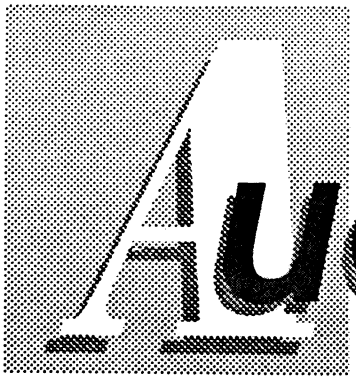

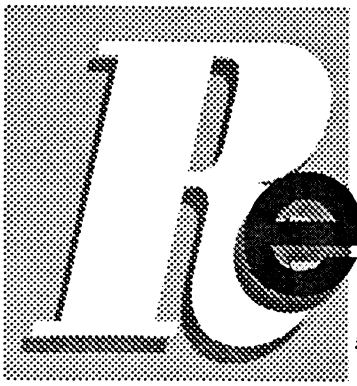

OFFICE OF THE INSPECTOR GENERAL

FUNDING FOR ARMY FACILITY MAINTENANCE AND REPAIR PROJECTS IN EUROPE

Report No. 96-120 May 15, 1996

Department of Defense

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Acronyms

USAEDE	U.S. Army Engineer District Europe
USAREUR	U.S. Army Europe

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-2884

May 15, 1996

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE (COMPTROLLER)
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Audit Report on Funding for Army Facility Maintenance and Repair Projects in Europe (Report No. 96-120)

We are providing this audit report for review and comment. This audit was done as a result of finding questionable fund substitutions during an audit of the construction project for the conversion of the Amelia Earhart facility, Germany. Management comments on a draft of this report were considered in preparing the final report.

DoD Directive 7650.3 requires that all audit recommendations and potential monetary benefits be resolved promptly. As a result of management comments, we added Recommendation 1.d. to the Army. We request that the Army provide comments on that recommendation and on unresolved Recommendations 1.a. and 1.b. by July 15, 1996.

The courtesies extended to the audit staff are appreciated. Questions on the audit should be directed to Mr. Joseph P. Doyle, Audit Program Director, at (703) 604-9348 (DSN 664-9348) or Ms. Deborah L. Culp, Audit Project Manager, at (703) 604-9335 (DSN 664-9335). See Appendix C for the report distribution. The audit team members are listed inside the back cover.

David K. Steensma

David K. Steensma
Deputy Assistant Inspector General
for Auditing

Office of the Inspector General, DoD

Report No. 96-120 **May 15, 1996**
(Project No. 5CK-8002.01)

Funding for Army Facility Maintenance and Repair Projects in Europe

Executive Summary

Introduction. This audit resulted from conditions noted during Project No. 5CK-8002, "Construction Project for the Conversion of the Amelia Earhart Facility, Wiesbaden, Germany." The audit of the Amelia Earhart facility was performed in response to a complaint to the Defense Hotline that alleged that the scope of the construction project was excessive and that the work was improperly classified and funded. Inspector General, DoD, Report No. 96-071, "Construction Project for the Conversion of the Amelia Earhart Facility, Germany," was issued February 15, 1996. During the audit of the Amelia Earhart facility, we determined that the funds used for the conversion of the Amelia Earhart facility and other maintenance and repair projects in Europe had been made available through fund substitutions.

Audit Objectives. The audit objective was to determine whether funds for the Amelia Earhart facility construction project and other U.S. Army Europe maintenance and repair projects had been made available through improper fund substitutions. The audit also assessed the adequacy of the management control program as it applied to the other audit objective.

Audit Results. The Army improperly substituted FYs 1993 and 1994 Operation and Maintenance, Army, funds on maintenance and repair projects that were previously properly funded with FY 1993 Real Property Maintenance, Defense, funds. In addition, the fund substitutions were not executed consistently by Army activities. As a result, the Army improperly obligated about $20.4 million of Operation and Maintenance, Army, funds for maintenance and repair projects in Europe. Correcting the Operation and Maintenance, Army, and Real Property Maintenance, Defense, fund accounts could result in a violation of the Antideficiency Act. The inconsistent execution of the fund substitution transactions may indicate that management controls over expired fund transactions are weak.

The Army did not have adequate management controls to ensure that fund substitution transactions were executed accurately and consistently. Because of the limited scope of our audit, we were unable to determine the extent and materiality of the management control weaknesses. Weaknesses are discussed in Part I, and our review of management controls is discussed in Appendix A.

Recommendations in this report, if implemented, will correct the funding of and the management controls over Army maintenance and repair projects in Europe.

Summary of Recommendations. We recommend that the Army deobligate about $20.4 million in FYs 1993 and 1994 Operation and Maintenance, Army funds on maintenance and repair projects and obligate the same amount of FY 1993 Real Property Maintenance, Defense funds. In addition, we recommend the Army perform an audit of management controls over expired fund transactions in U.S. Army Europe. We also recommended that the Army obtain an opinion from the Office of the Secretary of Defense Deputy General Counsel (Fiscal) on whether the fund substitutions were proper before requesting a decision from the Comptroller General. Finally, we recommend that if sufficient funds are not available that the Under Secretary of Defense (Comptroller) direct that an investigation of a potential violation of the Antideficiency Act be conducted.

Management Comments. The Army nonconcurred with making the accounting adjustments to FY 1993 and 1994 funds. Instead, because the Army General Counsel and the DoD General Counsel did not agree on whether the accounting adjustments were needed, the Army was requesting a decision from the Comptroller General. The Army concurred with the recommendation to perform an audit of management controls over Army expired funds. The Under Secretary of Defense (Comptroller) concurred with the recommendation to direct that an investigation of a potential violation of the Antideficiency Act be performed. See Part I for a summary of management comments on the recommendations and Part III for the complete text of management comments.

