

GAO

Report to the Subcommittee on Energy
and Water Development, Committee on
Appropriations, House of
Representatives

September 2006

ARMY CORPS OF ENGINEERS

Improved Monitoring and Clear Guidance Would Contribute to More Effective Use of Continuing Contracts





Highlights of [GAO-06-966](#), a report to the Subcommittee on Energy and Water Development, Committee on Appropriations, House of Representatives

Why GAO Did This Study

The U.S. Army Corps of Engineers (Corps) is authorized under the River and Harbor Act of 1922 to issue contracts with a continuing contracts clause to carry out certain projects. This allows the Corps to award multi-year contracts without having received appropriations to cover the full contract amount. The Corps has used these contracts for decades, but modified their use in 2005, in response to congressional committee concerns that their use may have been ineffective.

GAO was asked to determine (1) the number and dollar amount of continuing contracts the Corps awarded during fiscal years 2003–2005; (2) the circumstances in which the Corps used continuing contracts in fiscal years 2003–2005; and (3) how the Corps' process for approving and using continuing contracts changed since 2005, and whether the changes reduced the use of these contracts. For these objectives, GAO reviewed the Corps' contracting data, a random sample of 107 continuing contracts, and districts' requests to use continuing contracts.

What GAO Recommends

GAO recommends that the Corps eliminate its routine use of continuing contracts, establish meaningful criteria on the use of such contracts, and monitor its use of these contracts. In its comments on the draft report, the Department of Defense agreed with GAO's recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-06-966.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Anu Mittal at (202) 512-3841 or mittala@gao.gov.

ARMY CORPS OF ENGINEERS

Improved Monitoring and Clear Guidance Would Contribute to More Effective Use of Continuing Contracts

What GAO Found

The Corps does not know how many continuing contracts it awarded in fiscal years 2003–2005 or the dollar value of these contracts, because it does not track information on the contracts awarded with a continuing contracts clause. Although the Corps was directed to provide the appropriations committees with quarterly reports on their use of continuing contracts in fiscal year 2006, GAO found that the information was inaccurate. For example, at least 13 continuing contracts were missing from the reports and 10 continuing contracts had inaccurate values. Because the Corps could not provide information on the number of continuing contracts awarded for fiscal years 2003–2005, GAO analyzed the Corps' contracting data and determined that 1,592 contracts awarded in these 3 years most likely included and used a continuing contracts clause. These contracts were expected to cost more than \$3.96 billion when awarded and would generally be funded to cover the full contract amount (fully funded) pursuant to requirements of the Antideficiency Act. However, continuing contracts are exempt from the act. Consequently, the Corps only obligated \$655 million when it awarded these contracts, leaving an outstanding commitment of about \$3.30 billion to be covered by future years' appropriations.

During fiscal years 2003–2005, the Corps' standard operating practice was to include a continuing contracts clause in most contracts. As a result, many continuing contracts were used for short term and low dollar value contracts. The Corps might have been able to fully fund some of these contracts if, at the time of award, the Corps had adequate appropriations to cover the contract amount. For example, for the 107 continuing contracts GAO reviewed, about one-third were valued at less than \$1 million. In only 8 of 107 continuing contracts that GAO reviewed, the contract value was more than \$10 million and involved work that required more than 12 calendar months to complete. The Corps also used continuing contracts extensively to move funds among projects and help meet its policy of expending all available appropriations in the fiscal year appropriated. For fiscal years 2003–2005, GAO found that over half of the contracts reviewed were awarded during the last quarter of the fiscal year as continuing contracts with little or no associated obligations, thereby shifting the obligations to pay for these contracts into future years.

The Corps responded to congressional committee direction in 2005 and again in 2006 to monitor the use of continuing contracts by, among other things, requiring districts to obtain headquarters' approval before using such contracts. The new processes reduced the use of continuing contracts, but have not prevented the approval of continuing contracts for short-term, low dollar value contracts. This occurred because the Corps established criteria on when contracts should be fully funded, but did not establish criteria for when continuing contracts should be used.

Contents

Letter		1
	Results in Brief	3
	Background	5
	The Corps Cannot Accurately Identify How Many Continuing Contracts It Has Awarded because It Does Not Track These Contracts	10
	Prior to 2005, the Corps Routinely Included a Continuing Contracts Clause in Most Contracts	13
	The Corps' Revised Processes for Approving Continuing Contracts Has Reduced Their Use, but It Still Lacks Criteria for When Their Use Is Appropriate	18
	Conclusions	25
	Recommendations for Executive Action	26
	Agency Comments and Our Evaluation	27
Appendix I	Scope and Methodology	29
Appendix II	Characteristics of the Continuing Contracts Identified by GAO	32
Appendix III	Comments from the Department of Defense	41
Appendix IV	GAO Contact and Staff Acknowledgments	44
Tables		
	Table 1: Fiscal Years 2003–2005 Appropriations	6
	Table 2: Total Number and Full Costs to the Federal Government of Continuing Contracts, Fiscal Years 2003–2005	12
	Table 3: Total Number of the 107 Randomly Selected Continuing Contracts Awarded in Fiscal Years 2003–2005 by the Full Contract Costs and Number of Months to Complete the Contracted Work	16

Table 4: Headquarters' Reasons for Denying Seven Requests to Use a Continuing Contract and How Districts Proceeded with the Work	23
Table 5: Total Number of Approved Requests to Use a Continuing Contract in Fiscal Year 2005	24
Table 6: Total Number of Approved Requests to Use a Continuing Contract in Fiscal Year 2006	25
Table 7: Total Number of Continuing Contracts Awarded by the Full Costs to the Federal Government, Fiscal Years 2003–2005	32
Table 8: Total Number of Continuing Contracts by Percentage of Federal Funds Made Available in the First Year of the Contract, Fiscal Years 2003–2005	33
Table 9: Commitments for Continuing Contracts Made by Appropriations Account, Fiscal Years 2003–2005	36
Table 10: Total Number of Continuing Contracts by Appropriations Account, Fiscal Years 2003–2005	37
Table 11: Total Number and Full Costs to the Federal Government of Continuing Contracts Awarded by Division, Fiscal Years 2003–2005	38
Table 12: Total Number and Full Costs to the Federal Government of Continuing Contracts Awarded by District, Fiscal Years 2003–2005	39

Figures

Figure 1: Obligations by Fiscal Year for Continuing Contracts Awarded, Fiscal Years 2003–2005	34
Figure 2: Total Number of Continuing Contracts by Fiscal Quarter of Award, Fiscal Years 2003–2005	35

This is a work of the U.S. government and is not subject to copyright protection in the United States. It may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.



United States Government Accountability Office
Washington, DC 20548

September 8, 2006

The Honorable David L. Hobson
Chairman
The Honorable Peter J. Visclosky
Ranking Minority Member
Subcommittee on Energy and Water Development
Committee on Appropriations
House of Representatives

Each year, Congress provides funding to the U.S. Army Corps of Engineers' (Corps) Civil Works program to plan, construct, operate, and maintain a wide range of water resources projects. During fiscal years 2005 and 2006, the Corps received annual appropriations of more than \$4 billion for such projects. Water resources projects often take more than 1 fiscal year to complete, and the Corps usually relies on one or more contractors to complete these projects. Generally, agencies are required to obligate appropriations for all costs expected to be incurred at the time of award (i.e., fully fund contracts).¹ However, the River and Harbor Act of 1922 provides the Corps a unique authority to use what is referred to as a “continuing contract” to carry out certain projects. The Corps’ continuing contracts authority allows it to enter into, and commit the federal government for, the full amount of contracts that span more than 1 fiscal year—even though the Corps may not have sufficient funds to cover the full contract amount at the time the contract is awarded. For example, the Corps could award a 3-year, \$12 million continuing contract even if it only had appropriations to cover the first year’s work; the funds needed to cover the remaining contract amount would be obligated to subsequent years’ appropriations. A continuing contract contains a continuing contracts clause that allows contractors to continue work on a project even when appropriations are not available. When funding becomes available, the Corps is committed to pay all of the outstanding costs incurred by the contractor for work performed under the contract, as well as any interest that may have accrued on these outstanding balances.

¹The Antideficiency Act prohibits agencies from entering into contracts which exceed currently available appropriations or which obligate appropriations not yet made.

A provision of law enacted in the Water Resources Development Act of 1999 requires the Corps to use continuing contracts for certain water resources projects for which sufficient funds are not available to complete the project.² However, in the conference report accompanying the Corps' 2004 appropriations, the conference committee noted its concerns about the Corps' policy of allowing contractors to choose their own pace for working on continuing contracts, which effectively allowed contractors, rather than the Corps, to determine how future appropriations would be allocated. In fiscal year 2005, the conference committee noted that continuing contracts are to allow the Corps to award large construction elements of a project to take advantage of the economies of scale and allow these large elements to be efficiently managed over several years.³ The committee reiterated its past concerns that the Corps' construction projects may have used continuing contracts ineffectively.

In this context, you asked us to determine (1) the number and dollar amount of continuing contracts the Corps awarded during fiscal years 2003–2005; (2) the circumstances in which the Corps used continuing contracts in fiscal years 2003–2005; and (3) how the Corps' process for approving and using continuing contracts changed since 2005, and whether these changes have reduced the use of these contracts.

To address these objectives, we analyzed the Corps' contracting data for Civil Works fixed-price and indefinite-delivery contracts (both construction contracts and operation and maintenance contracts) for fiscal years 2003–2005. Of the contracts we reviewed, we identified all of the contracts for which the Corps did not obligate the full contract amount (i.e., partially funded). We excluded from our analysis contracts that the Corps identified as incrementally funded contracts.⁴ We assessed the reliability of the Corps' data and found that they were sufficiently reliable for our use. In addition, we reviewed 107 randomly selected continuing

²33 U.S.C. § 2331. The law applies to projects funded from the construction; operation and maintenance; and flood control, Mississippi River and tributaries appropriations accounts. A provision of the Energy and Water Development Appropriations Act of 2006 limited this requirement to projects funded from the operation and maintenance account and the operation and maintenance subaccount of the Mississippi River and tributaries account.

³The committee did not define what it meant by large contracts. For the purposes of our review, we defined large contracts as those that cost more than \$10 million.

