



**SIGAR**

Office of the Special Inspector General  
for Afghanistan Reconstruction

John F. Sopko  
Special Inspector General

June 28, 2013

SIGAR Alert 13-3

Congressional Committees:

In May 2013, SIGAR issued an audit that identified nearly \$1 billion in business taxes and penalties imposed by the Afghan government on contractors supporting U.S. operations.<sup>1</sup> In this follow-up letter to that report, we identify additional costs—including various fees, fines, and penalties—that the Afghan government imposed on many of those same contractors.<sup>2</sup> These additional fines, fees, and penalties may cost these contractors, and ultimately the U.S. government, hundreds of millions of dollars, and the actions taken by the Afghan government to enforce them may have an adverse effect on U.S. military operations. As such, we believe that these costs warrant the immediate attention of Congress.

Since 2002, Congress has appropriated nearly \$93 billion to U.S. government agencies, including the Department of Defense (DOD), Department of State (State), and the U.S. Agency for International Development (USAID), to implement humanitarian and reconstruction programs and projects in Afghanistan. U.S. government agencies, in turn, have awarded billions of dollars to contractors to implement those programs and projects. Contractors play important roles in the reconstruction effort by procuring goods and services needed to build roads, schools, and hospitals; equip, train, and house Afghan security forces; and support U.S. personnel working in Afghanistan.

The U.S. government does not have a comprehensive agreement with the government of Afghanistan that determines the tax status of all contractors working on behalf of the U.S. government. Rather, individual U.S. government agencies—DOD, State's Bureau of International Narcotics and Law Enforcement Affairs (INL), and USAID—have executed bilateral agreements with the Afghan government that exempt contractors supporting agency-funded contracts from paying various Afghan taxes. Each of these individual agreements also exempts goods imported into Afghanistan from tariffs, customs duties, and other fees. See appendix II for the specific language contained in each applicable agreement.

We identified four types of additional costs imposed on contractors supporting U.S. operations, summarized below and discussed in more detail in appendix I.

- *Customs process fees.* U.S. government agencies, including DOD, have executed a number of international agreements with the Afghan government that clearly exempt goods imported into Afghanistan in support of the U.S. military mission from Afghan tariffs and customs duties. However, the Afghan government is charging DOD commercial carriers customs process fees for every exempt container of goods shipped into Afghanistan in support of U.S. military operations—fees totaling at least \$1.03 million.
- *Fines levied by the Afghan government for delayed customs documentation.* In apparent violation of the Status of Forces Agreement between the U.S. and Afghan governments, the Afghan government has also charged fines for “late” or unprocessed customs declaration forms. As of

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<sup>1</sup>SIGAR Audit 13-8, *Taxes: Afghan Government Has Levied Nearly a Billion Dollars in Business Taxes on Contractors Supporting U.S. Government Efforts in Afghanistan*, May 14, 2013.

<sup>2</sup>As discussed below, some of these costs have been agreed to by U.S. agencies, while others have not.

May 2013, an official at the U.S. Army Military Surface Deployment and Distribution Command (SDDC) estimated that the Afghan government has levied more than \$150 million in improper fines for unprocessed customs declaration forms since 2009. In addition, the Afghan government has restricted the freedom of movement for commercial carriers to deliver their cargos—such as foodstuffs destined for U.S. military and ISAF personnel—resulting in serious consequences for the U.S. government’s combat mission and reconstruction effort in Afghanistan.

- *Visa and work permit fees.* The Afghan government requires contractors to receive annual visas and work permits for each non-Afghan employee working in Afghanistan. While some bilateral agreements between various U.S. government agencies and the Afghan government may exempt certain U.S. personnel from requirements to obtain visas, other agreements are silent on the matter. Furthermore, no agreement between the Afghan government and either the U.S. or ISAF specifically exempts contractors from the need to obtain work permits. Our analysis of the visa and work permit process shows that, together, these costs amount to approximately \$1,138 per employee per year.
- *Business license and registration fees.* All contractors supporting the U.S. government in Afghanistan are required to register annually with the Afghanistan Investment Support Agency (AISA) to obtain a business license. The fee associated with obtaining the required AISA business license ranges from \$100 to \$1,000 per year, depending on the type of industry in which the company will operate. At least 1,138 companies operated in Afghanistan in 2012 in support of U.S. operations; this would lead to business license fees ranging from \$113,700 to \$1,137,000 for 2012 alone. Moreover, fees associated with registering security companies are significantly higher, amounting to \$113,000 per company plus an additional \$378,000 to be held in reserve to be confiscated in the event of a security incident. At least 40 security companies have applied for or been issued licenses, leading to between \$2.3 million and \$4.5 million in registration fees and between \$7.6 million and \$15.1 million in incident reserves held by the Afghan government.

Congress’s appropriations for the Afghanistan reconstruction effort are intended to build Afghan security forces, improve governance, and foster economic development in Afghanistan. However, as SIGAR has found, a substantial portion of these funds are being spent not to achieve these important goals, but, rather, to pay the cost of doing business in Afghanistan. In addition to levying nearly a billion dollars in business taxes on companies supporting U.S. government efforts in Afghanistan—most of which we believe are improper based on applicable international agreements—the Afghan government is assessing hundreds of millions of dollars in additional fines, fees, and penalties, some of which are also improper, on many of these same companies. Enforcement efforts by the Afghan government to collect the assessed fees delay the delivery of cargo necessary to support the troops and cost the U.S. taxpayer millions in undue burden. From our work, we know that U.S. agencies, including the Departments of State and Defense, are aware of these problems. The purpose of this letter is to inform Congress of our findings. As the U.S. Congress considers future appropriations for Afghanistan, we believe it prudent to take into account the costs we have detailed in this letter and their impact on U.S. operations in that country.