Audit Response. As a result of management comments, we revised the recommendation to perform an audit of management controls to have U.S. Army Europe Internal Review office perform the audit. Also as a result of management comments, we added a recommendation to have the Army request an opinion from the Office of the Secretary of Defense Deputy General Counsel (Fiscal) on whether the fund substitutions were appropriate before proceeding with a request for a Comptroller General decision. We believe that the Office of Deputy General Counsel (Inspector General), DoD, opinion is clear that the fund substitutions by the U.S. Army Europe were not proper. The Army did not furnish any new evidence to support its position in its response. Accordingly, we request that the Army provide comments on the final report by July 15, 1996.

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Part I - Audit Results

Audit Background

The Office of the Inspector General, DoD, performed an audit of the construction project for the conversion of the Amelia Earhart facility in response to a complaint to the Defense Hotline. The complainant alleged that the scope of the project was excessive. In addition, the complainant alleged that the work on the project was improperly classified and funded and that minor construction costs exceeded statutory limits. The above allegations are addressed in a draft report on Project No. 5CK-8002, "Construction Project for the Conversion of the Amelia Earhart Facility, Germany," that was issued on November 6, 1995.

During the course of the audit of the construction project for the conversion of the Amelia Earhart facility, we found that part of the Amelia Earhart facility renovation was funded with Real Property Maintenance, Defense, funds that had been previously obligated on other maintenance and repair projects. The Real Property Maintenance, Defense, funds were made available for funding maintenance and repair projects through the substitution of Operation and Maintenance, Army, funds.

Audit Objectives

The audit objective for Project No. 5CK-8002.01, was to determine whether funds for the Amelia Earhart facility construction project and other U.S. Army Europe (USAREUR) maintenance and repair projects had been made available through improper fund substitutions. The audit also assessed the adequacy of the Army management control program as it applied to the other audit objective. See Appendix A for a discussion of the scope and methodology of the audit and our review of the management control program.

Funding of Maintenance and Repair Projects

The U.S. Army Europe improperly substituted FYs 1993 and 1994 Operation and Maintenance, Army, funds for previously obligated FY 1993 Real Property Maintenance, Defense funds, on maintenance and repair projects in Europe. Further, the fund substitutions were not executed consistently by Army activities. The improper substitutions occurred because the Army did not comply with applicable appropriations law or General Accounting Office guidance. The inconsistent substitutions occurred because management controls were not adequate to ensure that the fund substitutions were executed accurately. As a result of the improper substitutions, the Army improperly obligated about $20.4 million of Operation and Maintenance, Army, funds. Correcting the Operation and Maintenance, Army, and Real Property Maintenance, Defense, funds accounts could result in a violation of the Antideficiency Act. The inconsistent execution of the fund substitution transactions may indicate that management controls over expired fund transactions are weak.

Appropriations

In the Department of Defense Appropriations Act for 1992, Congress created a Real Property Maintenance, Defense, account for funding backlogged maintenance and repair projects. Funds in the account were available until September 30, 1993. In the Department of Defense Appropriations Act for 1993, Congress again funded the Real Property Maintenance, Defense, account. The funds could be used for any real property maintenance projects and were available for obligation until September 30, 1994. The Comptroller of the Department of Defense (now, Under Secretary of Defense [Comptroller]), interpreted the 1993 Appropriations Act as precluding the use of other funds for major repair and minor construction projects and directed the Military Departments not to obligate operation and maintenance funds for major repair and minor construction projects in FY 1993. Such limitation on the use of operation and maintenance funds was unintended by Congress and, to clarify its intent, Congress passed amendments to United States Code, title 10 (annotated) on May 31, 1993. The amendments stated that FY 1993 operation and maintenance funds were available (in addition to Real Property Maintenance, Defense, funds) to fund major repair projects and minor construction projects.

Fund Substitution

USAREUR improperly substituted about $20.4 million of FYs 1993 and 1994 Operation and Maintenance, Army, funds for previously obligated FY 1993 Real Property Maintenance, Defense, funds on maintenance and repair projects in Europe. The freed-up FY 1993 Real Property Maintenance, Defense, funds were then used to fund previously unfunded USAREUR maintenance and repair projects. In addition, the Army execution of the fund substitution transactions was not consistent.

Improper Fund Substitution. During FYs 1993, 1994, and 1995, USAREUR directed the U.S. Army Engineer District Europe (USAEDE) to substitute about $16.5 million and area support groups to substitute about $3.9 million of FYs 1993 and 1994 Operation and Maintenance, Army, funds for FY 1993 Real Property Maintenance, Defense, funds. The organizations and the amounts substituted are in the following table.

Funds Substituted by USAREUR

Organization by Fiscal Year	Operation & Maintenance, Army Funds
FY 1993	
USAEDE	$12,306,445 [1]
FY 1994	
USAEDE	3,363,230
6th Area Support Group	278,000
22nd Area Support Group	263,335
26th Area Support Group	807,663
98th Area Support Group	2,250,137
100th Area Support Group	316,071
Subtotal FY 1994	**7,278,436** [1]
FY 1995	
USAEDE	800,000 [2]
Total	**$20,384,881**

[1]Both amounts were funded by FY 1993 funds for a total of $19,584,881.
[2]Funded by FY 1994 funds.

U.S. Army Engineer District, Europe. During FYs 1993 through 1995, USAREUR requested that USAEDE substitute $16,469,675 of FYs 1993 and 1994 Operation and Maintenance, Army, funds for previously obligated FY 1993 Real Property Maintenance, Defense, funds on maintenance and repair projects.