⁴Notwithstanding how the Corps views their continuing contracts, these contracts are also incrementally funded. Incremental funding is the practice of providing budget authority for only a portion of a capital acquisition or project.

contract files from three Corps districts. The districts we selected used a large number of continuing contracts and were located in divisions that awarded a large percentage of continuing contracts in fiscal years 2003–2005. We also reviewed Corps guidance for approving and using continuing contracts before and after 2005, when the Corps revised its process. We surveyed all eight Corps divisions to determine the total number of continuing contract requests that were approved and denied by Corps headquarters after the Corps revised its process. We performed our work between December 2005 and July 2006, in accordance with generally accepted government auditing standards. Appendix I provides a detailed description of our scope and methodology.

Results in Brief

The Corps does not track information on the number of contracts with a continuing contracts clause that it awards, and therefore does not know how many continuing contracts it awarded during fiscal years 2003–2005. It also does not know the dollar value of these contractual obligations. The Corps was directed to provide the appropriations committees with quarterly reports on its use of on-going continuing contracts in fiscal year 2006, but we found that the information submitted in these reports was inaccurate. For example, we found that at least 13 continuing contracts were missing from the Corps' quarterly reports and 10 continuing contracts had incorrect dollar values. Because the Corps cannot determine how many continuing contracts it awarded for fiscal years 2003–2005, we analyzed the Corps' contracting data. We found that 1,592 of the 16,532 contracts awarded in this 3-year period most likely included and exercised (used) a continuing contracts clause. These 1,592 contracts accounted for more than 60 percent of the Corps' annual obligations for new contracts awarded during these 3 years. The 1,592 contracts were expected to cost the government more than \$3.96 billion at the time of award, but the Corps only obligated \$655 million to current appropriations when these contracts were awarded; as a result, the federal government was left with about \$3.30 billion in outstanding commitments. The value of individual continuing contracts ranged from as little as \$12,000 to as much as \$564 million.

During fiscal years 2003–2005, it was standard operating practice for the Corps to include a continuing contracts clause in most of its contracts. This occurred, according to Corps officials, because a provision in the Water Resources Development Act of 1999 required the agency to use continuing contracts when a project could not be fully funded with available appropriations. Our review of 107 randomly selected continuing contracts awarded during fiscal years 2003–2005 found numerous

examples of the Corps' overuse of this requirement for contracts where a continuing contract may not have been needed. For example, in about one-third of the continuing contracts that we reviewed, the contracted work required 6 months or less to complete or had a contract value of less than \$1 million. Therefore, we believe that these contracts did not need to be awarded as continuing contracts given their relatively short-term and small dollar values. The Corps might have been able to fully fund some of these contracts if, at the time of award, the Corps had adequate appropriations to cover the contract amount. Only 8 of the 107 continuing contracts we reviewed involved a relatively large dollar amount—for the purposes of our review, more than \$10 million—and required more than 12 calendar months to complete, thereby, in our opinion, establishing a rationale for a continuing contract. Another factor contributing to the routine use of continuing contracts was the Corps' policy of expending all available appropriations in the fiscal year for which it was appropriated, rather than carrying balances into the next fiscal year. According to Corps officials, the use of continuing contracts helped to meet this policy by allowing the Corps to move funds from projects that had excess funds either (1) to other ongoing projects that could use them or (2) to start new projects at the end of the fiscal year by using partially funded continuing contracts. For fiscal years 2003–2005, we found that over half of the contracts we reviewed were awarded during the last quarter of the fiscal year as continuing contracts with little or no associated obligations, thus committing the federal government to cover the costs of these contracts in future years' appropriations.

In response to congressional committee direction in 2005 and again in 2006, the Corps created new processes that, among other things, require districts to obtain Corps headquarters' approval before using continuing contracts. These new processes reduced the number of continuing contracts awarded by the Corps since 2005, but have not prevented the use of continuing contracts for short-term, low dollar value contracts. The Corps might have been able to fully fund some of these contracts if, at the time of award, the Corps had adequate appropriations to cover the contract amount. Under the new processes, in addition to obtaining headquarters' approval, districts were instructed to fully fund contracts when, among other things, they had sufficient funds. Districts were also instructed to stop contractors from working on a contract once fiscal year 2006 appropriations had been spent. However, the Corps did not establish criteria for when it was appropriate to use continuing contracts. Consequently, we determined that, despite the implementation of the new processes, Corps headquarters received requests for and approved the use of continuing contracts for short-term, low dollar value contracts. For

example, in fiscal year 2005, even with the new processes and guidance in place, headquarters approved 38 of 141 requests for continuing contracts that were valued at below \$10 million and that required less than 12 calendar months to complete, including 3 requests that were for contracts valued at less than \$500,000. Similarly, for the first 6 months of fiscal year 2006, of the 17 continuing contract requests approved by headquarters, 2 approvals were for work valued at below \$10 million and required less than 12 calendar months to complete.

We are making recommendations that the Secretary of Defense direct the Commanding General and Chief of Engineers of the U.S. Army Corps of Engineers to eliminate the routine use of continuing contracts, establish meaningful criteria for the use of such contracts, and monitor the Corps' use of these contracts. In commenting on a draft of this report, the Department of Defense stated that it was a constructive report and concurred with our recommendations.

Background

The Corps' Civil Works program is responsible for planning, developing, and maintaining the nation's water and related environmental resources. The Corps' headquarters is in Washington D.C.; eight regional divisions and 38 districts carry out its domestic civil works responsibilities.

Each year the Corps' Civil Works program receives funding through the Energy and Water Development Appropriations Act. The act normally appropriates a sum for water resources projects to several different appropriations accounts, including construction; operation and maintenance; and flood control, Mississippi River and tributaries. The construction account finances construction and major rehabilitation projects that relate to navigation, flood control, water supply, hydroelectric power, and environmental restoration. The operation and maintenance account finances the preservation, operation, maintenance, and care of existing river and harbor, flood-control, and related activities at the projects that the Corps operates and maintains. The flood control, Mississippi River and tributaries account provides flood protection for the alluvial valley of the Mississippi River from Cape Girardeau, Missouri, to the Head of Passes, Louisiana; and improvement of the Mississippi River for navigation from Cairo, Illinois, to Baton Rouge, Louisiana. Table 1 shows the appropriations received in fiscal years 2003–2005 for these accounts.

Table 1: Fiscal Years 2003–2005 Appropriations

Dollars in thousands			
Appropriations account	Fiscal year 2003 budget authority	Fiscal year 2004 budget authority	Fiscal year 2005 budget authority
Construction	\$1,756,012	\$1,722,319	\$1,796,089
Operation and maintenance	1,940,167	1,967,925	1,959,101
Flood control, Mississippi River and tributaries	344,574	324,222	324,500
Total	\$4,040,753	\$4,014,466	\$4,079,690

Sources: Fiscal years 2003, 2004, and 2005 Energy and Water Development Appropriations Acts.

The conference report accompanying the Energy and Water Development Appropriations Act generally lists individual projects and designates amounts for each project.⁵ Through this report, the appropriations committees essentially establish their priorities for the Corps' water resources projects. In recent years, Congress has appropriated less funding than the sum of the amounts designated to individual projects in the conference report. Districts are responsible for executing projects.

The Corps receives “no year” appropriations that remain available until spent. As part of the budget process, the Corps has historically requested appropriations from Congress to cover only those contract payments expected to be made in the upcoming fiscal year; it generally has not requested appropriations to fully fund its Civil Works contracts. According to the Corps, to comply with congressional direction that the agency give careful consideration to the disposition of appropriated funds to ensure that they are applied effectively, and that the agency effectively move (reprogram) funds from projects that are not moving forward, the Corps developed policies and business practices to expend all available appropriations in the fiscal year appropriated and thereby minimize carrying appropriated funds over to following years. In fiscal year 2006, again in response to changing congressional direction in the Energy and Water Development Appropriations Act and the accompanying conference report, the Corps modified its program execution process to focus on expending funds only on the projects for which they were specified, even

⁵Nonfederal sponsors (state, tribal, county, and local agencies) generally share the costs for a project with the Corps and provide, among other things, financial contributions, to complete the work.

if the appropriated funds could not be completely expended in the fiscal year, and minimizing reprogramming unless it was absolutely essential.⁶ Consequently, a higher level of carry-over balances is anticipated starting in fiscal year 2006. The Corps has also stated that it will begin requesting sufficient appropriations to fully fund most contracts beginning in fiscal year 2008.

The Corps primarily uses fixed-price and indefinite-delivery contracts to complete its work. Fixed-price contracts are awarded for a specific price, regardless of the final cost to the contractor. If the contract is completed for less than the fixed price, the contractor benefits from greater profits; if the costs exceed the fixed price, then the contractor bears the loss. Indefinite-delivery contracts allow the Corps to obtain services or supplies through multiple task or delivery orders, as needed, to carry out project construction, and operation and maintenance activities.

History of the Corps' Continuing Contracts Authority

Starting with the River and Harbor Act of 1892 and continuing intermittently through the River and Harbor Act of 1916, Congress gave the Corps authorization to enter into contracts to complete a limited number of projects even though the Corps did not have appropriations to cover the full contract amounts. In 1922, the Corps sought and received from Congress permanent authority to enter into these types of “continuing contracts.” The River and Harbor Act of 1922 gave the Corps authority to use continuing contracts for specifically authorized projects on canals, rivers, and harbors.

When the Corps sought its 1922 authority to use continuing contracts, it stated that this authority would enable it to enter into contracts that exceeded the amount of funding that had been appropriated. At that time, the Corps noted that the continuing contract option would be advantageous for some projects—such as a lock and dam project that required several million dollars and 3 to 4 years to complete—because it would help avoid tying up appropriations over a long period of time and carrying large sums of unexpended appropriations for several years. The Corps also noted that awarding contracts with a larger scope of work that covered several years would help encourage active competition among contractors.

⁶The changes to the Corps' program execution process are in the Corps' December 2005 Engineering Circular 11-2-189.