Appendix III discusses our scope and methodology in conducting this work. Should you or your staff have any questions or need additional information, please contact my Assistant Inspector General for Audits and Inspections, Ms. Elizabeth Field, at 703-545-6006 or elizabeth.a.field9.civ@mail.mil.

Sincerely,

A handwritten signature in black ink, appearing to read 'John F. Sopko', with a long horizontal flourish extending to the right.

John F. Sopko  
Special Inspector General  
for Afghanistan Reconstruction

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## APPENDIX I - ADDITIONAL COSTS IMPOSED ON CONTRACTORS SUPPORTING U.S. OPERATIONS IN AFGHANISTAN

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### Customs Process Fees

U.S. government agencies, including the Department of Defense (DOD), have executed several international agreements with the Afghan government that clearly exempt goods imported into Afghanistan in support of the U.S. military mission from Afghan tariffs and customs duties. Since 2009, the U.S. Army Military Surface Deployment and Distribution Command (SDDC),<sup>3</sup> in conjunction with the U.S. Embassy in Kabul, has also exchanged a number of diplomatic notes with the Afghan government outlining a specific process for SDDC to import goods for the U.S. military's mission free from tariffs and customs duties.<sup>4</sup> However, the Afghan government is charging DOD commercial carriers customs process fees for every exempt container of goods shipped into Afghanistan in support of U.S. military operations—fees that the SDDC maintains are inconsistent with the Status of Forces Agreement (SOFA).<sup>5</sup>

Under a process developed by the Afghan government, every container of goods entering the country must be accompanied by a customs declaration form, commonly known as a T1. Each T1, purchased from the Afghan Customs Department (ACD) for \$18.92,<sup>6</sup> contains important information, such as shipment contents, destination, point of origin, and recipient of the cargo. The T1 allows the Afghan government to record imported goods and apply the appropriate tariff and customs duties, as prescribed in Afghanistan's customs law.

If a commercial carrier is shipping cargo that is exempt from Afghan tariffs and customs duties, the commercial carrier must also purchase an exemption packet or “maffi namma” from the ACD at a cost of \$9.46;<sup>7</sup> for certain imports, up to four cargo containers in one shipment may be covered by a single maffi namma. To complete the tariff exemption procedure, after delivery of the cargo, the commercial carrier must submit the maffi namma and associated T1 to the ACD inland customs house closest to the point of import for processing. The ACD uses the T1 form and the maffi namma to track imports and apply tariffs and customs duties to goods as they enter Afghanistan. See figure 1 for a map of the ACD's border crossing points and inland customs houses.

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<sup>3</sup>SDDC is responsible for the ground import and distribution of material necessary for U.S. military operations in Afghanistan.

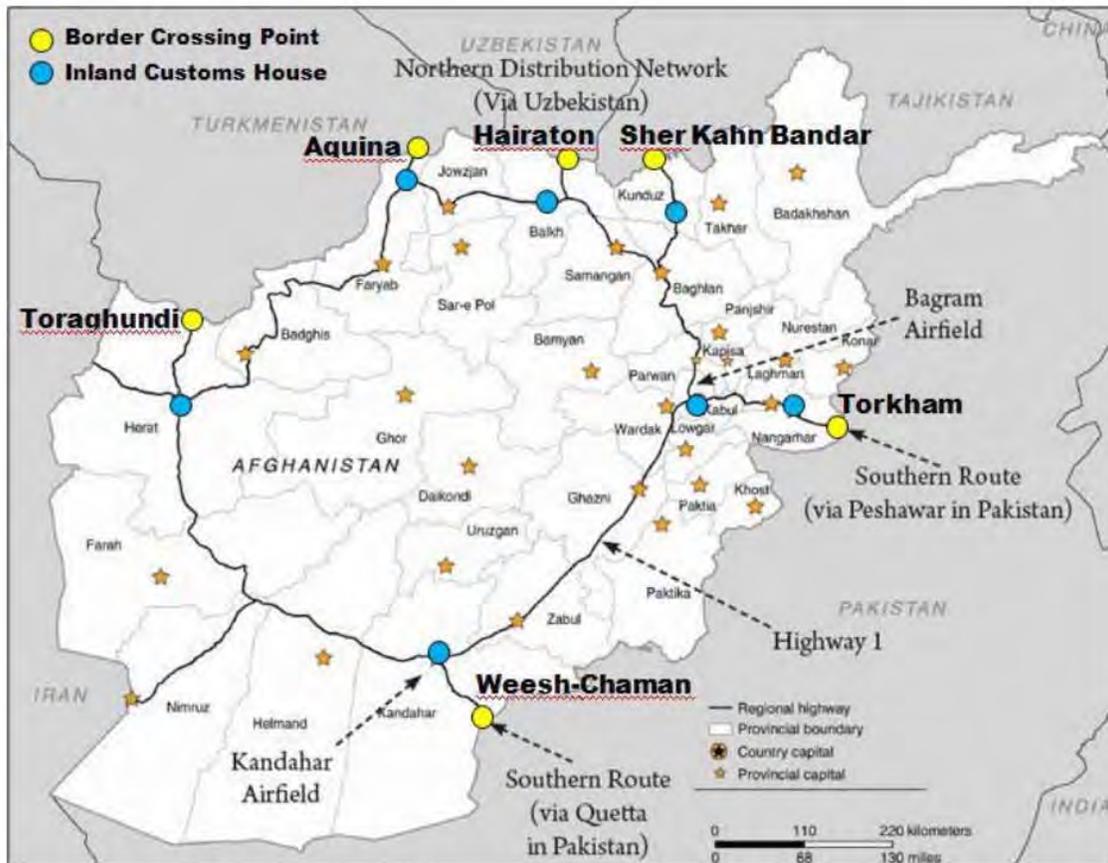
<sup>4</sup>Diplomatic Note 09-2233 sent by the U.S. Embassy in Kabul to the Afghan government on July 21, 2009; Diplomatic Note 10-2656 sent by the U.S. Embassy in Kabul to the Afghan Government on May 26, 2010; and Diplomatic Note 10-3093 sent by the U.S. Embassy in Kabul to the Afghan Government on August 18, 2010.