- In FY 1993, USAREUR requested that USAEDE substitute $12,306,445 of FY 1993 Operation and Maintenance, Army, funds for FY 1993 Real Property Maintenance, Defense, funds on USAEDE-administered projects. USAREUR requested that USAEDE substitute $11,447,633 and directed the 100th Area Support Group to request that USAEDE substitute $858,812.

- In FY 1994, USAREUR requested that USAEDE substitute $3,363,230 of expired FY 1993 Operation and Maintenance, Army, funds for FY 1993 Real Property Maintenance, Defense, funds on USAEDE-administered projects. USAEDE questioned the propriety of using expired funds to substitute for correctly obligated funds. On September 30, 1994, the Office of General Counsel, Department of the Army, provided an opinion that the fund substitution was an accounting transaction only and was legally unobjectionable. Based on that opinion, USAEDE accepted the request on September 30, 1994.

- In FY 1995, USAREUR requested that USAEDE substitute $800,000 of expired FY 1994 Operation and Maintenance, Army, funds for expired FY 1993 Real Property Maintenance, Defense, funds.

Area Support Groups. During FY 1994, USAREUR requested that area support groups substitute $4,964,100 of FY 1993 Operation and Maintenance, Army, funds for FY 1993 Real Property Maintenance, Defense, funds. However, the area support groups substituted only $3,915,206. In August 1994, USAREUR sent a memo to six area support group engineering units instructing them to deobligate FY 1993 Real Property Maintenance, Defense funds on specific projects and obligate expired FY 1993 Operation and Maintenance, Army, funds for the same projects. The engineering units were to coordinate the request with the area support group resource management units to ensure that bookkeeping was done properly.

Unfunded Projects. The $20.4 million of freed-up Real Property Maintenance, Defense, funds was used to fund previously unfunded USAREUR maintenance and repair projects. The Army reasoned that, if unobligated Operation and Maintenance, Army, funds (that were either expired or about to expire) could be applied to projects that had been obligated with Real Property Maintenance, Defense, funds, then the corresponding amount of Real Property Maintenance, Defense, funds could be deobligated. The Real Property Maintenance, Defense, fund, a 2-year appropriation, could be made available for new obligations. Subsequently, the deobligated Real Property Maintenance, Defense, funds were used to fund maintenance and repair projects on the USAREUR priority list.

Execution of Fund Substitution. The execution of the fund substitution was not done consistently at area support groups. The fund substitutions were accomplished administratively in area support group resource management offices. We did not find any instances where the area support groups' contracts were modified. Accordingly, contract documents, including paid vouchers, still reflect the use of Real Property Maintenance, Defense, funds in spite of the area support groups' efforts to substitute Operation and Maintenance, Army, funds.

Compliance With Law and Guidance

The improper fund substitutions occurred because the Army did not follow appropriation law or General Accounting Office guidance when it substituted appropriations on various maintenance and repair projects. The Office of Deputy General Counsel (Inspector General), DoD, supported our position that the substitutions were improper. The Army must, therefore, restore the original obligation of the FY 1993 Real Property Maintenance, Defense, funds for the projects involved in the fund substitution. Failure to do so may result in a potential violation of the Antideficiency Act.

Appropriation Law. Expired funds were used contrary to the United States Code. In FYs 1994 and 1995, USAREUR substituted about $8.1 million of the FYs 1993 and 1994 Operation and Maintenance, Army, funds that were beyond their period of obligational authority; that is, they were expired when the fund substitutions occurred. Once expired, an appropriation may be used for only very limited purposes. Under United States Code, title 31, section 1553(a), "Availability of Appropriations Accounts to Pay Obligations," such funds remain available for recording, adjusting, and liquidating obligations properly chargeable to that account. In this case, however, the funds were obligated to substitute for funds already correctly obligated. USAREUR substituted about $20.4 million of expired or expiring Operation and Maintenance, Army, funds, thus making available the 2-year FY 1993 Real Property Maintenance, Defense, funds for further obligations. That is not the kind of adjustment of obligations contemplated by the statute.

General Accounting Office Guidance. The Army did not follow General Accounting Office guidance when it substituted about $20.4 million of Operation and Maintenance, Army, funds for Real Property Maintenance, Defense, funds. The General Accounting Office stated in its publication, "Principles of Federal Appropriations Law," July 1991, that when two appropriations may be used for the same purpose, the Agency may select either appropriation. However, once the appropriation has been selected, the continued use of that appropriation is required; no other fund may be used because of insufficient funds in the selected appropriation or for any other reason. The General Accounting Office has stated that, while funds may be deobligated for several valid reasons, where the purpose of the action is merely to make the funds available for new obligations, such deobligation is improper.

Both Operation and Maintenance, Army, and Real Property Maintenance, Defense, funds were available for maintenance and repair projects. However, once the election between the two available appropriations was made on a particular contract, that election was binding, and subsequent adjustments to the contract should have been made within the appropriation from which the original contract was funded. Once the Army chose Real Property Maintenance, Defense funds for a project, that election became binding for future actions on that contract. The substitutions that resulted in the wholesale deobligation and reobligation of Real Property Maintenance, Defense, funds were improper.

Opinion of Office of Deputy General Counsel (Inspector General), DoD. The Office of Deputy General Counsel (Inspector General), DoD, opined that the deobligation of properly obligated Real Property Maintenance, Defense, funds in order to substitute Operation and Maintenance, Army, funds does not constitute an adjustment of accounts within the meaning of United States Code, title 31, section 1553(a), "Availability of Appropriations Accounts to Pay Obligations." The Office of Deputy General Counsel (Inspector General), DoD further opined that the Army action did not correct unrecorded or underrecorded obligations, nor did it adjust the account to reflect what actually occurred during the fiscal year. The fund substitution was not done for an accepted reason; rather, the actions were taken to make available Real Property Maintenance, Defense, funds that were still within their period of obligational availability.