Since 1922, the Corps has used its continuing contracts authority to varying degrees for different types of projects and activities. In recent years, Congress has provided both guidance and specific direction to the Corps on how to use continuing contracts. These include the following:

- The Water Resources Development Act of 1999. Congress broadened the types of projects and work covered by the Corps' continuing contracts authority. Specifically, it directed the Corps to award continuing contracts if sufficient funding was not available to complete a project funded from the construction; operation and maintenance; or flood control, Mississippi River and tributaries appropriations accounts.
- The Energy and Water Development Appropriations Act of 2004. Congress included a provision, not limited to fiscal year 2004, to also allow the use of continuing contracts for those contracts that were funded from the investigations appropriations account. The investigations account is used to collect and study basic information for, among other things, river and harbor and flood control activities; miscellaneous investigations; and surveys and detailed studies for projects before construction.
- The committee report accompanying the Corps' fiscal year 2005 appropriations. The conference committee expressed concern about the Corps' use of continuing contracts and noted that continuing contracts are to allow the Corps to award large construction elements of a project and take advantage of the economies of scale and allow these large elements to be efficiently managed over several years.
- The Energy and Water Development Appropriations Act of 2006. Congress included a provision that modifies the types of projects and work for which the Corps is required to use a continuing contract. The provision, not limited to fiscal year 2006, states that the requirements regarding the use of continuing contracts in the Water Resources Development Act of 1999 shall apply only to projects funded from the operation and maintenance account and the operation and maintenance subaccount of the Mississippi River and tributaries account. The 2006 act also prohibits the Corps from entering into a continuing contract or modifying an existing contract that commits an amount for a project "in excess of the amount appropriated for such project pursuant to this act."

The Corps' continuing contracts contain either a "basic clause" or an "alternate clause." Districts may only use the basic continuing contracts clause for those contracts awarded for congressionally authorized Civil Works water resources projects, which are typically authorized in a Water Resources Development Act. The alternate clause can be used for projects

that are not specifically authorized, but are covered by the Continuing Authorities Program.⁷ The Corps' continuing contracts authority applies to specific types of projects, which do not include water-related environmental infrastructure and resource development projects, such as wastewater treatment, water supply, storm water retention and remediation, environmental restoration, and surface water resource protection and development. Districts historically made the decision to use continuing contracts without oversight from the division or Corps headquarters.

In our prior reports on governmentwide funding practices, we have observed that full funding for capital asset acquisitions is the best way to ensure that all financial decisions are fully accounted for and recognized as part of the budget process, and that full funding also helps ensure that governmentwide fiscal control is maintained.⁸ Unlike a project started with a partially funded continuing contract, an agency receives budget authority for the project's full estimated costs before a commitment is made for a fully funded capital project. Otherwise, distortions in resource allocations can result when the full costs of the commitments are not recognized at the time budget decisions are made.

⁷Continuing Authorities Program projects, such as beach erosion, navigation, and flood control activities, generally do not receive specific congressional authorization or appropriations and are conducted at the Corps' discretion based on the availability of funds.

⁸These governmentwide reports include: *Budget Issues: Alternative Approaches to Finance Federal Capital*, [GAO-03-1011](#) (Washington, D.C.: Aug. 21, 2003); *Executive Guide: Leading Practices in Capital Decision-Making*, [GAO/AIMD-99-32](#) (Washington, D.C.: Dec. 1998); and *Budget Issues: Budgeting for Federal Capital*, [GAO/AIMD-97-5](#) (Washington, D.C.: Nov. 12, 1996).

The Corps Cannot Accurately Identify How Many Continuing Contracts It Has Awarded because It Does Not Track These Contracts

The Corps does not track information on the number of contracts that it awards with a continuing contracts clause; therefore, it could not identify the number or the dollar value of such contracts awarded in fiscal years 2003–2005. Because the Corps does not track its use of continuing contracts, the quarterly reports it submitted to the appropriations committees in fiscal year 2006, on the use of such contracts, were inaccurate. We independently identified the number of continuing contracts awarded by the Corps in fiscal years 2003–2005 by reviewing the agency’s contracting data, and we determined that 1,592 (about 10 percent) of all contracts awarded during this 3-year period most likely included and used a continuing contracts clause. These 1,592 contracts accounted for more than 60 percent of the Corps’ annual obligations for new contracts awarded during these 3 years.

The Corps Does Not Track Its Use of Continuing Contracts

The Corps does not systematically track the extent to which it uses a continuing contracts clause, and could not provide reliable information on the number of continuing contracts awarded in fiscal years 2003–2005 or the dollar value of these contracts. Moreover, according to Corps officials, nearly all multi-year contracts awarded by the Corps prior to fiscal year 2005 routinely included a continuing contracts clause, and the agency had no requirement for districts to track when this clause was actually used.

In fiscal years 2005 and 2006, the conference committees, in the reports accompanying the Corps’ appropriation acts, directed the Corps to monitor its use of continuing contracts. The Corps was also directed to provide the appropriations committees with a quarterly report on the agency’s use of such contracts, starting in fiscal year 2006. Because the Corps does not have a tracking system for continuing contracts, it gathered the information submitted in the two quarterly reports for fiscal year 2006 by asking each division to provide information on their existing continuing contracts and expected obligations for the federal costs associated with these contracts. We reviewed these two quarterly reports and determined that they included inaccurate information. For example, we found at least 13 continuing contracts that were missing from the reports sent to the committees, and we found wrong contract values (the expected total costs for a contractor to complete the work) listed for 10 contracts.

Continuing Contracts Most Likely Accounted for About 10 Percent of All Contracts Awarded by the Corps in Fiscal Years 2003–2005

Our analysis of the Corps' contracting data indicates that the Corps awarded 16,532 fixed-price and indefinite-delivery contracts (both construction contracts and operation and maintenance contracts) during fiscal years 2003–2005.⁹ According to Corps officials, the agency included a continuing contracts clause in most of its multi-year contracts. However, most of the 16,532 contracts were fully funded and, therefore, would not have needed to use a continuing contracts clause even if it was included in the contract.¹⁰ We found 1,592 of the 16,532 contracts (about 10 percent) were partially funded contracts at award and, therefore, most likely would have included and used a continuing contracts clause. The 1,592 contracts included 402 contracts that were partially funded at award but were fully funded by the end of the first fiscal year.¹¹ The 1,592 contracts accounted for more than 60 percent of the Corps' annual obligations for new contracts awarded during these 3 years.¹² The full costs to the federal government of the 1,592 contracts were more than \$3.96 billion at award. However, the Corps only obligated \$655 million to current appropriations when these contracts were awarded; the outstanding commitment at the time of award was about \$3.30 billion, and the Corps expects to obligate this amount to subsequent years' appropriations. Table 2 summarizes the total number and full costs to the federal government of continuing contracts awarded during fiscal years 2003–2005.

⁹We analyzed the Corps' contracting data contained in the Army's Standard Procurement System database. For more information on the methodology for our analysis, see appendix I.

¹⁰These fully funded contracts ranged from as small as \$1 to as large as \$49 million at award, with a median value of \$17,894.

¹¹About half of these contracts were awarded in the first fiscal quarter while the Corps was under a continuing budget resolution authority; its final appropriation was not known at the time of this report.

¹²The Corps' annual \$4 billion budget includes appropriations for both new and on-going contracts.

Table 2: Total Number and Full Costs to the Federal Government of Continuing Contracts, Fiscal Years 2003–2005

	Fiscal year			Total
	2003	2004	2005	
Number of continuing contracts	669	583	340	1,592
Full costs to federal government at award	\$1,098,599,154	1,703,122,079	1,154,337,793	\$3,956,059,026
Obligations at award	\$201,528,606	213,814,098	240,013,268	\$655,355,972
Outstanding commitment at award	\$897,070,548	1,489,307,981	914,324,525	\$3,300,703,054

Source: GAO analysis of Corps contracting data.

Other characteristics that we identified for these 1,592 continuing contracts included the following:

- All 38 districts used at least one continuing contract during fiscal years 2003–2005. Five districts—Jacksonville, Vicksburg, Memphis, Walla Walla, and Portland—awarded only about 2.8 percent of the total number of contracts for this time period, but accounted for about 30 percent of the continuing contracts.
- About 65 percent of the continuing contracts were valued at \$1 million or less; 26 percent were valued at between \$1 million and \$5 million; 5 percent were valued between \$5 million and \$10 million; and 4 percent were valued at more than \$10 million.
- Several appropriations accounts funded these continuing contracts.¹³ About 54 percent of the obligations were from the construction account; 25 percent from the operation and maintenance account; 7 percent from the flood control, Mississippi River and tributaries account; 9 percent from the Inland Waterway Trust Fund; and 6 percent from other accounts.¹⁴
- When contractors continue to work even after appropriations are not available, the Corps is committed to pay all of the outstanding costs incurred by the contractor and any interest that may have accrued on these outstanding balances. The Corps could not provide data on the interest it paid in fiscal year 2003 for these continuing contracts, but for fiscal years 2004 and 2005, the Corps paid about \$497,000 and \$288,000 in interest payments, respectively. Monthly interest payments on these

¹³The Corps may fund a continuing contract from more than one appropriations account.

¹⁴These accounts include, among others, the investigations, flood control and coastal emergencies, revolving funds, and regulatory programs accounts.

contracts ranged from about \$1 to more than \$76,000 for individual districts.

- Continuing contracts were generally used more often for fixed-price contracts than for indefinite-delivery contracts. About 50 percent of fixed-price contracts were continuing contracts, compared to only about 5 percent of indefinite-delivery contracts. The full costs to the federal government of fixed-price continuing contracts ranged from about \$21,000 to more than \$564 million, while indefinite-delivery continuing contracts ranged from as small as \$12,000 to more than \$22.5 million. The median dollar value of all 1,592 continuing contracts was about \$440,000; the median value of the fixed-price continuing contracts was about \$1.2 million; and the median value of the indefinite-delivery continuing contracts was about \$147,000.

Appendix II provides more information on the characteristics of the continuing contracts that we identified for fiscal years 2003–2005.

Prior to 2005, the Corps Routinely Included a Continuing Contracts Clause in Most Contracts

The Corps' routine practice was to include a continuing contracts clause in most of the contracts it awarded during fiscal years 2003–2005. According to the Corps, this occurred, in part, because a provision of the Water Resources Development Act of 1999 requires the agency to use continuing contracts for certain projects if sufficient funding is not available to complete the project. The Corps interpreted this provision to mean that, if sufficient funds were not available to complete the entire project, then all contracts associated with the project must be continuing contracts. The Corps' interpretation of this provision resulted, in our opinion, in the overuse of the continuing contracts authority because the provision does not require all contracts awarded for a given project to be continuing contracts. The Corps might have been able to fully fund some short-term, low dollar value contracts if, at the time of award, the Corps had adequate appropriations to cover the contract amount.¹⁵ Moreover, the Corps relied on its use of continuing contracts to help meet its policy of not carrying over unexpended appropriations into future fiscal years. By routinely including a continuing contracts clause into all of its contracts, the Corps

¹⁵For example, one district awarded a continuing contract for \$14,614 in April 2003 and only obligated \$6,739 to that fiscal year's appropriations. The district subsequently awarded 38 more continuing contracts in that fiscal year and obligated over \$9.7 million to these contracts. We believe the district could likely have obligated the remaining \$7,875 to the April 2003 contract from this \$9.7 million.

could more easily move funds among contracts at the end of the year. Appropriations that could not be expended on a contract would be obligated to a contract that could expend the funds. In addition, districts cited a variety of other reasons for a large number of continuing contracts being awarded at the end of the fiscal year.

