



Highlights of [GAO-09-552](#), a report to congressional committees

Why GAO Did This Study

The U.S. Army Corps of Engineers (Corps) has had the authority to award multiyear contracts—continuing contracts—without having received appropriations to cover the full contract amount. In 2006, Congress limited the Corps' use of such contracts by prohibiting obligations made in advance of appropriations. In response, the Corps developed a new clause that stopped work once funding for a fiscal year was expended. GAO was mandated to examine (1) the accuracy of the Corps' fiscal years 2007 and 2008 quarterly reports to Congress about continuing contracts that included the new clause, (2) the extent to which the Corps' use of continuing contracts with the new clause may have affected its execution of the Civil Works program during this time, and (3) the extent to which the Corps followed legal procedures in implementing the new clause. To conduct this work, GAO reviewed Corps documents, such as its quarterly reports and bid protests, federal procurement laws, and interviewed officials.

What GAO Recommends

GAO recommends that the Corps (1) establish adequate internal controls to track continuing contracts and (2) suspend its use of the new clause until it has been published in the *Federal Register*. The agency disagreed with the latter recommendation because it anticipates publication within 60 days. GAO continues to believe the recommendation is appropriate because use of the clause would be in violation of the OFPP Act.

View [GAO-09-552](#) or [key components](#). For more information, contact Anu K. Mittal at (202) 512-3841 or mittala@gao.gov.

ARMY CORPS OF ENGINEERS

Recent Changes Have Reduced the Use of Continuing Contracts, but Management Processes Need to Be Improved

What GAO Found

The Corps' quarterly reports to Congress for fiscal years 2007 and 2008 about continuing contracts with the new clause were inaccurate. According to the reports, the Corps awarded 21 new continuing contracts during fiscal years 2007 to 2008: 9 for construction and 12 for operations and maintenance, ranging in value from \$2.1 million to \$341.5 million, for a total value of about \$811 million. However, GAO found that some continuing contracts were double-counted, while others were missing from the reports. GAO also found other types of errors, such as a fully funded contract that was incorrectly included in the quarterly report as a continuing contract. These errors raise questions about the accuracy of the reports. GAO identified similar inaccuracies in the Corps' quarterly reports during its 2006 review and at that time recommended that the Corps develop a tracking system to monitor its use of these contracts. While the Corps believes its system of asking divisions to provide information on a quarterly basis is sufficient for tracking continuing contracts, GAO disagrees. Without a tracking system supported by sufficient internal controls to ensure accuracy, errors can persist in the information provided to Congress.

The Corps' use of the new clause has generally not affected the agency's ability to execute its Civil Works program. The Corps decreased its use of continuing contracts beginning around the time that the new clause was initiated. However, while acknowledging that the transition to the new clause created some initial difficulties that have since been overcome, Corp officials did not provide any examples of work being stopped on a project because funds were not available.

The Corps did not comply with a legal requirement in implementing the new clause, resulting in some districts' reluctance to use it. Section 22 of the Office of Federal Procurement Policy Act (OFPP Act) generally provides that no procurement regulation that has a significant effect beyond the internal operating procedures of the agency or a significant cost on contractors or offerors may take effect until 60 days after the procurement regulation is published for comment in the *Federal Register*. This requirement may be waived in urgent and compelling circumstances; however, the regulation must still be published in the *Federal Register* stating that it is temporary and providing for a public comment period of 30 days. Although the Corps has requested approval since 2006 from the Department of the Army and the Department of Defense, as it is required to, the clause has never been published and the Corps has continued to use it. GAO believes that the Corps' argument that its pursuit of publication satisfies the statute is unpersuasive. Moreover, GAO spoke with Corps officials from districts and divisions who expressed concern about using the clause prior to its publication. Specifically, they are concerned that using the clause could subject the Corps to legal challenges, such as bid protests, and that such potential challenges could delay projects and increase their costs.