



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

John F. Sopko
Special Inspector General

July 22, 2013

The Honorable John F. Kerry
Secretary
U.S. Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Dear Secretary Kerry:

I write to alert you to serious deficiencies related to the Afghanistan Justice Training Transition Program administered by the Department of State, Bureau of International Narcotics and Law Enforcement Affairs (INL). In the course of performing an audit of rule of law programs managed by INL, SIGAR became aware of INL's sole source award to the International Development Law Organization (IDLO) for Afghan justice sector training services. This award does not appear to contain basic provisions that would allow INL to ensure proper monitoring and evaluation of a project expected to cost U.S. taxpayers nearly \$50 million.

On December 27, 2012, INL offered IDLO \$47,759,796 in exchange for work on a project titled, "*Completing the Transition in Afghanistan: Justice Training Transition Program (JTTP)*" (see attached). On January 2, 2013, IDLO accepted INL's offer by initialing a two-and-a-half page Letter of Agreement. According to INL, this is the largest project IDLO has ever worked on and the United States has already obligated \$20 million towards its completion.

The JTTP is the most recent iteration of the regional justice sector training efforts that INL began in Afghanistan with the Justice Sector Support Program (JSSP). The JSSP was comprised of three main components: (1) regional training; (2) implementing the Case Management System criminal case database; and (3) building the administrative capacity of the Afghan government's justice sector ministries. Under the JSSP, INL relied on prime contractor PAE Inc. to provide services related to all three program components. INL has already expended over \$200 million on the JSSP since 2005. The agreement between INL and IDLO called for IDLO to replace PAE as the provider of regional training services to the Afghan justice sector, although PAE continues to implement the two remaining JSSP components.

SIGAR is already investigating significant concerns raised regarding award and management of the PAE contract by an office reporting to Undersecretary for Management Patrick F. Kennedy.¹ In light of those concerns, SIGAR was disturbed to learn that the IDLO agreement contains even fewer oversight requirements than the PAE contract. This development indicates that INL may be scaling back its oversight of a program that is central to U.S. efforts to promote the rule of law in Afghanistan and which involves millions of dollars of taxpayer money.

¹ Letter from Senator Claire McCaskill to Special Inspector General for Afghanistan Reconstruction John F. Sopko (February 15, 2013) and reply to Chairman Claire McCaskill (March 13, 2013).

For example, although INL and the Bureau of Administration relied on Contracting Officer's Representatives (CORs) to monitor work performed in Afghanistan under the PAE training contract, State Department officials told SIGAR that INL has not arranged for CORs to monitor the work now being performed by IDLO. SIGAR was also told by State Department officials that INL's Contract Administration Support Division is not required to conduct line-by-line oversight of costs associated with the work performed under the IDLO agreement. This approach is in direct contrast to the line-by-line cost oversight performed on the PAE contract, which normally allows the government to evaluate the validity of contractor costs before making payment. INL officials also told SIGAR auditors that they do not have the authority to demand basic organizational and project information from IDLO because it is an international organization.

INL officials' assertion that they do not have authority to compel IDLO to produce information is disingenuous: INL could have conditioned the award on IDLO submitting to appropriate oversight. This omission is particularly disturbing given that INL chose IDLO as the sole project implementer.

Moreover, the IDLO agreement appears to deviate from established State Department policy. In response to several SIGAR requests for copies of the guidelines, rules, and regulations that INL officials follow when drafting agreements like the one with IDLO, SIGAR obtained a copy of a State Department action memorandum,² which includes a template for drafting such agreements.

Most strikingly, the template contains a "required" provision establishing INL's "monitoring and evaluation" rights under agreements like the one signed with IDLO. This provision states, in pertinent part:

- A. Each party shall have the right . . . (2) to inspect and audit any records and accounts with respect to funds, property and contract services furnished by that party under this agreement to determine that such funds, services or property are being utilized in accordance with the terms of this agreement.