In the late 1990s, large carry-over amounts of unexpended Corps appropriations at the end of each fiscal year became a concern to Congress. Through a provision of the Water Resources Development Act of 1999, Congress instructed the Corps to use continuing contracts for certain water resources projects if sufficient funding was not available to complete the project—in effect, this made permanent the direction that the appropriations committees had given to the Corps for a number of years through fiscal year 1998. As a result, the Corps implemented policies designed to maximize expenditures from all available appropriations in the year appropriated. These policies, in turn, encouraged the Corps' use of continuing contracts to ensure that only the appropriations required for expenditure in a given year were obligated on the contract.

However, we believe that the Corps' implementation of the 1999 law has resulted in an overuse of the continuing contracts authority and the frequent awarding of continuing contracts for short-term, low dollar value contracts.¹⁶ The Corps might have been able to fully fund some of these contracts if, at the time of award, the Corps had adequate appropriations to cover the contract amount. For example, for the 107 randomly selected continuing contracts awarded in fiscal years 2003–2005 that we reviewed, we found only 8 continuing contracts that were valued at more than \$10 million dollars and involved contracted work that required more than 12 calendar months to complete. In contrast, many of the 107 continuing contracts we reviewed were short-term and/or low dollar value contracts. For example, we found that, 39 continuing contracts were for work that lasted 6 months or less; 34 continuing contracts had a contract value of less than \$1 million; and 10 continuing contracts had a contract value of less than \$1 million and included work that took less than 6 months to

¹⁶For the purposes of this report low dollar value is a contract that is for less than \$10 million.

complete.¹⁷ Some specific examples of the kinds of short-term, low dollar value continuing contracts we identified were:

- The Jacksonville district used a continuing contract to partially fund a \$695,285 contract that required 90 days to complete.
- The Galveston district used a continuing contract for an \$868,812 contract that required 30 days to complete. The district awarded the contract on September 29, 2004, and did not give the contractor permission to begin the work until the next fiscal year on November 1, 2004. Therefore, the contracted work was actually completed in one fiscal year and was not a multi-year contract.
- The Vicksburg district used a continuing contract for a \$102,051 contract that required 195 days to complete. Because the contract spanned more than one fiscal year, the Corps considered this a multi-year contract that justified the use of a continuing contract, even though the contract required less than 7 months to complete and had a relatively low dollar amount.

Table 3 summarizes the full contract costs and length of time needed to complete contracted work for the 107 randomly selected continuing contracts we reviewed.

¹⁷Although not included in the 107 contracts, we found that—in addition to construction, and operation and maintenance work—continuing contracts were also used for service contracts, such as archaeological work, marine benthic surveys, and a purchase order for the operation of a visitor’s center. Generally, these additional contracts were valued at less than \$500,000.

Table 3: Total Number of the 107 Randomly Selected Continuing Contracts Awarded in Fiscal Years 2003–2005 by the Full Contract Costs and Number of Months to Complete the Contracted Work

Number of months to complete work	Contract value at award				Total number of contracts
	Less than \$1 million	From \$1 million to less than \$5 million	From \$5 million to less than \$10 million	More than \$10 million	
Six or less	10	26	3	0	39
Between 6 and 12	16	12	2	0	30
Between 12 and 24	3	6	4	4	17
Greater than 24	1	0	0	4	5
Unknown	4	9	2	1	16
Total	34	53	11	9	107

Source: GAO analysis of Corps contracting data from randomly selected continuing contract files.

Note: These costs include both the federal government and nonfederal sponsor's share of the contract costs.

The Corps also routinely included a continuing contracts clause in its contracts to help meet its policy of expending all available appropriations in the fiscal year appropriated, and to minimize carrying over unexpended appropriations into the next fiscal year. According to the Corps, it allocates appropriations to projects at the beginning of the fiscal year. The only way to reallocate appropriations to avoid carryover is through reprogramming. Reprogramming provides the Corps with the flexibility to move excess funds from projects that are behind schedule to projects that may be able to use the funds because they are ahead of schedule. Generally, federal agencies are required to fully fund contracts at the time of award. The Corps would not have been able to easily move the funds from a contract unless it included a continuing contracts clause. According to agency officials, the Corps has had a standard practice to include a continuing contracts clause in most contracts as a precaution in the event that it might need to move funds from a project at a later date in the fiscal year to meet the agency's policy of expending all available appropriations in the fiscal year appropriated.

As we reported in 2005, the Corps had come to rely excessively on reprogramming as its primary method to manage Civil Works project funds, with little consideration to pending needs or long-term financial

planning and priority-setting.¹⁸ In our 2005 report, we identified numerous instances where the Corps' policy of expending all available appropriations in the fiscal year appropriated had resulted in reprogramming actions that were inconsistent with the Corps' reprogramming guidance. Similarly, during this review of the Corps' use of continuing contracts, we found a number of instances where the Corps used its continuing contracts authority primarily to reprogram funds in furtherance of the agency's policy of expending all available appropriations in the fiscal year appropriated. For example, in some cases, we found that the Corps included a continuing contracts clause even in contracts that had been fully funded at the time of award, in case it needed to reprogram funds sometime later during the year from these contracts. In some other cases, according to Corps district officials, we found that the Corps modified fully funded contracts and converted them into continuing contracts so that obligations could be reprogrammed from these contracts. In addition, other continuing contracts were awarded in a manner that was inconsistent with the Corps' own guidance for the use of continuing contracts, but which allowed the agency to award end-of-year contracts and not carry over any end-of-year balances. A continuing contracts clause should identify the portion of the contract value that the Corps will reserve for the contract for the first fiscal year. However, we found four contracts that were awarded at the end of the fiscal year where the district initially obligated \$50,000 to each of the contracts, but deobligated the entire \$50,000 from each contract within 1 day. These actions helped the Corps meet its policy of expending all available appropriations in the fiscal year appropriated by allowing the money to be spent on other contracts.

A variety of other factors may also lead to the award of many continuing contracts late in the fiscal year.¹⁹ According to district officials, it is not uncommon for a continuing contract to be awarded late in the fiscal year in situations where (1) the district commander committed to awarding the contract in that fiscal year, (2) the district had agreements with the nonfederal sponsor that certain contracts would be awarded in that fiscal

¹⁸For additional information on the Corps' use of reprogramming, see GAO, *Army Corps of Engineers: Improved Planning and Financial Management Should Replace Reliance on Reprogramming Actions to Manage Project Funds*, [GAO-05-946](#) (Washington, D.C.: Sept. 16, 2005).

¹⁹In addition, Corps officials said that environmental windows to protect, among others, sea turtles, can cause continuing contracts to be awarded late in the year to ensure that dredging work begins at the start of the next fiscal year.

year, or (3) the district ran out of money to fully fund a contract. Of the 107 contracts we reviewed, over half of these (58) were awarded in the fourth quarter of the fiscal year. Of these, 27 were awarded in September, the last month of the fiscal year, and 15 of the 27 September contracts were awarded in the last week of the fiscal year. Because the Corps only obligated a small portion of the total contract amount to these contracts in the year that they were awarded, the bulk of the funds needed to cover most of the contracts had to come from future years' appropriations.

The Corps' Revised Processes for Approving Continuing Contracts Has Reduced Their Use, but It Still Lacks Criteria for When Their Use Is Appropriate

In fiscal year 2005 and again in 2006, in response to congressional committee direction, the Corps implemented new processes that require districts to, among other things, obtain headquarters' approval before using continuing contracts. The new processes have reduced the total number of continuing contracts the Corps awarded in fiscal years 2005 and 2006. However, the Corps has not established clear criteria for when it is appropriate to request and approve the use of continuing contracts. As a result, headquarters continues to receive and approve continuing contracts for short-term, low dollar value contracts. The Corps might have been able to fully fund some of these contracts if, at the time of award, the Corps had adequate appropriations to cover the contract amount.

Fiscal Year 2005 Process Changes for Approving Continuing Contracts

Congressional committee direction contained in the conference report to the Consolidated Appropriations Act of 2005 required the Corps to monitor its use of continuing contracts and stated that the award of such contracts should be guided by responsible financial management practices. Further, according to Corps officials, based on their discussions with the House Subcommittee on Energy and Water Development, the Corps created a new process that required districts to obtain headquarters' approval before using continuing contracts. Corps headquarters' primary criterion for approving a request to use a continuing contract was whether or not the project was likely to receive appropriations in the next fiscal year. The first continuing contracts were approved using this criterion on March 30, 2005. In June 2005, the Corps documented this change in procedure by issuing an interim policy guidance memorandum. The guidance stated that headquarters' approval was required for all continuing contracts, and that districts should seek to fully fund contracts whenever possible. The guidance also established criteria for the kinds of situations in which a contract should generally be fully funded. These situations include the following:

-
- when the contract will span 2 fiscal years but will begin or end a short amount of time before or after a fiscal year, and sufficient appropriations can be made available to fully fund the contract without adversely affecting progress on other projects or prior reprogramming commitments;
 - when the contract will span 2 fiscal years but requires only a small amount of funding in the first or last fiscal year, and sufficient appropriations can be made available to fully fund the contract without adversely affecting progress on other projects or prior reprogramming commitments;
 - when future allocations of appropriated funds in amounts needed to support a continuing contract are unlikely, and appropriations already allocated for the project could be used to fully fund the contract; and
 - for all, or portions of, Continuing Authorities Program projects.²⁰

Unlike in the past when no oversight was provided to the districts' use of continuing contracts, Corps officials told us the new fiscal year 2005 process for approving and using continuing contracts involved all levels of the agency—the district, division, and headquarters. The districts were required to submit written requests to their divisions if they were seeking approval to use continuing contracts. The requests were to include a discussion of alternative contracting options, whether the project would be budgeted for in subsequent fiscal years, the likelihood of the project receiving appropriations in subsequent fiscal years, and whether the needs identified in subsequent fiscal years' appropriations were reasonable given the Corps' budget environment. After the division reviewed the districts' request, the division either denied the request or forwarded it to headquarters. If the division denied the request, it might have suggested that the district provide additional information to support the request, fully fund the work, use an alternate contracting option, or wait until the next fiscal year to proceed with the work. Under the 2005 process, requests forwarded to headquarters for review were approved, withdrawn by the division, sent back to the division for more information, or denied.