<sup>5</sup>The U.S. and Afghan governments entered into the SOFA in May 2003. The SOFA exempts DOD personnel and contractors from paying taxes on goods and services provided in Afghanistan. The SOFA further states that the acquisition of goods and services in Afghanistan by or on behalf of the U.S. government are not subject to any taxes, custom duties, or other similar charges.

<sup>6</sup>Each T1 costs 1,000 Afghani. All conversions to U.S. dollars contained herein are based on conversion rate of 52.85 Afghani per U.S. dollar, published by Da Afghanistan Bank on October 18, 2012.

<sup>7</sup>Each maffi namma costs 500 Afghani.

Figure 1 - Afghan Border Crossings and Inland Customs Houses



Border Crossing Point	Respective Customs House
Torkham	Jalalabad
Weesh-Chaman	Kandahar
Hairaton	Balkh
Sher Kahn Bandar	Kunduz
Toraghundi	Herat
Aquina	Ankhoi

Source: United States Central Command, Defense Transportation Regulation – Part V, Department of Defense Customs and Border Clearance Policies and Procedures, March 28, 2013.

The process developed by the SDDC and the U.S. Embassy in Kabul, in conjunction with the ACD, requires commercial carriers to send a list of exempt cargo being imported to the SDDC. The SDDC then produces an Interim Tariff Memo (ITM) that it sends to the border crossing point prior to the arrival of the convoy carrying tax exempt cargo. Each ITM documents the exempt cargo and verifies that the cargo supports U.S. military operations in Afghanistan. This ITM, in conjunction with the T1 and maffi namma, allows the convoy and cargo to pass through the Afghan border crossing without paying tariffs and customs duties.

Although we were not able to obtain figures for the total number of T1s and maffi nammas purchased by commercial carriers for the import of exempt goods, an official at the SDDC estimates that at least 54,000 T1s and 1,900 maffi nammas remained unprocessed as of May 2013. The total fees associated with just these outstanding documents exceed \$1.03 million.

## Fines Levied by the Afghan Government for Delayed Customs Documentation

In apparent violation of the SOFA, the Afghan government has also charged fines for “late” or unprocessed T1s. Commercial carriers working for the SDDC have 21 days from the time exempt cargo crosses the border into Afghanistan to deliver the cargo and return the properly stamped T1 and maffi namma to the nearest ACD inland customs house for the ACD to complete the exemption process. If the ACD does not process the exemption paperwork within 21 days of the date that the exempt cargo crossed into Afghanistan, regardless of the reason for the delay, the Afghan government assesses a fine on the commercial carrier for each outstanding T1.

In March 2012, the U.S. Transportation Command (SDDC’s parent command) issued guidance to all commercial carriers importing exempt cargo into Afghanistan in support of U.S. military operations. The command’s guidance stated that the T1 fines levied by the Afghan government on commercial carriers importing exempt cargo violate the SOFA and instructed commercial carriers to refuse to pay T1 fines.<sup>8</sup> Nevertheless, the Afghan government continues to assess fines for late or unprocessed T1s. As of May 2013, an official at the SDDC estimated that the Afghan government has levied more than \$150 million in improper fines for unprocessed T1s since 2009.<sup>9</sup>

Further, a SDDC official stated that, although the SDDC and Afghan government agreed on the ITM process, the Afghan government has repeatedly altered its procedures and made it more difficult for commercial carriers importing tax exempt cargo to avoid fines for late or unprocessed T1s. For example, the official stated that the Afghan government has ceased accepting copies of transit paperwork and now requires carriers to return to inland customs houses with original documentation. The ACD has also begun starting the 21-day processing countdown from the time the border checkpoint receives the ITM for the exempt cargo, often several days before the goods actually cross into Afghanistan. These changes have led personnel to fly to customs houses to hand deliver original documents and avoid further fines.