Antideficiency Act. The Army must restore the original $20,384,881 of FY 1993 Real Property Maintenance, Defense, funding for the projects involved in the fund substitution. Inability to do so, because of lack of appropriate funds, may lead to an Antideficiency Act violation. DoD Directive 7200.1, "Administrative Control of Appropriations," May 4, 1995, and volume 14 of DoD 7000.14-R, "DoD Financial Management Regulation," prescribe policy and procedures to be followed regarding Antideficiency Act violations. DoD Directive 7200.1 assigns responsibility to the heads of the DoD Components for investigating and reporting potential violations of the Antideficiency Act.

Management Controls

Not only were fund substitutions by USAREUR improper, the fund substitution transactions were not executed consistently. Management controls over the process employed in making the fund substitutions were not adequate to ensure that the transactions were executed accurately. Controls were not in place to ensure that the project lists and amounts were correct and that USAREUR provided sufficient guidance and followup to the area support groups. Further, the area support groups inaccurately and inconsistently executed the fund substitutions. In addition, USAREUR lost the use of $11.5 million for about 35 days because of duplicate funding of maintenance and repair projects.

Project Lists. USAREUR did not have management controls in place to ensure that the project lists and amounts requested to be substituted were accurate. In March 1994, personnel in the USAREUR Office of the Deputy Chief of Staff, Engineers, prepared a list of projects that they considered eligible for the fund substitutions and sent the list to the area support groups that had cognizance over the projects. The area support groups were asked to review the list and provide any corrections to fund citations and cost figures. The basic criterion for all projects involved in the fund substitution was that they were funded with Real Property Maintenance, Defense, funds. The list of projects and the amounts provided to the area support groups contained numerous errors. The projects listed did not always reflect the correct amounts of obligation or disbursement; projects had not always been funded with Real Property Maintenance, Defense, funds; and projects were listed that had never been funded. USAREUR did not follow up to make sure area support groups followed its instruction to correct the fund citations and amounts on the list of projects to be included in the fund substitutions.

Implementation. USAREUR did not provide adequate instructions to the area support groups as to how to implement the fund substitutions. In August 1994, USAREUR sent a memo requesting that the area support group engineering units coordinate the action with their area support group resource manager and ensure that proper bookkeeping was done. USAREUR provided the area support groups with funding advice documents indicating that $4,964,100 of FY 1993 Operation and Maintenance, Army, funds should be obligated in exchange for FY 1993 Real Property Maintenance, Defense, funds. However, the area support groups obligated only $3,915,206. USAREUR did not follow up on its request to the area support groups to perform the fund substitutions to determine whether the substitutions were done accurately.

Examples of the inaccurate or inconsistent manner in which the area support groups executed the fund substitutions follow.

All Area Support Groups. As discussed earlier, none of the area support groups modified contracts to reflect changed fund citations for the projects. Therefore, USAREUR contracting offices were not aware that the fund cites had been changed on the projects. All contract documentation reflects the original FY 1993 Real Property Maintenance, Defense, funds.

6th Area Support Group. The USAREUR Resource Management office provided a funding advice document to the 6th Area Support Group to substitute $261,100 of FY 1993 Operation and Maintenance, Army, funds for FY 1993 Real Property Maintenance, Defense, funds. The Area Support Group Resource Management office obligated $278,000 of FY 1993 Operation and Maintenance, Army, funds for the substitution. Personnel in the Area Support Group Resource Management office stated that they did not receive the list of projects for which USAREUR wanted funds substituted. The Area Support Group, therefore, developed its own list of projects. For one project, the Area Support Group substituted $55,325 of the $58,722 cost of the project. As a result, the project was funded with both FY 1993 Real Property Maintenance, Defense, and FY 1993 Operation and Maintenance, Army, funds.

22nd Area Support Group. The 22nd Area Support Group received funding advice documents to deobligate $431,729 of FY 1993 Real Property Maintenance, Defense, funds and obligate $263,800 of FY 1993 Operation and Maintenance, Army, funds on various projects. The difference between the Real Property Maintenance, Defense, and Operation and Maintenance, Army, fund amounts represents the undisbursed amount of the contracts. The Area Support Group informed the USAREUR Resource Management office that it had previously deobligated the undisbursed funds and had returned the money to USAREUR. The Area Support Group stated that USAREUR did not correct the funding advice documents, but instead, USAREUR had instructed the Area Support Group to cancel another project funded by Real Property Maintenance, Defense, funds to correct the Real Property Maintenance, Defense, account.

26th Area Support Group. The USAREUR Resource Management office provided a funding advice document to the 26th Area Support Group to substitute $1,570,500 of FY 1993 Operation and Maintenance, Army, funds for FY 1993 Real Property Maintenance, Defense. funds. The 26th Area Support Group substituted a total of $807,663 instead. A project to repair the roof on building 428, Taylor Barracks, was on the USAREUR project list at $170,350. The roof repair project was obligated in FY 1994 and not eligible for fund substitution of FY 1993 Operation and Maintenance, Army, funds. Also, a project to construct the fitness center at Patrick Henry Village was on the USAREUR project list at $299,900; however, only $33,232 was obligated in FY 1993.

98th Area Support Group. The USAREUR Resource Management office provided a funding advice document to the 98th Area Support Group to substitute $2,085,300 of FY 1993 Operation and Maintenance, Army, funds for FY 1993 Real Property Maintenance, Defense, funds. They substituted $2,250,137. Similar to the 6th Area Support Group, the 98th Area Support Group only substituted part of the cost of one project; therefore, the project was funded by both funds. Another of the projects involved in the substitution was work performed by the 6970th Civilian Support Center. The 98th Area Support Group Resource Management office substituted only the labor costs, not the material costs for the project.