²⁰ Continuing Authorities Program projects are conducted at the Corps' discretion based on the availability of funds and generally do not receive specific congressional authorization or appropriations. These projects include activities for beach erosion, navigation, and flood control.

Fiscal Year 2006 Process Changes for Continuing Contracts

For fiscal year 2006, Congress provided additional direction to the Corps in the Energy and Water Development Appropriations Act of 2006. The law states that, (1) with certain exceptions, none of the funds made available in the act may be used to award any continuing contract or make modifications to any existing continuing contract that commits an amount for a project in excess of the amount appropriated for the project; and (2) notwithstanding any other provision of the law, the requirements regarding the use of continuing contracts under the Water Resources Development Act of 1999 shall apply only to projects funded under the operation and maintenance account and the operation and maintenance subaccount of the flood control, Mississippi River and tributaries account. To respond to these new congressional requirements, in December 2005, the Corps issued additional guidance that is effective through the end of fiscal year 2006, which, among other things:²¹

- reaffirmed its policy that districts should use fully funded contracts as their primary contracting option;
- directed that continuing contracts should only be used as the contracting option of last resort;
- summarized new information that the districts are required to provide in their requests to use continuing contracts, including an explanation on why using a continuing contract is in the best interest of the government; and
- directed districts to take measures to ensure that contractor costs generally do not exceed the amount appropriated for projects in fiscal year 2006.

The Corps also continued to make additional policy changes in fiscal year 2006 to better manage the use of continuing contracts in response to the Energy and Water Development Appropriations Act of 2006. For example, in March 2006, to help districts comply with the requirement that contractors stop working on a contract once appropriations for the fiscal year were spent, Corps headquarters developed two new continuing contracts clauses.²² Corps headquarters directed districts to replace the

²¹The Corps issued this guidance in its Engineering Circular 11-2-189.

²²The Corps issued this guidance in Principal Assistant Responsible for Contracting Instruction letter 2006-05, Continuing Contracts and Incrementally Funded Contracts for Fiscal Year 2006.

existing continuing contracts clause with either one of two new continuing contracts clauses for most continuing contracts. These new clauses do not permit the contractor to work beyond the amount obligated in the contract for that year. Under the previous continuing contracts clause the contractor could continue working on the contract, which required the Corps to either reprogram funds or to make payments from the next fiscal year's funds when they were appropriated. By requiring the contractor to stop work once all reserved funds for a given project are spent, the Corps is effectively reasserting control in determining how future appropriations will be spent for specific contracts.

The conference report accompanying the Energy and Water Development Appropriations Act of 2006 also specified that the Assistant Secretary of the Army for Civil Works would be responsible for approving the award of each continuing contract. According to the Corps, to simplify the administration of this provision, the Assistant Secretary of the Army for Civil Works, after coordination with the House and Senate Subcommittees for energy and water development appropriations, issued a memorandum in March 2006 pre-approving continuing contracts that met certain conditions for operation and maintenance work. These conditions include, among other things, being financed from the operation and maintenance account or the maintenance subaccount of the Mississippi River and tributaries account, and that districts have determined that using a continuing contract is the most cost-effective acquisition mechanism. In May 2006, the Corps delegated, to the divisions and districts, the authority to determine whether operation and maintenance contracts meet the conditions for pre-approval. As a consequence, Corps headquarters is no longer directly involved in the approval of these new operation and maintenance continuing contracts. Because these changes are relatively recent, it is too early to determine the effect that they will have on the districts' use of continuing contracts for operation and maintenance work.

Process Changes Have Reduced the Number of Continuing Contracts, but Approvals Continue for Short-Term, Low Dollar Value Contracts

The Corps process changes in fiscal years 2005 and 2006 reduced the number of requests districts made to use continuing contracts. In fiscal year 2005, headquarters approved 141 requests during the 6 months that the new procedures were in place (March 30 through September 30, 2005),²³ but only 17 requests were approved during the first 6 months of fiscal year 2006 (October 1, 2005, through March 30, 2006). According to the Corps, the process changes that were made in response to discussions with the House Subcommittee on Energy and Water Development and the enactment of the Energy and Water Development Appropriations Act of 2006 were key in reducing the use of continuing contracts.

Between March 30, 2005 (when the new approval process was implemented), and March 30, 2006, Corps headquarters approved most of the continuing contract requests that it received. The divisions received 180 requests from the districts, 175 of which were forwarded to headquarters for approval and 5 of which were denied.²⁴ Of the 175 requests forwarded to headquarters for approval, 10 were withdrawn by the divisions prior to receiving approval.²⁵ Headquarters approved 158 of the 165 requests it considered and denied 7 of them. The seven requests were denied primarily because they did not identify subsequent years' funding in their requests. The districts ultimately fully funded five of the seven requests that were denied. Table 4 summarizes headquarters' reasons for denying the seven requests and how the districts proceeded with the work after the denial.

²³Districts may not have proceeded with a continuing contract for all of the requests that were approved by headquarters because, in some instances, the districts chose not to.

²⁴Divisions used the following reasons for denying the requests: fiscal year 2005 appropriations were insufficient to cover the contractor's expenses, the contract could be fully funded, there were problems with the cost estimate, and the contract was for an environmental infrastructure project (which must be fully funded, according to Corps guidance).

²⁵Divisions withdrew these requests, primarily because the work could be fully funded or because there was uncertainty about appropriations.

Table 4: Headquarters' Reasons for Denying Seven Requests to Use a Continuing Contract and How Districts Proceeded with the Work

Contract	Reason for denial				Action taken to proceed with the work		
	Contract could be fully funded	Contract did not identify subsequent years' funding	Contract not in president's fiscal year 2007 budget	Contracted work cannot use a continuing contract	Contract was fully funded	District assessing alternate contracting options	Contract will use a new continuing contracts clause
1	X				X		
2	X				X		
3		X			X		
4		X			X		
5		X					X
6			X			X	
7				X ^a	X		

Source: GAO analysis of Corps information.

^aThis contract was for an environmental infrastructure project, which cannot use a continuing contract.

Although the Corps' revised approval processes reduced the number of continuing contracts districts used, they have not adequately addressed when the use of continuing contracts is appropriate. This is because the Corps' revised guidance established the situations in which districts should consider fully funding contracts, but did not establish similar criteria for when to use continuing contracts. Consequently, even with the new process changes, districts requested and headquarters approved the use of continuing contracts for contracted work that is of short term and has a low dollar value. The Corps believes that these requests demonstrated a strong business case for using a continuing contract;²⁶ however, we believe that the Corps might have been able to fully fund some of these contracts if, at the time of award, the Corps had adequate appropriations to cover the contract amount.

Moreover, under the new processes, in fiscal year 2005, Corps headquarters' primary criterion for approving a request to use a continuing contract was whether or not the project was likely to receive

²⁶The Corps also noted there could be some cases in which a continuing contract may be required, such as when a nonfederal sponsor, i.e., the local community, could not afford to match federal funds under the lump-sum approach.

appropriations in the next fiscal year. If headquarters determined that there was little likelihood of the project receiving future years' appropriations it would generally deny the request for a continuing contract. By focusing its review on just this criterion, the Corps did not address factors such as length of work and dollar value of the contract, which we believe are also important factors to consider when justifying the need to use a continuing contract. Of the 141 requests approved by headquarters between March 30 through September 30, 2005, only 24 (about 17 percent) were for contracts valued at more than \$10 million and that required more than 12 calendar months to complete. In contrast, headquarters approved 38 of 141 requests (almost 27 percent) for contracts valued at less than \$10 million and that required less than 12 calendar months to complete, and included 3 requests that were for contracts for less than \$500,000. Table 5 summarizes information on the requests approved in fiscal year 2005.

Table 5: Total Number of Approved Requests to Use a Continuing Contract in Fiscal Year 2005

Number of months to complete work	Contract value at award ^a					Total number of approved requests
	Less than \$1 million	From \$1 million to less than \$5 million	From \$5 million to less than \$10 million	More than \$10 million	Unknown	
Six or less	2	14	1	1	0	18
Between 6 and 12	5	15	1	2	0	23
Between 12 and 24	1	14	5	5	0	25
Greater than 24	0	10	9	19	1	39
Unknown	8	23	5	0	0	36
Total	16	76	21	27	1	141

Source: GAO analysis of Corps information.

Note: Fiscal year 2005 requests include those approved during the period March 30 through September 30, 2005.

^aThe contract value generally includes only the federal government's costs, except for those requests that did not distinguish between the federal government and a nonfederal sponsor's share of the costs.

In fiscal year 2006, the Corps further revised headquarters' criteria for approving continuing contract requests (or for recommending approval by the Assistant Secretary, pursuant to the conference report guidance); however, these changes also did not address our concern about approving short-term, low dollar value continuing contracts. As a result, the Corps and the Assistant Secretary continued to approve such contracts as continuing contracts in fiscal year 2006. Of the 17 requests approved by headquarters in fiscal year 2006 (as of March 30, 2006), only 4 of the

requests (about 24 percent) were for contracted work that required more than \$10 million and more than 12 calendar months to complete; 2 approved continuing contract requests were for short-term, low dollar value requests. Table 6 summarizes information on the requests approved for fiscal year 2006, as of March 30, 2006.

Table 6: Total Number of Approved Requests to Use a Continuing Contract in Fiscal Year 2006

Number of months to complete work	Contract value at award ^a					Total number of approved requests
	Less than \$1 million	From \$1 million to less than \$5 million	From \$5 million to less than \$10 million	More than \$10 million	Unknown	
Six or less	0	2	0	0	0	2
Between 6 and 12	0	0	0	0	0	0
Between 12 and 24	0	2	1	1	0	4
Greater than 24	0	0	3 ^b	3	2	8
Unknown	0	2	0	1	0	3
Total	0	6	4	5	2	17

Source: GAO analysis of Corps information.

Note: Fiscal year 2006 requests include those approved from October 1, 2005, through March 30, 2006.