The fines, and the Afghan government’s actions to enforce them, have had very real and serious consequences for the U.S. government’s combat mission and reconstruction effort in Afghanistan. Specifically, the ACD has stopped the passage—or revoked the freedom of movement—of commercial carriers importing exempt goods due to outstanding T1 fines on numerous occasions. The U.S. Embassy in Kabul, the SDDC, and ISAF have engaged the Afghan government to resolve the T1 issue on multiple occasions.<sup>10</sup> In November 2012, ISAF sent a letter, endorsed by the SDDC, to the Afghan government requesting that freedom of movement be restored for all cargo and carriers supporting ISAF and the U.S. military with outstanding T1 fines. In December 2012, the Afghan Attorney General agreed that cargo supporting ISAF and U.S. military operations cannot be denied entry into Afghanistan due to outstanding T1 fines;<sup>11</sup> and on December 26, 2012, Afghanistan’s Internal and International Transit Director created a proposal to absolve all outstanding T1 fines and restore freedom of movement for commercial carriers. However, on January 15, 2013, the Afghanistan Cabinet of Ministers rejected the proposal, a decision endorsed by President Karzai. On February 9, 2013, ISAF submitted a rebuttal to the Cabinet’s decision on behalf of U.S. forces and the SDDC. Later that month, the Cabinet of Ministers rejected the rebuttal letter and reiterated that T1 fines are valid and must be paid.

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<sup>8</sup>United States Transportation Command, *Memorandum for USC Carriers*, March 27, 2012.

<sup>9</sup>According to an SDDC official, prior to the command’s guidance, a number of commercial carriers paid T1 fines to resolve customs issues and regain freedom of movement.

<sup>10</sup>The ISAF Commander is also the Commander of U.S. Forces-Afghanistan. ISAF engagement on the issue of outstanding T1 fines includes engagement on behalf of DOD and other coalition partners.

<sup>11</sup>The Afghan Ministry of Foreign Affairs and Ministry of Finance concurred with the Attorney General’s position.

Following the proposal's rejection, the ACD issued 30-day freedom of movement letters that allowed commercial carriers with outstanding T1 fines to continue operations. On March 5, 2013, the issue had still not been resolved, and the ACD issued additional 20-day freedom of movement letters. After the Afghan solar year ended in March 2013, the ACD leadership was replaced with new personnel who issued a final letter on March 26, 2013, granting freedom of movement only through April 25, 2013. See the timeline for an order of events related to the restriction of commercial carriers' freedom of movement and assessment of fines for outstanding T1s.

TIMELINE OF T1 ISSUES	
Date	Key Event
July 21, 2009	Diplomatic note 09-2233 exchanged between the U.S. Embassy in Kabul and the Afghan government formalizing the import process for goods destined for the U.S. military
May 26, 2010	Diplomatic note 10-2656 exchanged between the U.S. Embassy in Kabul and the Afghan government reiterating the import process set up by earlier diplomatic note
August 18, 2010	Diplomatic note 10-3093 exchanged between the U.S. Embassy in Kabul and the Afghan government, also reiterating the import process set up by earlier diplomatic note
March 27, 2012	U.S. Transportation Command issues guidance to commercial carriers instructing them to not pay outstanding T1 fines
Late November 2012	ISAF drafts letter, endorsed by SDDC requesting freedom of movement be restored for all cargo and carriers
Mid December 2012	The Afghan Attorney General receives ISAF's letter and agrees that cargo supporting ISAF and U.S. military operations cannot be denied entry into Afghanistan due to outstanding T1 fines
December 26, 2012	Afghanistan's Internal and International Transit Director creates a proposal to absolve all outstanding T1 fines and restore freedom of movement for commercial carriers
January 15, 2013	The Afghanistan Cabinet of Ministers rejects the proposal—a decision endorsed by President Karzai
January 22, 2013	ACD grants 30 day freedom of movement letters to allow carriers to import and export goods until T1 issue is resolved
February 8, 2013	U.S. Embassy in Kabul states that it reserves the right to lodge a formal objection to President Karzai in reference to the Ministerial Cabinet's refusal to absolve T1 fines
February 9, 2013	ISAF submits a rebuttal to the Cabinet's decision on behalf of U.S. forces and the SDDC
February 26, 2013	SDDC learns the Cabinet of Ministers rejected the ISAF rebuttal letter and reiterated that T1 fines are valid and must be paid
February 28, 2013	One commercial carrier reports being stopped at Hairaton port because of outstanding T1 fines
March 5, 2013	ACD grants 20 day freedom of movement letter for U.S. and ISAF cargo
March 18, 2013	Afghan government announces changes in leadership at the ACD
March 25, 2013	Freedom of movement letters expire without replacement
March 26, 2013	New ACD leadership grants last extension for freedom of movement for U.S. and ISAF cargo
April 25, 2013	Freedom of movement expires for U.S. and ISAF cargo; commercial carriers begin experiencing stoppages at border crossings

Source: SIGAR analysis of SDDC documentation.

When the last freedom of movement letter expired on April 25, 2013, the issue of outstanding T1s had still not been resolved, and ACD officials at border crossings began to more vigorously enforce cargo stoppages. One commercial carrier that supplies food and fuel for ISAF and the U.S. military stated that all of its cargo was affected by the freedom of movement stoppage. According to a SDDC official, as of May

2013, this carrier had 220 containers held at the port of Hairaton in northern Afghanistan. Some of these containers contain foodstuffs destined for U.S. military and ISAF personnel. Moreover, because the carrier is unable to reuse the containers while the cargo is held at the port, the commercial carrier charges the U.S. contracting agency \$100 per day, per container, totaling \$22,000 per day. Similarly, the Afghan government has held 440 containers from another commercial carrier with revoked freedom of movement at the Torkam port in eastern Afghanistan since August 2012, because of outstanding T1 fines. Additional containers containing fuel for U.S. and ISAF forces are being held at the port of Torghundi in western Afghanistan.