100th Area Support Group. The 100th Area Support Group received a funding advice document from USAREUR Resource Management office to substitute $316,200 of FY 1993 Operation and Maintenance, Army, funds on five projects. The Area Support Group Resource Management office substituted $316,071. On two projects, the work was performed by the 6970th Civilian Support Center. Unlike the 98th Area Support Group, the 100th Area Support Group added the cost of the materials consumed on the project to the labor costs to arrive at the total costs substituted with FY 1993 Operation and Maintenance, Army, funds.

104th Area Support Group. USAREUR Resource Management office provided a funding advice document to the 104th Area Support Group to substitute $467,200 of FY 1993 Operation and Maintenance, Army, funds for FY 1993 Real Property Maintenance, Defense, funds. The 104th Area Support Group did not act on the funding advice document and did not report its inaction

to USAREUR. In addition, of the 10 projects for which the Area Support Group was asked to substitute funds, four were already obligated with FY 1993 Operation and Maintenance, Army, funds. Still another project of the 10 had never been funded. Following our visit in May 1995, the 104th Area Support Group substituted FY 1993 Operation and Maintenance, Army, funds for FY 1993 Real Property Maintenance, Defense, funds on one of the five remaining projects. In June 1995, the 104th Area Support Group reversed the fund substitution it performed in May 1995 and restored the original FY 1993 Real Property Maintenance, Defense, fund cite.

Duplicate Funding. Another example of poor fund control occurred on a fund substitution transaction that resulted in a duplicate obligation of funds. USAREUR requested that USAEDE substitute $11,447,633 of expiring FY 1993 Operation and Maintenance, Army, funds for previously obligated Real Property Maintenance, Defense, funds. The Military Interdepartmental Purchase Request that requested the obligation of the Operation and Maintenance, Army, funds was prepared on September 28, 1993, and accepted by USAEDE personnel on September 30, 1993. The Military Interdepartmental Purchase Request deobligating the Real Property Maintenance, Defense, funds was not prepared until October 27, 1993, and accepted November 4, 1993. In effect, that sequence created a duplicate obligation of funds and prohibited the use of $11,447,633 for about 35 days.

Conclusion

USAREUR improperly substituted about $20.4 million of FYs 1993 and 1994 Operation and Maintenance, Army, funds for FY 1993 Real Property Maintenance, Defense, funds. Further, about $8.1 million of the FYs 1993 and 1994 Operation and Maintenance, Army, funds substituted were expired at the time the substitutions took place. Correction of the Operation and Maintenance, Army, and Real Property Maintenance, Defense, fund accounts could potentially result in a violation of the Antideficiency Act. USAREUR failure to have adequate management controls in place to ensure that fund substitutions were consistently done is indicative of management control weaknesses. We were unable to determine whether those weaknesses were material because we reviewed only transactions concerning the improper fund substitutions and no other transactions involving expired funds. For that reason, we are not making specific recommendations to correct the weaknesses we identified. The Army should, however, review management controls over expired fund transactions.

Recommendations, Management Comments, and Audit Response

Revised and Added Recommendations. As a result of management comments, we revised Recommendation 1.c. to have the U.S. Army Europe Internal Review office perform the audit of management controls over expired funds. We also added Recommendation 1.d. for the Army to obtain an opinion from the Office of the Secretary of Defense Deputy General Counsel (Fiscal) on whether the fund substitutions were proper before requesting a decision from the Comptroller General.

1. We recommend that the Assistant Secretary of the Army (Financial Management and Comptroller):

a. Instruct the Commander, U.S. Army Europe and 7th Army, to make accounting adjustments to deobligate $19,584,881 of FY 1993 Operation and Maintenance, Army, funds and obligate $19,584,881 of FY 1993 Real Property Maintenance, Defense, funds.

b. Instruct the Commander, U.S. Army Europe and 7th Army, to make accounting adjustments to deobligate $800,000 of FY 1994 Operation and Maintenance, Army, funds and obligate $800,000 of FY 1993 Real Property Maintenance, Defense, funds.

Management Comments. The Army nonconcurred with making the accounting adjustments and provided a copy of Army General Counsel opinion. Because the Army General Counsel and the DoD General Counsel do not agree on the appropriateness of the accounting transactions, the Army is requesting a decision on this issue from the Comptroller General.

Audit Response. We reviewed the Army General Counsel opinion on this issue and considered the same opinion when preparing the draft report. We concluded that the information contained in the opinion was substantially the same as had been provided to us during the audit. Accordingly, we did not change Recommendations 1.a. and 1.b. We are adding Recommendation 1.d. that the Army request an opinion from the Office of the Secretary of Defense Deputy General Counsel (Fiscal) before requesting a decision from the Comptroller General. We request the Army to reconsider its position on the accounting adjustments and provide additional comments when responding to the final report.

c. Request that the U.S. Army Europe Internal Review office audit management controls over expired fund transactions in U.S. Army Europe to determine whether controls are adequate to ensure that funds are properly allocated and used.

Management Comments. The Army concurred that a review of the management controls over expired funds is proper. The Army requested that the U.S. Army Europe Internal Review staff include in its annual review of expired fund transactions an objective to evaluate the management controls over the transactions.

Audit Response. The alternative action proposed by the Army is responsive, and we have revised the recommendation to have the U.S. Army Europe Internal Review office perform the audit of management controls over expired funds. No additional comments are needed.

d. Request that the Office of the Secretary of Defense Deputy General Counsel (Fiscal) provide an opinion on whether the Army properly substituted about $20.4 million of FYs 1993 and 1994 Operation and Maintenance, Army, funds for FY 1993 Real Property Maintenance, Defense, funds before requesting a decision from the Comptroller General.