^aThe contract value generally includes only the federal government's costs, except in those requests that did not distinguish between the federal government and a nonfederal sponsor's share of the costs.

^bThe Corps approved the use of a continuing contract for two of the requests because requiring that the two requests be fully funded would have required that the local communities fully fund their share of the project, thus creating an economic hardship.

Although the Corps' current criteria does not consider the duration and dollar value of contracts when making decisions about whether or not to award continuing contracts, agency officials are evaluating guidance for the fiscal year 2008 budget (and beyond) under which they would propose full funding of the federal government's commitment for contracts that are below a certain threshold. According to the Corps, this approach would reduce the use of continuing contracts up to 90 percent by fiscal year 2010.

Conclusions

The continuing contracts authority is a unique authority that provides the Corps with important flexibilities to manage multi-year, multi-million-dollar water resources projects. However, this authority also allows the Corps to commit the federal government to future financial obligations without appropriated funds to meet them. Because of the potential to

create significant future liabilities for the federal government, it is critical that the Corps have appropriate processes and practices in place to ensure that the use of the continuing contracts privilege is not misused or overused. We continue to advocate that fully funding contracts at the time of award is the best way for federal agencies to manage contractual obligations. If the Corps continues to use continuing contracts, then it must be able to monitor and track the extent to which they are used. This will enable the Corps to accurately determine the extent to which it has committed future years' appropriations, and also readily provide information on the full amount of these financial commitments.

Moreover, the Corps' past practice of routinely awarding continuing contracts (especially at the end of the fiscal year) to reprogram funds and avoid large carryover of unexpended balances, exemplifies, in our opinion, the need for clear criteria on when continuing contracts should be used. Even though the Corps has recently implemented new approval processes to restrict the use of continuing contracts, it has not yet established clear criteria to guide their use. As a result, while the Corps has reduced its reliance on continuing contracts, it continues to approve short-term, low dollar value contracts that may not justify the use of a continuing contract. Without meaningful criteria that include factors such as the length of time needed to complete the work and the dollar value of the contract, we believe that the Corps will not be able to assure that it uses continuing contracts appropriately.

Recommendations for Executive Action

To ensure the judicious use of continuing contracts by the Corps districts and to provide better management of projects that use such contracts, we recommend that the Secretary of Defense direct the Commanding General and the Chief of Engineers of the U.S. Army Corps of Engineers to take the following three actions:

- eliminate the routine use of continuing contracts by adopting good project planning and management practices rather than relying on continuing contracts;
- establish meaningful criteria for the use of continuing contracts, including an assessment of dollar value and length of time needed to complete contracted work so that districts have clear guidance on when a continuing contract may be used; and
- develop a tracking system to monitor the use of continuing contracts.

Agency Comments and Our Evaluation

We provided a draft copy of this report to the Department of Defense for review and comment. The Department stated that the report was very constructive and concurred with our recommendations. Specifically, the Department concurred with the recommendation that the Corps eliminate the routine use of continuing contracts by adopting good planning and management practices rather than relying on continuing contracts. The Department stated that it incorporated the appropriations committees' direction that discouraged continuing contracts and reprogramming in its execution guidance for fiscal year 2006. As a consequence, the number and dollar volume of new continuing contracts fell substantially in fiscal year 2006 compared to previous years. For its implementation guidance for fiscal year 2007, the Department stated that it will incorporate any new direction in law or committee reports, as well as lessons learned from fiscal year 2006.


The Department concurred with our recommendation that the Corps establish meaningful criteria for the use of continuing contracts, including an assessment of dollar value and length of time needed to complete contracted work so that districts have clear guidance on when a continuing contract may be used. The Department stated that in its fiscal year 2007 implementation guidance it will include, among other things, clearer criteria on when it is appropriate to use continuing contracts including explicit consideration of dollar value and length of time.

The Department concurred with our recommendation that the Corps develop a tracking system to monitor the use of continuing contracts. The Department said it has reviewed its data on continuing contracts and included corrections in its third quarterly report to the appropriations committees. The Department also stated that an automated tracking system will be established for its fiscal year 2007 appropriations and retained indefinitely.

The Department of Defense's comments on our draft report are included in appendix III.

We will send copies of this report to interested congressional committees, the Commanding General and Chief of Engineers of the U.S. Army Corps of Engineers, the Secretary of Defense, and the Director of the Office of Management and Budget. We will make copies available to others on request. In addition, this report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have questions about this report, please call me at (202) 512-3841 or contact me at mittala@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.



Anu K. Mittal
Director, Natural Resources
and Environment

Appendix I: Scope and Methodology

To determine the number and dollar amount of continuing contracts the U.S. Army Corps of Engineers (Corps) awarded during fiscal years 2003–2005, we reviewed the Corps’ quarterly reports to the appropriations committees on their use of these contracts. We also obtained the Corps’ contracting data from the Army’s Standard Procurement System. We analyzed information on the Corps’ domestic Civil Works fixed-price and indefinite-delivery contracts (both construction contracts and operation and maintenance contracts) for fiscal years 2003–2005. We excluded the base contract of indefinite-delivery contracts from our analysis because these base contracts have no value and no work associated with them. Like the Corps, we treated individual task orders awarded against the base contract to carry out the work as separate contracts. Because the Corps does not track information on contracts that included a continuing contracts clause, we developed a methodology for identifying these contracts. Of the contracts we reviewed, we identified all of the contracts for which the Corps did not obligate the full contract amount. According to the Corps, in order to partially fund a contract, the contract has to be either an incrementally funded contract¹ or a continuing contract. Using the data, we eliminated contracts identified by the Corps as incrementally funded that used either the limitation of funds clause or the Defense Federal Acquisition Regulations Supplement’s incremental funding clause.² We based our analyses on the most current data available and only included the federal portion of the continuing contracts’ costs. We obtained from Corps officials monthly interest payment information contained in the Corps of Engineers’ Financial Management System. We determined, based on interviews with Corps officials, comparison of data to contract files, and electronic data testing, that the data were sufficiently reliable for our purposes.

To determine the circumstances in which the Corps used continuing contracts in fiscal years 2003–2005, we judgmentally selected three Corps districts that used a large number of continuing contracts and were located in divisions that awarded a large percentage of continuing contracts in fiscal years 2003–2005. We selected Galveston (Southwest

¹Notwithstanding how the Corps views their continuing contracts, these contracts are also incrementally funded. Incremental funding is the practice of providing budget authority for only a portion of a capital acquisition or project.

²The limitation of funds clause is found at the Federal Acquisition Regulation 52.232-22; the Department of Defense’s incremental funding clause is found at the Defense Federal Acquisition Regulation Supplement 252.232-7007.

division), Jacksonville (South Atlantic division), and Vicksburg (Mississippi Valley division). We identified and reviewed a random sample of 107 continuing contracts from these three districts. Within the three districts, we ordered the districts' continuing contracts in a random list using the continuing contracts identified in the Corps of Engineers' Financial Management System and a list of contracts the Corps identified as continuing contracts. We reviewed the continuing contract files based on this random list. We reviewed fixed-price and indefinite-delivery contracts and eliminated from our sample contracts that were fully funded. For each contract, we reviewed the contract files and entered information into a data collection instrument to ensure uniformity. We also interviewed the contracting and program management officials to obtain additional information on the contract, including information on the circumstances when continuing contracts were used. We entered information from the data collection instruments into a database for analysis and independently verified the contents of the database with information from the data collection instruments. We also reviewed the Corps' guidance documents and interviewed Corps officials at districts, divisions, and headquarters to determine the Corps' policies and procedures for using a continuing contract. We compared the information collected from each contract to the Corps' general policies and procedures for using continuing contracts.

To determine how the Corps' process for approving and using continuing contracts changed since 2005 and whether the changes reduced their use of these contracts, we obtained Corps guidance documents for approving and using continuing contracts and interviewed Corps officials at districts, divisions, and headquarters. We also obtained information from Corps headquarters on districts' requests to use continuing contracts. For the purpose of our review, we treated a request as being equivalent to a contract. For example, if in one request, a district submitted information to justify the use of a continuing contract for two different contracts, then we counted this as two individual requests. We also surveyed the Corps' eight divisions to obtain information on the total number of requests to use continuing contracts submitted by each of their districts, requests forward by the division to headquarters, requests that were denied by the division, and requests that were denied by headquarters. We obtained responses from all eight divisions to our survey. We compared the information from the divisions' surveys to information that we obtained from Corps headquarters, and reconciled any differences. We entered information from the requests to use a continuing contract into a spreadsheet for analysis and independently verified the contents of the spreadsheet with information from the requests. We compared the

requests to the Corps' internal guidance on the use of continuing contracts.

We performed our work between December 2005 and July 2006, in accordance with generally accepted government auditing standards.

Appendix II: Characteristics of the Continuing Contracts Identified by GAO

This appendix provides additional characteristics of the continuing contracts awarded by the Corps during fiscal years 2003–2005 that we identified using the Corps’ contracting data in the Army’s Standard Procurement System. We summarize the 1,592 continuing contracts and include information on the total number of continuing contracts awarded by contract value and award date during this 3-year time frame. We also summarize the total number of continuing contracts awarded in each division and district during fiscal years 2003–2005.

According to the Corps’ contracting data for fiscal years 2003–2005, the contract values of 1,043 of 1,592 (over 65 percent) continuing contracts awarded were less than \$1 million; only 64 of 1,592 (about 4 percent) of the contracts were for more than \$10 million. Table 7 summarizes the full costs to the federal government for the 1,592 continuing contracts.

Table 7: Total Number of Continuing Contracts Awarded by the Full Costs to the Federal Government, Fiscal Years 2003–2005

Contract value	Fiscal year			Total number of continuing contracts
	2003	2004	2005	
≤ \$1 million	464	386	193	1,043
> \$1 million and ≤ \$5 million	161	149	98	408
> \$5 million and ≤ \$10 million	28	26	23	77
> \$10 million	16	22	26	64
Total	669	583	340	1,592

Source: GAO analysis of Corps contracting data.

Our analysis of the Corps’ contracting data indicates that 402 of 1,592 (about 25 percent) of the continuing contracts awarded in fiscal years 2003–2005 were fully funded within the fiscal year that they were awarded. About half of these contracts were awarded in the first fiscal quarter while the Corps was under a continuing budget resolution authority and its final appropriation was not yet known. We found another 66 contracts where a continuing contract was used to start a contract with no money. Table 8 summarizes the total number of continuing contracts by the percentage of federal funds made available in the first year for continuing contracts awarded in fiscal years 2003–2005.