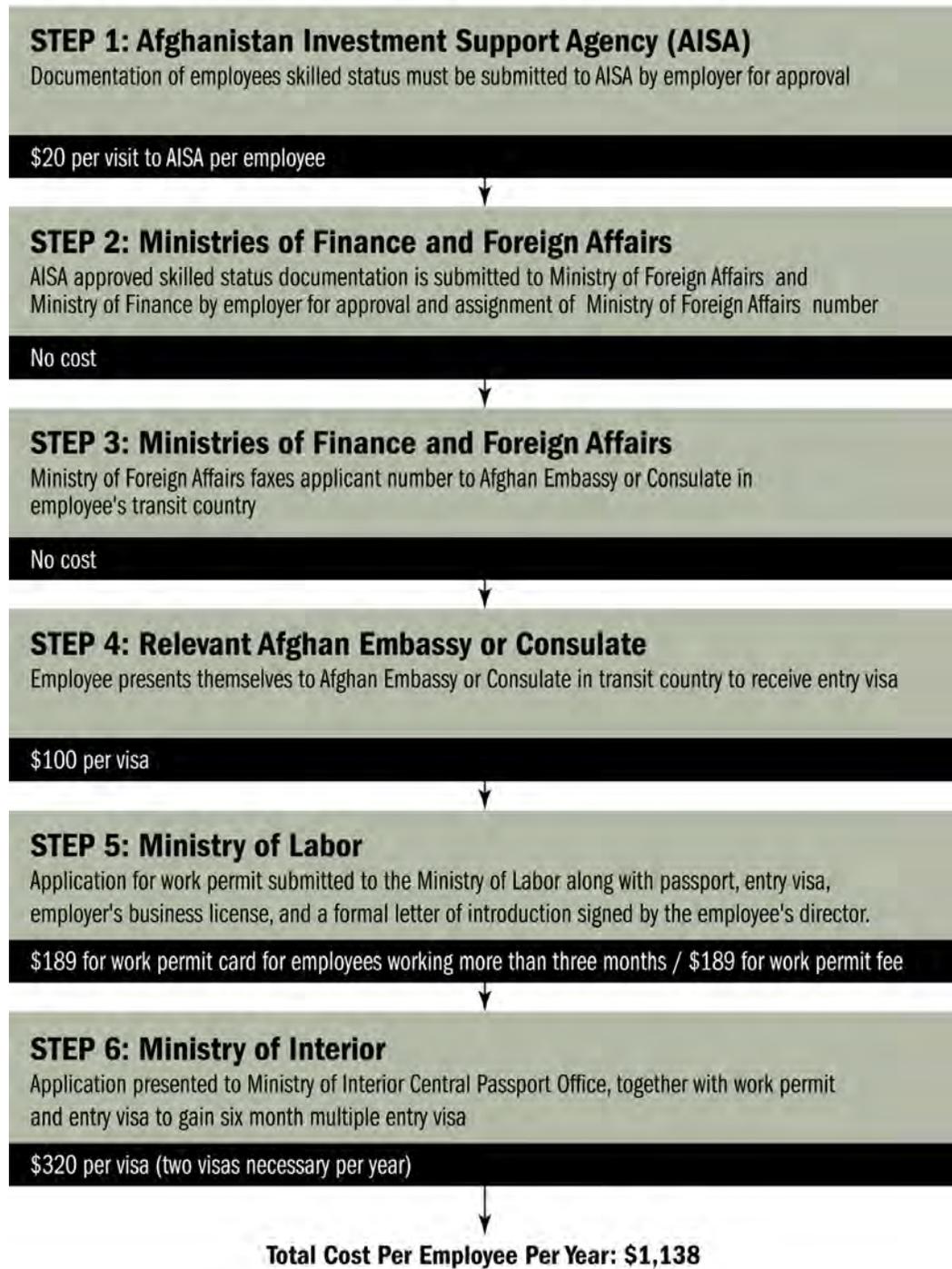
## Visa and Work Permit Fees

Pursuant to Afghan law, foreign contractors must receive annual visas and work permits for each non-Afghan employee working in Afghanistan. The bilateral agreements between various U.S. government agencies and the Afghan government seem to differ in their requirements for personnel to obtain visas, and no agreements explicitly exempt contractors from the need to obtain work permits. For example, the ISAF Military Technical Agreement states that contractor personnel “may enter and depart Afghanistan with military identification and with collective movement and travel orders.”<sup>12</sup> In contrast, the DOD SOFA, the INL Letters of Agreement, and USAID’s Strategic Objective Grant Agreements do not contain similar language suggesting that their contractor personnel may be exempt from visa requirements. None of the bilateral agreements we reviewed between the Afghan government and the U.S. agencies clearly states whether contractor personnel are subject to work permit requirements. Our analysis of the visa and work permit process shows that, together, these costs amount to approximately \$1,138 per employee per year. Figure 2 outlines the process and fees associated with obtaining necessary visas and work permits in Afghanistan.

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<sup>12</sup> Military Technical Agreement Between the International Security Assistance Force and the Interim Administration of Afghanistan, Annex A, Sec. 2.

Figure 2 - Visa and Work Permit Process



Note: The dollar amounts represented in this figure are based on SIGAR's analysis of contractor interviews and Afghan government sources. However, fees associated with this process may vary, based on Afghan government sources.