* * * *

- C. Each party will furnish the other with information necessary to evaluate the effectiveness of the project operations under the terms of this agreement. At the termination of the project a completion report shall be issued as an integral part of this process. The completion report will include a summary of United States Government and [the other party's] project contributions, a record of activities performed, objectives achieved and related basic data.

² Action Memorandum from Rand Beers (INL) to Frank E. Loy (June 21, 1999).

This provision was included in an agreement between the State Department and the Government of the Islamic Republic of Afghanistan³ and SIGAR found examples of other State Department agreements containing this provision as recently as 2012.⁴ Yet inexplicably, this provision was not included in the IDLO agreement. This omission raises red flags regarding the level of planning and analysis INL conducted prior to determining that IDLO would be a suitable implementing partner. It also calls into question why INL would award nearly \$50 million to IDLO without requiring the same level of transparency it requires from a foreign government or a government contractor.

Preliminary information gathered by SIGAR auditors suggests that IDLO is ill-prepared to manage and account for how U.S.-taxpayer funds will be spent on the JTTP. Documents provided to SIGAR indicate that IDLO's annual budget is about \$27 million (at €1.32 to the dollar). A State Department official told SIGAR auditors that IDLO's budget has declined in recent years, even as its portfolio of projects has increased, forcing IDLO to implement its projects with less funding. According to this official, IDLO also lacks proper international financial certifications, which prevents it from validating its internal spending. Therefore, in the absence of further explanation, it seems ill-considered for INL to have awarded almost \$50 million to an organization that may not have the ability to account for the use of those funds, under an agreement in which INL failed to require proper provisions for oversight.

The oversight risks associated with INL's sole source award prompted SIGAR to request substantive information directly from IDLO. However, IDLO has refused to fully comply with SIGAR's repeated requests for information regarding its budget, organizational structure, and financial relationship with the U.S. government. IDLO has also refused to provide complete copies of the materials it uses to help train Afghan justice sector officials under its award from INL. IDLO's failure to comply with these requests raises serious concerns regarding its commitment to transparency and willingness to acknowledge the authority of the U.S. government to oversee how U.S. taxpayer funds are spent.

Immediate transparency is necessary to help ensure that INL's sole source award to IDLO does not turn into a blank check, even if that means renegotiating the current agreement to provide for proper oversight. If the State Department is not able to ensure proper oversight, SIGAR may be obligated to issue a letter pursuant to section 5(d) of the Inspector General Act of 1978, as amended. In addition, because INL's failure to include proper oversight provisions in the IDLO agreement has hindered SIGAR's ability to obtain information from IDLO, it may also be necessary for SIGAR to subpoena IDLO to compel the production of any and all records IDLO possesses related to its operations in Afghanistan. On a related point, I trust that INL and those offices reporting to Undersecretary Kennedy will be fully transparent as SIGAR continues its audit of the PAE contract and its transition to IDLO.

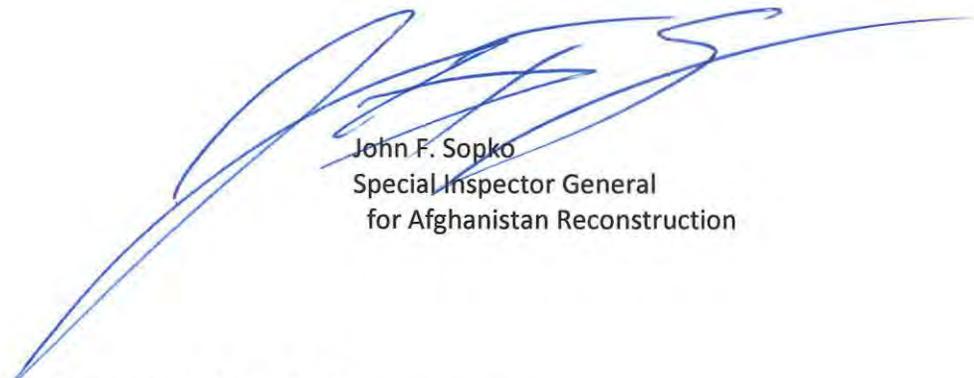
³ Letter of Agreement on Police, Criminal Justice, and Counternarcotics Support Programs Between the Government of the United States of America and the Islamic Republic of Afghanistan (March 6, 2006).