Table 8: Total Number of Continuing Contracts by Percentage of Federal Funds Made Available in the First Year of the Contract, Fiscal Years 2003–2005

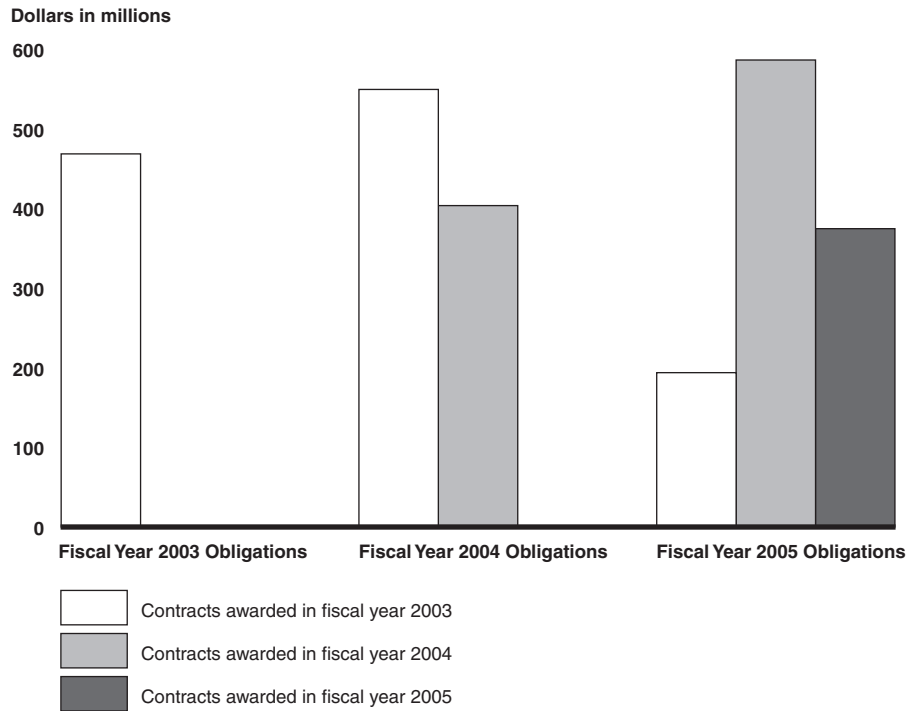
Percentage of federal funds made available in first year of continuing contract	Fiscal year			Total number of continuing contracts
	2003	2004	2005	
0%	29	24	13	66
> 0 and ≤ 10	127	115	49	291
> 10 and ≤ 25	78	70	42	190
> 25 and ≤ 50	91	95	43	229
> 50 and ≤ 75	96	66	47	209
> 75 and < 100	81	82	42	205
100%	167	131	104	402
Total	669	583	340	1,592

Source: GAO analysis of Corps contracting data.

Note: Contracts with 100 percent of funds available in the first year were partially funded at award but fully funded within the fiscal year they were awarded.

According to the Corps' contracting data for fiscal years 2003–2005, a large portion of each year's appropriations was obligated to continuing contracts awarded in previous fiscal years. For example, in fiscal year 2005, the Corps obligated more than \$781 million to continuing contracts awarded in fiscal years 2003 and 2004. Figure 1 summarizes the Corps' obligations by fiscal year for the 1,592 continuing contracts awarded during fiscal years 2003–2005.

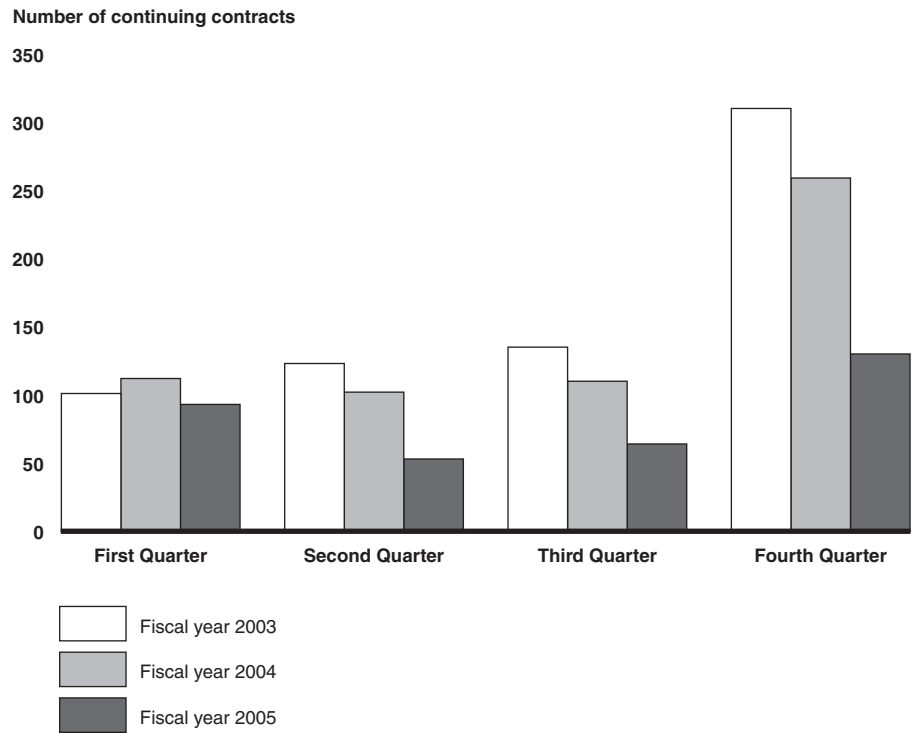
Figure 1: Obligations by Fiscal Year for Continuing Contracts Awarded, Fiscal Years 2003–2005



Source: GAO analysis of Corps contracting data.

According to the Corps' contracting data for fiscal years 2003–2005, almost 44 percent of the 1,592 continuing contracts were awarded during the fourth quarter of the fiscal year. Figure 2 summarizes the total number of continuing contracts awarded, by quarter, in fiscal years 2003–2005.

Figure 2: Total Number of Continuing Contracts by Fiscal Quarter of Award, Fiscal Years 2003–2005



Source: GAO analysis of Corps contracting data.

According to the Corps' contracting data for fiscal years 2003–2005, most of the commitments for continuing contracts came from the construction appropriations account. Table 9 summarizes the commitments for continuing contracts by appropriations accounts.

Table 9: Commitments for Continuing Contracts Made by Appropriations Account, Fiscal Years 2003–2005

Dollars in millions

Appropriations account	Fiscal year			Total
	2003	2004	2005	
Construction	\$585	\$923	\$617	\$2,125
Operation and maintenance	301	387	282	970
Flood control, Mississippi River and tributaries	103	62	105	269
Other ^a	110	331	150	591
Total	\$1,099	\$1,703	\$1,154	\$3,956

Source: GAO analysis of Corps contracting data.

Note: During the 3-year period, the Corps received an additional \$170 million from nonfederal project sponsors.

^aThe other account includes the following: investigations, flood control and coastal emergencies, regulatory programs, revolving funds, and the Inland Waterway Trust Fund.

The construction appropriations account was the source for the largest number of continuing contracts awarded. Some continuing contracts received appropriations from more than one account. Table 10 summarizes the total number of continuing contracts funded by each appropriations account.

Table 10: Total Number of Continuing Contracts by Appropriations Account, Fiscal Years 2003–2005

Appropriations accounts	Fiscal year			Total ^b
	2003	2004	2005	
Construction	276	250	129	655
Operation and maintenance	233	224	116	573
Flood control, Mississippi River and tributaries	76	41	37	154
Other ^a	101	90	78	269
Total^b	686	605	360	1,651

Source: GAO analysis of Corps contracting data.

^aThe other account includes the following: investigations, flood control and coastal emergencies, regulatory programs, revolving funds, and the Inland Waterway Trust Fund.

^bSome continuing contracts received appropriations from more than one account and are included in more than one account.

Of the Corps' eight divisions, four divisions—Mississippi Valley, South Atlantic, Great Lakes, and Northwest—account for about 72 percent (and over 66 percent of the value) of the 1,592 continuing contracts awarded during fiscal years 2003–2005. Table 11 summarizes the total number and full costs to the federal government of continuing contracts awarded by division.

**Appendix II: Characteristics of the
Continuing Contracts Identified by GAO**

Table 11: Total Number and Full Costs to the Federal Government of Continuing Contracts Awarded by Division, Fiscal Years 2003–2005

Division	Total number of continuing contracts				Full costs to the federal government			
	Fiscal year				Fiscal year			
	2003	2004	2005	Total	2003	2004	2005	Total
Mississippi Valley	148	120	70	338	\$211,354,085	\$200,471,639	\$223,623,848	\$635,449,572
South Atlantic	133	101	57	291	256,418,689	277,679,098	171,286,604	705,384,392
Great Lakes	105	98	62	265	66,341,407	776,307,678	250,408,627	1,093,057,712
Northwest	111	98	48	257	75,881,917	112,441,841	95,168,247	283,492,005
North Atlantic	59	63	32	154	93,427,779	108,228,554	126,398,547	328,054,880
Southwest	61	51	37	149	109,168,860	76,430,950	181,682,768	367,282,578
South Pacific	48	49	32	129	245,833,752	142,725,841	78,820,802	467,380,395
Pacific Ocean	4	3	2	9	40,172,666	8,836,477	26,948,350	75,957,493
Total	669	583	340	1,592	\$1,098,599,154	\$1,703,122,079	\$1,154,337,793	\$3,956,059,026

Source: GAO analysis of Corps contracting data.

All 38 of the Corps' domestic districts awarded at least one continuing contract during fiscal years 2003–2005. Districts' use of continuing contracts ranged from Honolulu's 1 continuing contract to Jacksonville's 142 continuing contracts during the 3-year time frame. Table 12 summarizes the total number and full costs to the federal government of continuing contracts awarded by each district during fiscal years 2003–2005.