Source: SIGAR analysis of Afghan government sources and contractor interviews.

While we did not determine how many individuals working on behalf of the U.S. government in Afghanistan applied for visas, a recent DOD report stated that more than 67,000 U.S. citizen and third country national contractor personnel worked in Afghanistan for DOD during the second quarter of fiscal year 2013.<sup>13</sup><sup>14</sup> If all of those personnel obtained work permits and visas, it could cost DOD contractors over \$76 million each year. However, we do not believe that all of these contractor personnel obtained work permits and visas because we believe that many travel directly to, and work exclusively on, DOD bases and fly into and out of Afghanistan via military air.<sup>15</sup> Consequently, we believe those personnel do not interact with Afghan immigration officials, and often do not apply for work permits and visas. According to DOD and State guidance concerning general entry requirements for travel to Afghanistan, personnel in Afghanistan who do not have valid visas are subject to “heavy” fines.

## Business License and Registration Fees

As we noted in our audit report on business taxes issued in May 2013, all contractors supporting the U.S. government in Afghanistan are required to register annually with the Afghanistan Investment Support Agency (AISA) to obtain a business license and operate legally in Afghanistan. While SOFA specifically exempts contractors supporting DOD from such registration requirements, the U.S. government ultimately agreed that DOD contractors would nonetheless register with AISA.<sup>16</sup> Similarly, USAID guidance also instructs contractors to register with AISA, and the U.S. Embassy in Kabul maintains a website instructing contractors to obtain a business license to operate legally in Afghanistan.<sup>17</sup> When applying for a business license, contractors must provide information such as the name and address of the company, a company contact, a business plan, and register the industry in which the company will operate. The fee associated with obtaining the required AISA business license—for non-security services—ranges from \$100 to \$1,000 per year, depending on the type of industry the company is registering for and the size of the business. A search of the Federal Procurement Data System showed that at least 1,137 companies operated in Afghanistan in 2012 in support of U.S. operations; this would lead to business license fees ranging from \$113,700 to \$1,137,000 for 2012 alone.

The fees associated with registering a security company are significantly higher than those for registering other types of companies. In August 2010, President Karzai issued Presidential Decree 62 ordering the disbandment of private security contractors and allowing for the creation of risk management companies.<sup>18</sup> The fee for registering a non-Afghan risk management company is approximately

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<sup>13</sup> *Contractor Support of U.S. Operations in the USCENTCOM Area of Responsibility to Include Iraq and Afghanistan*, Deputy Assistant Secretary of Defense for Program Support, April 2013. We could not obtain similar data for the number of non-Afghan contractors supporting State and USAID.

<sup>15</sup> The DOD country clearance guide for Afghanistan states that contractor personnel who arrive in Afghanistan on a U.S. military aircraft can depart via commercial air if they have legalized their status, otherwise they should depart via U.S. military aircraft.

<sup>16</sup> See Diplomatic Note 12-4021 sent by the Embassy in Kabul to the Afghan government on September 10, 2012.

<sup>17</sup> Embassy of the United States Kabul, *Afghanistan Frequently Asked Questions*, <http://kabul.usembassy.gov/business-faq.html>, accessed on December 3, 2012.

<sup>18</sup> The bridging strategy created after Presidential Decree 62 placed limits on the size of private security contractors. The Afghan government has imposed fines on private security contractors for exceeding employee man caps. One contractor that provided necessary security services for DOD and ISAF has paid more than \$1.2 million in penalties for exceeding the cap on the number of employees it can have in Afghanistan. A second contractor that provided security services for the DOD and two private contracts has paid more than \$746,000 in employee penalties.

\$113,000.<sup>19</sup> The Afghan government also requires risk management companies to pay an additional \$378,000 as a reserve that will be confiscated should a security incident occur.<sup>20</sup> In this review, we did not determine how many risk management companies support U.S. operations in Afghanistan. However, according to the Afghan Public Protection Force's published record, at least 40 companies have applied for, or have been issued risk management licenses, leading to between \$2.3 million and \$4.5 million in registration fees paid to the Afghan government and between \$7.6 million and \$15.1 million in incident reserves held by the Afghan government.

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<sup>19</sup>The fee for registering a non-Afghan risk management company is 6 million Afghanis.

<sup>20</sup>The incident reserve for a non-Afghan risk management company is 20 million Afghanis. The fees for registering an Afghan risk management company with the Afghan Public Protection Force are exactly half the cost for registering a non-Afghan risk management company.

## APPENDIX II - APPLICABLE LANGUAGE FROM BILATERAL AGREEMENTS

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Each bilateral agreement contains specific language that provides exemption from tariffs, customs duties, and other fees levied by the Afghan government on goods brought into Afghanistan in support of the U.S. government mission. Below is the applicable language from each agreement.

### Department of Defense (DOD)

The U.S. and Afghan governments entered into a Status of Forces Agreement (SOFA) in May 2003. The SOFA exempts DOD personnel and contractors from paying taxes on goods and services provided in Afghanistan. The SOFA further states that the acquisition of goods and services in Afghanistan by or on behalf of the U.S. government are not subject to any taxes, custom duties, or other similar charges. Specifically, the SOFA states that,

“the Government of the United States of America, its military and civilian personnel, contractors and contractor personnel shall not be liable to pay any tax or similar charge assessed within Afghanistan.