⁴ *See, e.g.*, Letter of Agreement on Narcotics Control and Law Enforcement Between the Government of the United States of America and the Government of the Dominican Republic (September 7, 2012).

SIGAR recommends that the State Department address the oversight deficiencies in INL's agreement with IDLO and review the circumstances that led to IDLO's selection as the JTTP implementer. Moreover, SIGAR recommends that the State Department review all similar contracts, grants, and other agreements related to Afghanistan reconstruction to ensure that arrangements have been made for appropriate oversight.

Thank you for your attention to this important matter. Please do not hesitate to contact me should you have any questions.

Sincerely,



John F. Sopko
Special Inspector General
for Afghanistan Reconstruction

Enclosure:

Letter of Agreement Between Department of State and
The International Development Law Organization (December 27, 2012)



United States Department of State

Washington, D.C. 20520

www.state.gov

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ACTION MEMO FOR ACTING ASSISTANT SECRETARY PEREZ

FROM: INL/AP – Al Matano, Acting ARM

SUBJECT: International Law Development Organization (IDLO)
Contribution Letter for Justice Program in Afghanistan

Recommendation

That you approve and sign the attached funding letter from INL/AP to the International Development Law Organization (IDLO) to fund the Justice Training Transition Program (JTTP), which represents the de-scoped training portion of the current Justice Sector Support Program (JSSP), in the amount of \$47,759,796 in incremental funding, over 30 months.

Approve  Disapprove _____

Background

This is an action request to provide \$47,759,796 to IDLO to fund the newly created program: “*Completing the Transition in Afghanistan: Justice Training Transition Program (JTTP)*.” JTTP will continue the de-scoped training portion of the JSSP contract currently implemented by Pacific Architects & Engineers. IDLO will take over the portion of the program which provides nationwide justice sector training.

Due to the evolving operational environment in Afghanistan, INL has determined that IDLO is the best partner to carry out the ultimate goal of transitioning the justice sector training program from an externally implemented project to an Afghan Government-operated and managed continuing legal education program. INL believes that this change is necessary to reach the final stage in the plan to transition the training program to the Afghan government.

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The new program capitalizes on IDLO's unique relationship with the Government of Afghanistan, which is a member state, IDLO's fundamental expertise in legal training, and its years of experience operating in Afghanistan.

This program will be incrementally funded through the 30-month period of performance and \$20,000,000 has been currently identified from the FY 2012 Washington-held Administration of Justice (IN41AF25) project.

Attachment:

Funding Letter to IDLO Director General Irene Khan

Fiscal Data:

1911231022000C—2078—2078328D15—2761—4131—IN41AF25—019525--
\$20,000,000.00

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United States Department of State

**Bureau for International Narcotics
and Law Enforcement Affairs**

Washington, D.C. 20520

DEC 27 2012

Dear Director General Khan:

This letter is to inform you that, under the authority of the Foreign Assistance Act of 1961, as amended, the Government of the United States of America, through the U.S. Department of State's Bureau of International Narcotics and Law Enforcement Affairs (INL) will provide \$47,759,796 to the International Development Law Organization (IDLO) for the project "Completing the Transition in Afghanistan: Justice Training Transition Program (JTTP)," as described in the attached program proposal and budget, pending availability of funds. The funds will support a program which will provide nationwide justice sector training, and will transfer operations and management to the Afghan government. Your countersignature on this letter acknowledges acceptance of these funds and your agreement to comply with the terms and conditions set forth in this letter, and constitute firm commitments of the U.S. government and IDLO. None of the funds provided may be used for other projects without express written consent.