**Appendix II: Characteristics of the
Continuing Contracts Identified by GAO**

Table 12: Total Number and Full Costs to the Federal Government of Continuing Contracts Awarded by District, Fiscal Years 2003–2005

District	Total number of continuing contracts				Full costs to the federal government			
	Fiscal year			Total	Fiscal year			Total
	2003	2004	2005		2003	2004	2005	
Jacksonville	65	51	26	142	\$144,396,151	\$142,584,020	\$119,645,647	\$406,625,819
Vicksburg	50	22	22	94	88,066,978	30,913,686	61,997,017	180,977,681
Memphis	31	31	20	82	48,249,456	70,903,673	63,557,543	182,710,673
Walla Walla	32	36	12	80	13,152,231	27,424,601	5,103,979	45,680,811
Portland	38	16	19	73	23,312,900	18,123,246	56,232,398	97,668,544
Mobile	28	27	15	70	73,363,467	40,665,764	20,256,737	134,285,968
Louisville	29	35	4	68	28,295,240	577,885,226	23,612,598	629,793,064
Galveston	34	18	16	68	83,037,690	52,916,826	28,904,950	164,859,467
New Orleans	34	24	9	67	33,500,736	11,153,745	23,279,233	67,933,714
Sacramento	10	24	14	48	25,722,603	38,407,869	23,559,019	87,689,491
Los Angeles	22	12	12	46	124,079,132	25,874,734	51,808,004	201,761,870
Baltimore	15	18	11	44	16,114,744	31,392,195	35,984,641	83,491,580
Little Rock	11	19	12	42	6,524,151	13,641,946	124,103,897	144,269,993
St. Paul	15	19	8	42	21,314,700	54,179,480	28,469,738	103,963,918
Huntington	20	12	9	41	7,015,273	30,287,886	39,103,622	76,406,781
Kansas City	12	22	5	39	4,488,255	19,174,960	1,108,519	24,771,734
St. Louis	14	20	5	39	19,525,371	28,502,106	5,191,377	53,218,854
Wilmington	17	13	7	37	12,325,462	13,149,898	12,271,767	37,747,126
Seattle	18	11	6	35	14,423,451	19,607,356	21,635,892	55,666,699
Detroit	10	14	10	34	6,490,988	22,220,346	11,721,323	40,432,656
Philadelphia	12	19	2	33	22,769,997	55,937,326	6,400,394	85,107,716
Omaha	11	13	6	30	20,505,079	28,111,678	11,087,459	59,704,216
Pittsburgh	18	8	5	31	9,738,860	103,453,306	21,205,797	134,397,963
Nashville	10	8	13	31	2,735,434	10,692,771	103,378,174	116,806,379
Chicago	9	10	11	30	9,040,432	27,298,298	41,616,047	77,954,777
New England	9	11	10	30	10,387,794	4,141,081	5,202,937	19,731,812
Buffalo	9	11	10	30	3,025,180	4,469,845	9,771,066	17,266,091
New York	11	13	4	28	28,012,322	15,557,452	77,211,076	120,780,850
Albuquerque	10	9	5	24	79,633,600	20,273,752	1,872,680	101,780,031
Savannah	12	5	6	23	13,375,225	50,182,815	14,204,840	77,762,879
Fort Worth	10	6	6	22	2,007,514	298,253	26,633,736	28,939,503
Charleston	11	5	3	19	12,958,385	31,096,602	4,907,613	48,962,599

**Appendix II: Characteristics of the
Continuing Contracts Identified by GAO**

District	Total number of continuing contracts				Full costs to the federal government			
	Fiscal year			Total	Fiscal year			Total
	2003	2004	2005		2003	2004	2005	
Norfolk	12	2	5	19	16,142,922	1,200,500	1,599,499	18,942,921
Tulsa	6	8	3	17	17,599,505	9,573,926	2,040,184	29,213,616
Rock Island	4	4	6	14	696,843	4,818,950	41,128,939	46,644,733
San Francisco	6	4	1	11	16,398,417	58,169,486	1,581,100	76,149,003
Alaska	3	3	2	8	40,047,170	8,836,477	26,948,350	75,831,997
Honolulu	1	0	0	1	125,496	0	0	125,496
Total	669	583	340	1,592	\$1,098,599,154	\$1,703,122,079	\$1,154,337,793	\$3,956,059,026

Source: GAO analysis of Corps contracting data.

Appendix III: Comments from the Department of Defense



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

AUG 25 2006

Ms. Anu K. Mittal
Director, Defense Capabilities and Management
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Ms. Mittal:

This is the Department of Defense (DoD) response to the GAO draft report, 'ARMY CORPS OF ENGINEERS: Improved Monitoring and Clear Guidance Would Contribute to More Effective Use of Continuing Contracts,' dated July 28, 2006, (GAO Code 360631/GAO-06-966).

The draft report is very constructive. DoD concurs with all three recommendations (see enclosure). I look forward to GAO's completion and transmittal of the report.

Very truly yours,

A handwritten signature in cursive script that reads "John Paul Woodley, Jr.".

John Paul Woodley, Jr.
Assistant Secretary of the Army
(Civil Works)

Enclosure

Printed on Recycled Paper

GAO DRAFT REPORT - DATED JULY 28, 2006
GAO CODE 360631/GAO-06-966

“ARMY CORPS OF ENGINEERS: IMPROVED MONITORING AND
CLEAR GUIDANCE WOULD CONTRIBUTE TO MORE EFFECTIVE
USE OF CONTINUING CONTRACTS”

DEPARTMENT OF DEFENSE COMMENTS
TO THE RECOMMENDATIONS

RECOMMENDATION 1: The GAO recommended that the Secretary of Defense direct the Commanding General and the Chief of Engineers of the U.S. Army Corps of Engineers to eliminate the routine use of continuing contracts by adopting good planning and management practices rather than relying on continuing contracts. (p. 29/GAO Draft Report)

DOD RESPONSE: Concur.

Prior to Fiscal Year 2006, 33 U.S.C. 2331 prohibited the Corps of Engineers from applying a fully allocated funding policy and required the award of continuing contracts in certain situations. The Energy and Water Development Appropriations Act for Fiscal Year (FY) 2006 limited the applicability of 33 U.S.C. 2331. However, continuing contracts are still required by law for some projects funded with operation and maintenance appropriations.

Furthermore, prior to FY 2006 the Appropriations Committees had provided guidance (see e.g. Senate Report 108-105 and House Report 108-212) encouraging the use of continuing contracts and reprogramming to obligate and expend available funds. The guidance of the Conference Committee for FY 2006 superseded the prior guidance and discouraged continuing contracts and reprogramming, and the FY 2006 Act included provisions establishing funding requirements for continuing contracts and modifications thereto, and requiring notification to the Committees for reprogrammings exceeding certain thresholds.

The Corps of Engineers execution guidance for FY 2006 is contained in Engineer Circular 11-2-189. This guidance implements the direction in law and Committee reports for FY 2006, and, accordingly, represents a substantial change from previous practice. With respect to continuing contracts, it establishes a policy that (except where a continuing contract is required by law) continuing contracts are to be used only where there is a strong business case, as where other types of contracting mechanisms are impractical, funding for the contractor's future earnings under such a contract is relatively certain, and there would be significant adverse consequences should the funded work not proceed with the available funds. (It should be noted that in some cases a good business case can be made for continuing contracts under \$10 million or of short duration.) In addition, it establishes planning and management mechanisms for

the review and approval of each proposed continuing contract, in addition to other funds management mechanisms.

As a consequence of these actions, the number and dollar volume of new continuing contracts has fallen substantially in FY 2006 compared to previous years.

Once Congress has acted on FY 2007 appropriations, the Corps will develop its implementing guidance for FY 2007. The guidance will reflect any new direction in law or Committee reports, as well as lessons learned from FY 2006.

RECOMMENDATION 2: The GAO recommended that the Secretary of Defense direct the Commanding General and the Chief of Engineers of the U.S. Army Corps of Engineers to establish meaningful criteria for the use of continuing contracts, including an assessment of dollar value and length of time needed to complete contracted work so that districts have clear guidance on when it is appropriate to use a continuing contract. (p. 29/GAO Draft Report).

DOD RESPONSE: Concur. The implementing guidance for FY 2006 established criteria for the use of continuing contracts. Once Congress has acted on FY 2007 appropriations, the Corps will develop its implementing guidance for FY 2007 appropriations. The guidance will reflect lesson learned from FY 2006, including establishing clearer criteria on when it is appropriate to use continuing contracts. The criteria will include explicit consideration of dollar value and length of time. The guidance, however, must continue to ensure that Corps awards continuing contracts when required by 33 U.S.C. 2331.

RECOMMENDATION 3: The GAO recommended that the Secretary of Defense direct the Commanding General and the Chief of Engineers of the U.S. Army Corps of Engineers to develop a tracking system to monitor the use of continuing contracts. (p. 29/GAO Draft Report)

DOD RESPONSE: Concur. As an interim measure, the Corps performed a review of its data on continuing contracts awarded through the second-quarter of FY 2006, and corrections are being included in the third quarter report to the Appropriations Committees. For the longer term, an automated tracking system will be established through the implementing guidance for FY 2007 appropriations, and will be retained indefinitely.

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Anu K. Mittal (202) 512-3841

Staff Acknowledgments

In addition to the individual named above, Edward Zadjura, Assistant Director; Lisa Berardi; Brandon Booth; Diana Cheng Goody; Joel Grossman; Ken Lightner; John Mingus; Alison O'Neill; and Barbara Timmerman made key contributions to this report. Also contributing to this report were Thomas Armstrong, Christine Bonham, Molly Boyle, Doreen Feldman, Cynthia Norris, and Amelia Shachoy.

GAO's Mission

The Government Accountability Office, the audit, evaluation and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site (www.gao.gov). Each weekday, GAO posts newly released reports, testimony, and correspondence on its Web site. To have GAO e-mail you a list of newly posted products every afternoon, go to www.gao.gov and select "Subscribe to Updates."

Order by Mail or Phone

The first copy of each printed report is free. Additional copies are \$2 each. A check or money order should be made out to the Superintendent of Documents. GAO also accepts VISA and Mastercard. Orders for 100 or more copies mailed to a single address are discounted 25 percent. Orders should be sent to:

U.S. Government Accountability Office
441 G Street NW, Room LM
Washington, D.C. 20548

To order by Phone: Voice: (202) 512-6000
TDD: (202) 512-2537
Fax: (202) 512-6061

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm

E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Gloria Jarmon, Managing Director, JarmonG@gao.gov (202) 512-4400
U.S. Government Accountability Office, 441 G Street NW, Room 7125
Washington, D.C. 20548

Public Affairs

Paul Anderson, Managing Director, AndersonP1@gao.gov (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, D.C. 20548