The Government of the United States of America, its military and civilian personnel, contractors and contractor personnel may import into, export out of, and use in the Republic of Afghanistan any personal property, equipment, supplies, materials, technology, training or services required to implement this agreement. Such importation, exportation and use shall be exempt from any inspection, license, other restrictions, customs duties, taxes or any other charges assessed within Afghanistan.”

While the SOFA does not specifically address the requirement for its contractors to obtain visas and work permits, the SOFA may provide a visa exemption for DOD military and civilian personnel who arrive and depart via U.S. military aircraft. Specifically, the SOFA states that,

“...military and civilian personnel of the United States Department of Defense who may be present in Afghanistan in connection with cooperative efforts in response to terrorism, humanitarian and civic assistance, military training and exercises, and other activities. The Embassy proposes, without prejudice ... that such personnel be accorded a status equivalent to that accorded to the administrative and technical staff of the Embassy of the United States of America under the Vienna Convention on Diplomatic Relations of April 18, 1961; that United States personnel be permitted to enter and exit Afghanistan with United States identification and with collective movement of individual travel orders...”

Even though the SOFA refers to U.S personnel and contractors, DOD and Department of State (State) officials agree that the SOFA applies only to DOD personnel and contractors.<sup>21</sup>

### Department of State

In February 2003 and in March 2006, the United States government entered into agreements with the Afghan government to provide tax-exempt status to both the non-Afghan contractors supporting the

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<sup>21</sup>SIGAR interviewed officials from all contracting agencies and met with officials from DOD Office of General Counsel, State Office of the Legal Adviser, and USAID Regional Legal Office. DOD Office of General Counsel and State Legal Office stated that the SOFA only applies to DOD contractors. USAID Regional Legal Office officials stated that SOFA does not apply to USAID contractors.

Department of State Bureau of International Narcotics and Law Enforcement Affairs (INL) counternarcotics and law enforcement efforts and materials imported in support of INL's mission. These agreements state,

“Any funds, material and equipment introduced into Afghanistan by the USG [United States Government] or by any person or entity (including but not limited to contractors and grantees) funded by the USG pursuant to this Agreement shall be exempt from taxes, service charges and investment or deposit requirements and currency control in Afghanistan, and the import, export, acquisition, use or disposition of any such property or funds in connection with this Agreement shall be exempt from any tariffs, custom duties, import and export taxes, taxes on purchases or disposition and any other taxes or similar charges in Afghanistan.”<sup>22</sup>

For materials imported into Afghanistan in support of Embassy operations, State relies upon protections set in the 1961 Vienna Convention on Diplomatic Relations. Specifically, the Convention states:

“The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

(a) Articles for the official use of the mission;”

This provision exempts materials imported for the use of the Embassy from tariffs, customs duties, and other fees related to their import.

Neither the INL agreements nor the 1961 Vienna Convention contain specific provisions applicable to determining whether State contractors in Afghanistan are exempt from visa and work permit requirements.

## U.S. Agency for International Development (USAID)

In 1951 USAID and the Afghan government executed the Point Four General Agreement for Technical Cooperation stating that

“Any funds, materials and equipment introduced into Afghanistan by the Government of the United States of America pursuant to such program and project agreements shall be exempt from taxes, service charges, investment or deposited requirements, and currency controls.”

This language, still in force today, allows for contractors to import goods for the USAID mission, into Afghanistan free of tariff and customs duties. In September 2005, in conjunction with the 1951 accord, USAID established four Strategic Objective Grant Agreements with the Afghan government. These agreements allow U.S. foreign assistance to be used for development and civil society projects and state that the “assistance... is free from any taxes imposed under laws in effect in [Afghanistan].” Together, these agreements state that materials imported into Afghanistan in support of USAID projects are tariff free and that non-Afghan contractors working on behalf of USAID are tax-exempt.

Neither the Point Four General Agreement for Technical Cooperation or the SOAGs specifically address the Afghan government's visa and work permit requirements.

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<sup>22</sup>Letter of Agreement on Police, Criminal Justice, and Counternarcotics Support Programs Between The Government of the United States of America and The Islamic Republic of Afghanistan (March 9, 2006). And Letter of Agreement on Police, Justice, and Counternarcotics Programs Between The Government of the United States of America and The Transitional Islamic State of Afghanistan (February 19, 2003).

## International Security Assistance Force (ISAF) and North Atlantic Treaty Organization (NATO)

In addition to the agreements between U.S. government agencies and the Afghan government, NATO has entered into its own agreement with the Afghan government. The Military Technical Agreement, signed in January 2002, defines the relationship between ISAF and the Afghan government,<sup>23</sup> and grants material imported in support of ISAF's mission and ISAF military and civilian personnel tax-exempt status. Specifically, the agreement provides that,

"The ISAF will be allowed to import and export free of duty or other restriction, equipment, provisions and supplies necessary for the mission...

\* \* \* \*

. . ISAF will be allowed to contract direct [sic] with suppliers for services and supplies in Afghanistan without payment of tax or duties. Such services and supplies will not be subject to sales or other taxes.