Management Comments. We ask that the Army respond to Recommendation 1.d. in its comments on the final report.

2. We recommend that the Under Secretary of Defense (Comptroller), if sufficient funds are not made available in the FY 1993 Real Property Maintenance Defense account to fund the obligations in Recommendation 1., direct the initiation of an investigation of a potential violation of the Antideficiency Act.

Management Comments. The Under Secretary of Defense concurred with the recommendation and has directed the Army to initiate an investigation of a potential violation of the Antideficiency Act.

Part II - Additional Information

Appendix A. Scope and Methodology

Scope

Funding of Maintenance and Repair Projects. We evaluated the policies, procedures, and management controls for funding maintenance and repair projects at U.S. Army Europe. We reviewed funding transactions at the following organizations in the European Theater:

- U.S. Army Engineering District Europe, Wiesbaden, Germany;
- 6th Area Support Group, Stuttgart, Germany;
- 22nd Area Support Group, Vicenza, Italy;
- 26th Area Support Group, Heidelberg, Germany;
- 98th Area Support Group, Wuerzburg, Germany;
- 100th Area Support Group, Grafenwoehr, Germany; and
- 104th Area Support Group, Hanau, Germany.

In addition, we coordinated the audit with the Office of Deputy General Counsel (Inspector General), DoD, and the Army Audit Agency headquarters and its European Office, Mainz-Kastel, Germany.

We reviewed FYs 1993 through 1995 transactions for implementing fund substitutions between FYs 1993 and 1994 Operation and Maintenance, Army, and FY 1993 Real Property Maintenance, Defense, funds. The fund substitutions reviewed for FY 1993 ($12,306,445) and FY 1994 ($7,278,436) were FY 1993 Operation and Maintenance, Army, funds. The fund substitution reviewed for FY 1995 ($800,000) was FY 1994 Operation and Maintenance, Army, funds.

We interviewed U.S. Army Europe personnel that were involved in the decision to substitute funds. At installations that implemented the fund substitutions (Area Support Groups and U.S. Army Engineer District Europe), we interviewed cognizant personnel and reviewed documents that supported the amount of the funds that were substituted. We did not use computer-processed data or statistical sampling procedures for this audit.

Audit Period and Standards. We performed this financial related audit from May through December 1995. The audit was performed in accordance with auditing standards issued by the Comptroller General of the United States, as implemented by the Office of the Inspector General, DoD. The DoD organizations visited or contacted are listed in Appendix B.

Prior Audit Reports. No audits on fund substitutions at U.S. Army Europe have been conducted within the last 5 years.

Management Control Program

DoD Directive 5010.38, "Internal Management Control Program," April 14, 1987, requires DoD organizations to implement a comprehensive system of management controls that provides reasonable assurance that programs are operating as intended and to evaluate the adequacy of controls.

Scope of Review of the Management Control Program. We reviewed only transactions pertaining to the improper fund substitutions and no other transactions involving expired funds. We evaluated management controls over the execution of the fund substitutions transactions.

Adequacy of Management Controls. The Army did not have adequate management controls to ensure that subordinate commands processed funding transactions accurately and consistently. Because of the limited scope of our audit, we were unable to determine whether those management control weaknesses were material as defined by DoD Directive 5010.38, "Internal Management Control Program," April 17, 1987. The finding in Part I discusses the weaknesses.

Appendix B. Organizations Visited or Contacted

Office of the Secretary of Defense

Under Secretary of Defense (Comptroller), Washington, DC

Department of the Army

Assistant Secretary of the Army (Financial Management and Comptroller), Washington, DC
Assistant Chief of Staff for Installation Management, Alexandria, VA
U.S. Army Corps of Engineers, Washington, DC
  U.S. Army Center For Public Works, Alexandria, VA
  U.S. Army Corps of Engineers, Trans-Atlantic Division, Winchester, VA
    U.S. Army Engineer District Europe, Frankfurt, Germany
U.S. Army Europe, Heidelberg, Germany
  U.S. Army Europe Contracting Command, Seckenheim, Germany
  6th Area Support Group, Stuttgart, Germany
  22nd Area Support Group, Vicenza, Italy
  26th Area Support Group, Heidelberg, Germany
  53rd Area Support Group, Bad Kreuznach, Germany
    Amelia Earhart Facility, Wiesbaden, Germany
  98th Area Support Group, Wuerzburg, Germany
  100th Area Support Group, Grafenwoehr, Germany
  104th Area Support Group, Hanau, Germany
Army Audit Agency, Alexandria, Virginia
  Army Audit Agency, European Office, Mainz-Kastel, Germany

Unified Command

Commander In Chief, U.S. European Command

Other Defense Organizations

Defense Logistics Agency, Alexandria, VA
  Defense Contract Management Command, Alexandria, VA
    Defense Contract Management Command International, Dayton, OH
      Defense Contract Management Area Office Germany, Frankfurt, Germany

Appendix C. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition and Technology
  Director, Defense Logistics Studies Information Exchange
Under Secretary of Defense (Comptroller)
  Deputy Chief Financial Officer
  Deputy Comptroller (Program/Budget)
Assistant to the Secretary of Defense (Public Affairs)

Department of the Army

Assistant Secretary of the Army (Financial Management and Comptroller)
Assistant Secretary of the Army (Installations, Logistics, and Environment)
  Assistant Chief of Staff for Installation Management
Commander, U.S. Army Corps of Engineers
  Director, U.S. Army Center for Public Works
  Commander, Trans-Atlantic Division
    Commander, U.S. Army Engineer District Europe
Commander, U.S. Army Europe
  Commander, U.S. Army Europe Contracting Command
Auditor General, Department of the Army

Department of the Navy

Assistant Secretary of the Navy (Financial Management and Comptroller)
Auditor General, Department of the Navy