The actions to be taken and the resources to be provided by the U.S. government and IDLO in support of the proposed program are set forth in this letter and the enclosed program proposal and budget, and constitute firm commitments of the U. S. government and IDLO. Future funding for this project is contingent upon the availability of duly authorized and appropriated funds, satisfactory progress toward project goals, and approval by the U.S. Department of State.

IDLO is to provide INL with quarterly program and financial reports on the activities undertaken with these funds with particular attention to the performance indicators enumerated within the program proposal. These reports should be submitted not later than 30 days after the end of each quarter in accordance with the attached program proposal. A final report should be provided upon completion of the program within six months of the date of completion. We anticipate that IDLO will do all in its power to minimize overhead costs so that funding can be directed towards implementing the project proposal. The terms and conditions of the project may be amended by mutual written agreement. IDLO will cooperate with INL to ensure that funds provided in this letter of agreement are implemented consistent with U.S. Department of State requirements including the obligation in

some cases to take appropriate measures or, if necessary, to terminate assistance if the recipient organization or key individual of such an organization is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking.

As required by U.S. law and regulations, IDLO shall make reasonable efforts to ensure that none of the funds provided through this letter are provided to or through a known drug trafficker. IDLO also agrees to use reasonable efforts to ensure that none of these funds are used, directly or indirectly, to provide support to individuals or entities associated with terrorism. Reasonable efforts include ensuring that all grants and contracts used to carry out these projects will include provisions corresponding to the terrorism and drug trafficking requirements of this paragraph with respect to all recipients of these funds. U.S. funds cannot be used to pay any contractors or sub-contractors who are on the U.S. Treasury Office of Foreign Assets Control List, which may be found at <https://sdnsearch.ofac.treas.gov/>.

While IDLO will have primary project management responsibility, the U.S. Department of State requires close coordination between IDLO project management personnel and INL's Afghanistan/Pakistan Office (INL/AP) and INL/Kabul Office. To this end, INL/AP will designate one or more of its staff members to monitor IDLO's performance.

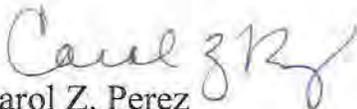
U.S. law does not permit IDLO to earn interest on funds provided. If interest is earned on any such funds, IDLO shall provide INL with a year-end accounting and send to the attention of INL/AP, through the U.S. Mission to the UN Agencies in Rome, a certified check made out to the order of the United States Treasury for the amount of the earned interest.

In addition, consistent with Section 620M of the Foreign Assistance Act, U.S. funds shall not be provided to furnish assistance, including training, to any unit of the security forces (including customs and border police) where there is credible information that such unit has committed gross violations of human rights. Should IDLO include members of security force units in the targeted audience, IDLO will provide each applicable candidate's name and identifying information concerning any police unit(s) not less than 45 days prior to the commencement of training, and IDLO will not proceed with training of any security force member until advised that this human rights vetting has been successfully completed.

To comply with U.S. procedures for providing these funds to IDLO, please confirm to me in writing as soon as possible, your response indicating IDLO's acceptance of the terms and conditions set forth in this letter. Our receipt of this letter, with your counter signature below indicating your acceptance of the terms and conditions herein, will serve as the official U.S. obligation of \$20,000,000. The U.S. government's obligation for performance of this agreement over the amount of \$20,000,000 is contingent upon the availability of appropriated funds.

Please provide your response through the U.S. Mission to the UN Agencies in Rome. The funds provided herein will be transferred to IDLO as soon as practicable following my receipt of your acceptance.

Sincerely,


Carol Z. Perez
Acting Assistant Secretary

Enclosures:

1. IDLO Program Proposal
2. IDLO Program Budget
3. U.S. Fiscal Data

Countersigned:

Name: _____

Date: _____

Fiscal Data

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\$20,000,000.00