\* \* \* \*

. . . local personnel hired by ISAF will . . . [b]e exempt from taxation on the salaries and emoluments paid to them by the ISAF."<sup>24</sup>

On March, 9, 2011, ISAF's Commanding General issued a letter of interpretation to the Afghan government's Minister of Finance declaring that, as of March 21, 2011, Afghan contractors and employees were no longer tax-exempt with regard to profits and wages earned while working on behalf of ISAF. In addition, the letter declared that non-Afghan subcontractors to ISAF, as well as contractors, are exempt from taxes.<sup>25</sup> While the MTA does not explicitly exempt contractors from work permit requirements, the MTA may provide exemption for ISAF personnel and contractors supporting ISAF from visa requirements as it states:

"The Interim Administration understands and agrees that the ISAF and supporting personnel, including associated liaison personnel, may enter and depart Afghanistan with military identification and with collective movement and travel orders."

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<sup>23</sup>ISAF conducts operations in Afghanistan to reduce the capability and will of the insurgency, support the growth in capacity and capability of the Afghan National Security Forces, and facilitate improvements in governance and socio-economic development. ISAF funding and forces come from the various NATO member states, primarily the US government.

<sup>24</sup> *Military Technical Agreement between the International Security Assistance Force (ISAF) and the Interim Administration of Afghanistan ('Interim Administration'), January 2002.*

<sup>25</sup>2011 COMISAF Letter of Interpretation: March 9, 2011.

## APPENDIX III - SCOPE AND METHODOLOGY

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In June 2012, we initiated an audit to determine the extent to which U.S. contractors working in Afghanistan were subject to tariffs, customs duties, and taxes. On May 14, 2013, SIGAR issued a report resulting from this audit, which focused on income taxes and associated penalties, titled *Taxes: Afghan Government Has Levied Nearly a Billion Dollars in Business Taxes on Contractors Supporting U.S. Government Efforts in Afghanistan*, SIGAR Audit 13-8. We decided to report separately on tariffs and customs process fees.<sup>26</sup> Specifically, our objective was to identify the extent to which the Afghan government has assessed tariffs, customs process fees, and other fines, fees, and penalties on U.S. contractors conducting business in Afghanistan.

To accomplish our objective, we reviewed documents related to tariffs and penalties for the period between January 1, 2002 and May 11, 2013. We also reviewed guidance related to Afghan tariff and customs law, international agreements, and government contracting agencies; obtained information through interviews and documentation on the Afghan process for determining tariffs and customs process fees on goods imported into Afghanistan; and identified the extent to which the Afghan government charges U.S. government contractors for importing goods and obtaining visas, work permits, and business licenses. Because no database existed that identified the amounts paid by U.S. contractors conducting work in Afghanistan, we used several methods to obtain this type of information, including soliciting the data from a source with knowledge of customs and tariffs, using publicly available information, and computer processed data. For all types of data collection, we determined that data reliability was sufficiently reliable to address our objective.

For determining customs process fees, we used data provided by the U.S. Surface Deployment Distribution Command (SDDC). The SDDC is responsible for the ground transportation of goods destined for U.S. forces in Afghanistan. Using data collected since 2009, the SDDC was able to calculate the number of outstanding T1s and maffi nammas issued for the import of goods for U.S. military forces in Afghanistan. Furthermore, the SDDC was able to gain an estimate of the cost of the fines for the outstanding T1s from the Afghan government. We utilized self reported information from the SDDC and did not independently verify the accuracy of the data.

For estimating the number of visas and work permits issued, we used publicly available data published by the U.S. Central Command on the number of contractors operating within U.S. Central Command's area of operations.<sup>27</sup> This report stated the number of U.S. citizen and third country national contractors working in Afghanistan during the second quarter of fiscal year 2013. We were able to use this information, along with our understanding of the applicable bilateral agreements and Afghan law, to estimate the number of visas and work permits that could have been issued to U.S. citizen and third country national contractors during that period. We utilized self reported information published by the DOD and did not independently verify the accuracy of the data.

For determining fees associated with the issuance of business licenses, we used the Federal Procurement Data System (FPDS) database for contractors with operations in Afghanistan. FPDS is a searchable database of federal contracting actions, maintained by the U.S. government, that allows for queries of contract actions using variables such as contractor name, contracting office, action date, and place of performance. We searched FPDS for all contractors operating in Afghanistan during calendar year 2012, and estimated the number of business licenses that could have been issued to these companies. Furthermore, we used data published by the Afghan Public Protection Force, the state run corporation

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<sup>26</sup> The audit work was conducted under the project code SIGAR-060A.

<sup>27</sup> *Contractor Support of U.S. Operations in the USCENTCOM Area of Responsibility to Include Iraq and Afghanistan*, Deputy Assistant Secretary of Defense for Program Support, April 2013.

responsible for providing security services, to estimate the number of risk management companies operating in Afghanistan. We did not assess the reliability of FPDS. However, we only utilized the data retrieved from FPDS for the purposes of creating an estimate of the number of contractors operating on behalf of U.S. contracting agencies in Afghanistan during calendar year 2012.

We reviewed the Afghan customs process fee procedures to assess internal controls and the results are included in the body of the report.

This report is largely based on audit work we conducted under SIGAR code 060A for our May 2013 business taxes audit, which was conducted in Kabul, Afghanistan, and Washington D.C., from June 2012 to January 2013, in accordance with generally accepted government auditing standards. Additional work for this report subsequent to the May 2013 business taxes audit was conducted in accordance with SIGAR's quality control policies. Those standards and policies require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. SIGAR conducted this audit under the authority of Public Law No. 110-181, as amended and the Inspector General Act of 1978, as amended.