) Provide accurate and properly supported invoices to the Districts.

Renumbered
to B.1.b (2)

Concur. Payment should not be made until accurate and properly supported invoices are presented. CEPR will issue guidance reminding FOAs of contract requirements for properly supported invoices. Target Completion 31 March 2007.

Recommendation C.1.b.

(3) Obtain and maintain the required water quality reports and provide copies to USACE District as requested.

Renumbered
to B.1.b (3)

Concur. If, in the Contracting Officer's discretion there is a need to request the water quality reports, Lipsey will be directed to produce the reports. The contractor is responsible to maintain water quality reports in accordance with the contract. Target Completion 31 March 2007.

Contract Administration of the Water Delivery Contract Between the Lipsey Mountain Spring Water Company and the USACE, Project No. D2006-D000FE-0091.001
Page 5

Renumbered
to B.1.c

Recommendation C.1.c. Establish effective procedures to ensure that all FEMA Task Orders and USACE Delivery Orders are maintained.

Concur. Each Contracting Officer placing an order under the nationwide contract is required to maintain the contract administration files for that order. Each contracting officer should ensure that the contractor is following the requirements of the contract in maintenance of their task order documentation. CEPR will issue guidance reminding FOAs of contract requirements for ACI contracts and the need to ensure proper documentation is maintained by the contractor. Target Completion 31 March 2007.

Renumbered
to B.2.a

Recommendation C.2.a. Recoup the \$881,000 overpayment associated with the USACE Wilmington District Delivery Order DQ12 for the Government-ordered delay of work.

Non-Concur. This issue was addressed with Lipsey and it was determined that this was not an overpayment. CESAW researched this matter before payment was made. Specifically, CESAW obtained supporting documentation for all delay-of-work claims from the subcontractor and received adequate explanation for the duplication of load numbers. (See attachment #4)

*

Renumbered
to B.2.b

Recommendation C.2.b. Pay future payments of drayage, stand-by-time, and additional ground mileage to Lipsey in accordance with the terms of the contract.

Concur. Process has always been in place at CESAW to pay according to the terms in contract. CESAW-IR will review this process in the future to ensure payments are made according to terms of contract. Target Completion Date 31 March 2007.

Renumbered
to B.2.c

Recommendation C.2.c. Recoup the unsupported payment of \$778,000 made to the Lipsey Mountain Spring Water Company for air transportation costs associated with the USACE Wilmington District Delivery Orders DQ07 and DQ11.

*Attachment was omitted because of length. Copies will be provided upon request.

Contract Administration of the Water Delivery Contract Between the Lipsey Mountain Spring Water Company and the USACE, Project No. D2006-D000FE-0091.001
Page 6

Concur. CESAW agrees that an error was made, which resulted in an overpayment of \$778,000 that was not properly supported. CESAW will take action to recoup the overpayment. However, we do not agree with the language in the report that states that SAW did not adequately review billing documentation and water delivery forms to ensure that expenses were properly supported prior to payment. It is absolutely not true that CESAW personnel "did not adequately review billing documentation and water delivery forms submitted by Lipsey". In fact, CESAW personnel have reviewed all invoices received, noted discrepancies or unsupported claims and has NOT paid Lipsey over \$3.8 million worth of unsupported or disputed items. CESAW personnel have worked tirelessly to insure the accuracy and validity of every invoice submitted for payment and the tone of this report appears to ignore this fact. Target Completion Date 31 December 2006.

Recommendation C.3. We recommend that the Chief of Engineers, United States Army Corps of Engineers direct the United States Army Corps of Engineers Mobile District to:

C.3.a. Recoup the unsupported \$6,530,000 payment made to the Lipsey Mountain Spring Water Company for air transportation costs associated with the United States Army Corps of Engineers Mobile District Delivery Orders CK05 and CK17.

Renumbered
to B.3.a and
Revised

C.3.a. Partially Concur. The draft report states that, "Lipsey billed USACE \$6.5 million for air transportation costs related to Mobile District Delivery Orders CK05 and CK17. However, Lipsey paid a subcontractor \$4.9 million for the same work. On this transaction, Lipsey received approximately \$1.6 million (26 percent profit). We consider this amount excessive." The draft report further states that, "[d]uring our site visit to Lipsey in March 2006, Lipsey provided copies of billing invoices to support the \$6.5 million payment but did not provide copies of the airline cargo manifests." Based on these findings, the draft report's Recommendation C.3a provides that the Mobile District should be directed to recoup the unsupported \$6,530,000 payment made to the Lipsey for air transportation costs associated with the delivery orders. The seemingly harsh recommendation does not seem to follow from the findings. The District will review the delivery orders and pursue appropriate action to recoup any profit deemed excessive. Target date for completion is 30 March 2007.

Contract Administration of the Water Delivery Contract Between the Lipsey Mountain Spring Water Company and the USACE, Project No. D2006-D000FE-0091.001
Page 7

Renumbered
to B.3.b

C.3.b. Revalidate the supporting documentation for air transportation costs associated with the United States Army Corps of Engineers Mobile District Delivery Order CK05, verify the amount paid, and issue an amendment to Mobile District Delivery Order CK05.

Concur. Mobile District6 has revalidated the supporting documentation for air transportation costs. We will issue an administrative modification to Delivery Order CK05. Target date for completion is December 20, 2006.

Renumbered
to B.3.c

C.3.c. Determine the continental United States "per unit" price for all air transportation costs prior to actual delivery and maintain adequate support for this price.

Concur. Due to the numerous hurricanes in the past few years, we have better information to determine cost for air transportation. Target date for completion is prior to any more air transportation awards.

Team Members

The Department of Defense Office of the Deputy Inspector General for Auditing, Defense Financial Auditing Service prepared this report. Personnel of the Department of Defense Office of Inspector General who contributed to the report are listed below.

Paul J. Granetto
Patricia A. Marsh
Lorin T. Pfeil
Dana E. Whiting
Joshua H. Hickman
Kenneth W. Lambert
Scott E. Kontor
Ralph W. Dickison
Dana M. Bocek
Jonah E. Toler



Inspector General Department of Defense