Department of the Air Force

Assistant Secretary of the Air Force (Financial Management and Comptroller)
Auditor General, Department of the Air Force

Unified Command

Commander In Chief, U.S. European Command

Other Defense Organizations

Director, Defense Contract Audit Agency
Director, Defense Logistics Agency
  Director, Defense Contract Management Command
    Director, Defense Contract Management Command International
      Director, Defense Contract Management Area Office, Germany
Director, National Security Agency
  Inspector General, National Security Agency
Inspector General, Defense Intelligence Agency

Non-Defense Federal Organizations

Office of Management and Budget
Technical Information Center, National Security and International Affairs Division, General Accounting Office

Chairman and ranking minority member of each of the following congressional committees and subcommittees:

  Senate Committee on Appropriations
  Senate Subcommittee on Defense, Committee on Appropriations
  Senate Committee on Armed Services
  Senate Committee on Governmental Affairs
  House Committee on Appropriations
  House Subcommittee on National Security, Committee on Appropriations
  House Committee on Government Reform and Oversight
  House Subcommittee on National Security, International Affairs, and Criminal Justice, Committee on Government Reform and Oversight
  House Committee on National Security

Part III - Management Comments

Office of the Under Secretary of Defense (Comptroller) Comments

OFFICE OF THE UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

COMPTROLLER

APR 24 1996

MEMORANDUM FOR DIRECTOR, CONTRACT MANAGEMENT DIRECTORATE, OFFICE OF THE INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

SUBJECT: Audit Report on Funding for Army Facility Maintenance and Repair Projects in Europe (Project No. 5CK-8002.01)

Your office provided the subject draft report for review and comment, and requested our comments in preparing the final report.

This office generally agrees with the draft audit report. Our comments regarding recommendation 2 are as follows:

Recommendation 2. We recommend that the Under Secretary of Defense (Comptroller), if sufficient funds are not made available in the FY 1993 Real Property Maintenance Defense account to fund the obligations in Recommendation 1., direct the initiation of an investigation of a potential violation of the Antideficiency Act.

Management Comments. Concur. The Office of the Under Secretary of Defense (Comptroller) has directed the Army to initiate an investigation of a potential violation of the Antideficiency Act. Attached is a copy of a memorandum to the Army requesting such action.

Questions regarding this matter may be directed to Mr. De W. Ritchie, Jr. He may be contacted on (703) 697-3135.

Alvin Tucker
Deputy Chief Financial Officer

Attachment

OFFICE OF THE UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

COMPTROLLER

APR 24 1996

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (FINANCIAL MANAGEMENT AND COMPTROLLER)

SUBJECT: Audit Report on Funding for Army Facility Maintenance and Repair Projects in Europe (Project No. 5CK-8002.01)

The Office of the Inspector General, Department of Defense, in the subject draft report, found that the Army's Amelia Earhart Facility, Wiesbaden, Germany, used fund substitutions for the conversion of the facility and other maintenance and repair projects in Europe.

Specifically, the auditors state that the Army improperly substituted $20.4 million of FYs 1993 and 1994 Operation and Maintenance, Army funds on maintenance and repair projects that previously were properly funded with FY 1993 Real Property Maintenance, Defense funds. The auditors assert that correcting the accounts could result in a violation of the Antideficiency Act.

Based on the findings and recommendations stated in the draft audit report, the Army is requested to initiate an investigation of a potential Antideficiency Act in accordance with Volume 14, "Administrative Control of Funds and Antideficiency Act Violations" of the DoD Financial Management Regulation (DoD 7000.14-R).

Questions regarding this matter may be directed to Mr. De W. Ritchie, Jr. He may be contacted on (703) 697-3135.

Alvin Tucker
Deputy Chief Financial Officer

Department of the Army Comments

Final Report Reference

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
FINANCIAL MANAGEMENT AND COMPTROLLER
109 ARMY PENTAGON
WASHINGTON DC 20310-0109

REPLY TO ATTENTION OF

02 APR 1996

MEMORANDUM FOR THE INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

SUBJECT: Audit of Funding for Army Facility Maintenance and Repair Projects in Europe (Project No. 5CK-8002.01)

We have reviewed the subject report. The attached comments from the Office of the Army General Counsel explain in greater detail the legal basis for the Army's position in this matter.

Since the opinion of the Army General Counsel and the DODIG General Counsel are at odds, the certifying officer, U.S. Army Europe is requesting an advance decision from the Comptroller General on this issue in accordance with 31 USC 3529. We request that you hold the draft report in abeyance pending the Comptroller General decision. We will keep you and the Office of the Under Secretary of Defense (Comptroller) apprised of the status of this request.

Recommendation 1.c. revised.

We concur that a review of the management controls over expired funds is proper. The internal review staff of the U.S. Army Europe performs annual reviews of expired fund transactions. This audit is performed as part of the Army's Joint Reconciliation Process. I have requested the internal review staff to include an objective to evaluate the management controls over expired fund transactions to ensure that transactions are executed accurately.

Helen T. McCoy
Assistant Secretary of the Army
(Financial Management and Comptroller)

Attachment

CF:
Office of the Under Secretary of Defense (Comptroller)
Assistant Chief of Staff, Installation Management

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DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
104 ARMY PENTAGON
WASHINGTON DC 20310-0104

5 January 1996

MEMORANDUM FOR OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY (FINANCIAL MANAGEMENT & COMPTROLLER)
(ATTN: MR. JOE)

SUBJECT: DODIG (Draft Report): Funding for Army Facility Maintenance and Repair Projects in Europe

This responds to your request for a legal review of the subject draft DODIG audit report concerning the funding of Army facility maintenance and repair projects in Europe. This office does not concur with the report's conclusion that the substitution of Operation and Maintenance, Army (OMA) appropriations for Real Property Maintenance, Defense (RPM,D) appropriations constitutes an improper adjustment of accounts under 31 U.S.C. § 1553(a). Thus, in our opinion, the Army is not legally required to "correct" this adjustment by deobligating OMA appropriations and reobligating RPM,D appropriations, and there is no basis for the audit report's recommendation that the Under Secretary of Defense (Comptroller) investigate a potential Antideficiency Act violation.

In support of its conclusion that the subject accounting adjustment was improper, the report cites the Comptroller General's longstanding rule that when an agency has two specific appropriations available for the same expense, the agency's election to use one will require it to continue using the appropriation selected to the exclusion of the other. However, this "election" rule is not the relevant doctrine to apply in ascertaining the propriety of the accounting adjustment in this case. To ensure that DoD funded major repair and minor construction projects with both 1993 OMA and RPM,D appropriations, Congress expressly authorized the Army to use fiscal year 1993 OMA funds in addition to RPM,D funds for these projects. Pub. L. No. 103-35, sec. 301, 107 Stat. 103. In cases such as this, where Congress enacts legislation that expressly authorizes an agency to use multiple appropriations for a specific purpose, the general "election" rule is inapplicable, and the agency may instead fund its activities as directed by Congress. *See, e.g.*, 67 Comp. Gen. 276 (1988).

An examination of the purpose for which the Comptroller General established the "election" rule demonstrates its inapplicability to the transaction at issue in this case. As articulated by the Comptroller

ATTACHMENT

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General, the "election" rule applies only "where either of two appropriations reasonably may be construed as available for expenditures *not specifically mentioned under any appropriation.*" 23 Comp. Gen. 827 (1944) (emphasis added). The highlighted language indicates that the Comptroller General established this rule as a means of controlling the extent to which agencies fund their activities in cases where Congress' intentions regarding the funding level for the particular activity are unclear. By requiring agencies to elect only one source of funds under these circumstances, the rule ensures that, in the absence of specific expressions of legislative intent, agencies fund their activities at levels that reasonably may be assumed to be consistent with Congress's expectations.

In this case, however, Congress' intentions regarding the funding of major repair and minor construction projects are manifestly clear. Expenditures for minor construction and major repair of real property were specifically mentioned in the RPM,D appropriation for fiscal year 1993. *See* DoD Appropriations Act, 1993, Pub. L. No. 102-396, 106 Stat. 1885. Further, as noted above, Congress enacted special curative legislation for the express purpose of ensuring that DoD funded these activities with both OMA and RPM,D appropriations. Applying the "election" rule under these circumstances is not only unwarranted because of the absence of the type of funding ambiguity to which the rule is designed to respond, but also contrary to clear expressions of congressional intent regarding the joint funding of facility maintenance and repair projects.

A correct legal analysis of the accounting adjustment at issue in this case must proceed from the terms of 31 U.S.C. § 1553(a), which provide that, during the 5 years between account expiration and closing, the account retains its fiscal year identity and is available for "recording, adjusting, and liquidating obligations *properly chargeable* to that account." 31 U.S.C. § 1553(a) (emphasis added). *See* Ms. Comp. Gen. B-253623 (Sep. 28, 1994). Obligations are "properly chargeable" to an expired account if the account is available (1) for the purpose underlying the obligation; (2) at the time the obligation was incurred; and (3) in the amount of the obligation. As explained in our memorandum dated September 30, 1994, these "purpose, time and amount" requirements were satisfied in this case.

The draft audit report incorrectly suggests that

expired accounts may be adjusted *only* to correctly record obligations that were unrecorded or underrecorded. Although these are the most common purposes for exercising the account adjustment authority under 31 U.S.C. § 1553(a), agencies may make accounting adjustments for other reasons, provided the adjustment does not transgress the "purpose, time and amount" restrictions explained above. As correctly noted in the draft audit report, the accounting adjustments in this case were accomplished in order to "make available RPM,D funds that were still within their period of obligational availability." This rationale is fully consistent with Congress' unambiguous direction--in duly enacted legislation as well as committee reports--to fund major repair and minor construction projects with both OMA and RPM,D funds. Under these circumstances, we disagree with the draft report's conclusion that the fund substitution "was not done for an accepted reason[.]"

For the reasons set forth above, the Army is not legally required to reverse the subject accounting adjustment by deobligating OMA funds and reobligating RPM,D appropriations. Further, in view of section 301, Pub. L. No. 103-35, which expressly authorizes the expenditure of both fiscal year 1993 OMA and RPM,D appropriations for major repair and minor construction projects, there is no basis for concluding that the Army overexpended the appropriations that Congress made available for these projects. Nor is there any indication that the Army expended funds for these purposes in advance of an available appropriation or in contravention of an administrative fund control regulation.

In summary, the accounting transactions described in the subject draft audit report are legally unobjectionable. Congress enacted specific legislation expressly authorizing DoD to expend both fiscal year 1993 OMA and RPM,D appropriations for major repair and minor construction projects. This legislation was intended to ensure that DoD did not construe the RPM,D appropriation as the sole source of funding for these projects. The enactment of this specific legislation renders inapplicable the general "election" rule upon which the conclusions in the draft audit report are based. The audited accounting transactions are fully consistent with

clear Congressional mandates in this area, and they did not in any respect undermine Congress' oversight of Army activities through the appropriations process.

Matt Reres
Deputy General Counsel
(Ethics & Fiscal)

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Audit Team Members

This report was prepared by the Contract Management Directorate, Office of the Assistant Inspector General for Auditing, DoD.

Paul J. Granetto
Joseph P. Doyle
Deborah L. Culp
Michael J. Tully
Robin A. Hysmith