

SIGAR

**Special Inspector General for
Afghanistan Reconstruction**

SIGAR 15-78 Inspection Report

Power Grid Project at the Counter Narcotics
Strip Mall in Kabul: Construction Met Contract
Requirements but Electrical System Was Not
Deemed Operable Until More Than 18 Months
After Project Completion



AUGUST
2015



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

August 3, 2015

The Honorable John F. Kerry
Secretary of State

The Honorable P. Michael McKinley
U.S. Ambassador to Afghanistan

This report discusses the results of SIGAR's inspection of a power grid project intended to support the eight law enforcement compounds located at the Counter Narcotics Strip Mall in Kabul, Afghanistan. The Department of State's Bureau of International Narcotics and Law Enforcement Affairs (INL) funded and administered this project. Although the project was completed within budget and met contract performance standards, we found that the power grid was not tested or deemed operable until January 2015. This was over 18 months after the project's completion in June 2013. INL officials cited protracted discussions with Afghan power authorities concerning repairs to connecting power lines and a one-time hook-up fee as the basis for this delay. In addition to this problem, INL had a payment dispute with the contractor—BSCEC JV MSCC. A negotiated settlement was eventually reached after funds appropriated for the contract expired. When current year funds become available, INL intends to pay the contractor's final invoice of approximately \$53,000 and the associated minor interest penalty under the Prompt Payment Act.

In commenting on a draft of this report, INL stated that completing the power grid project after the warranty period had expired was not the ideal situation, but the reasons for the delay were largely beyond its control. INL's comments are reproduced in appendix II.

SIGAR conducted this inspection under the authority of Public Law No. 110-181, as amended, and the Inspector General Act of 1978, as amended; and in accordance with the *Quality Standards for Inspection and Evaluation*, published by the Council of the Inspectors General on Integrity and Efficiency.

John F. Sopko
Special Inspector General
for Afghanistan Reconstruction

On September 26, 2011, the Department of State's (State) Regional Procurement Support Office in Frankfurt, Germany, awarded a \$1.3 million firm-fixed-price design/build contract to BSCEC JV MSCC (BSCEC), an Afghan firm, to connect eight law enforcement compounds in Kabul, Afghanistan, to the local commercial power grid.¹ The eight compounds—one for the U.S. Drug Enforcement Administration and seven for Afghan government entities—are co-located at a site referred to as the Counter Narcotics Strip Mall (Strip Mall).² The site, which is on the northern outskirts of Kabul, provides a secure location for agencies working on interdiction of drug trafficking and the detention of suspects.

Each compound at the Strip Mall is powered by diesel-fuel generators. Under a contract awarded by the U.S. Army Corps of Engineers (USACE) in 2007, a commercial power line was installed between the Kabul North Electric Substation and the Strip Mall in anticipation of a future project to install an electrical system inside the Strip Mall. The 2011 BSCEC project—funded by State's Bureau of International Narcotics and Law Enforcement Affairs (INL)—called for construction of three components that, taken together, would provide commercial power to the eight law enforcement compounds. Those components included (1) construction and installation of transformer substations and 15/20 kilovolt-rated control panels in each compound, (2) installation of a 15/20 kilovolt overhead power line within the Strip Mall, and (3) connection of the 15/20 kilovolt power line built by USACE to the Strip Mall line and the Kabul North Electric Substation.³ Photo 1 shows overhead power lines installed inside the Strip Mall.

Photo 1 - Overhead Power Lines Inside the Strip Mall



Source: SIGAR, January 26, 2015

The INL contract gave BSCEC 150 days to develop an approved design and an additional 315 days to complete construction by May 8, 2013. On May 24, 2013, INL modified the contract to extend the performance period by 37 days to June 14, 2013, for “excusable delays.”⁴ The contracting officer's representative determined that the contract was substantially complete on June 13, 2013.⁵ The contract was completed within the firm-fixed-price amount with only a \$5,381 deduction under the final modification to account for actual Defense Base Act, 42 U.S.C. §§ 1651–1654, insurance costs paid by the contractor.

The objectives of this inspection were to determine whether (1) work was completed in accordance with contract requirements and applicable construction standards, and (2) the compounds have access to commercial power, as intended.

¹ Under this design/build contract (number SGE50011C0088), BSCEC was responsible for preparing the design drawings for the project and constructing the project in accordance with those drawings.

² The Afghan agencies are the Counter Narcotics Judicial Center, Counter Narcotics Police of Afghanistan, Intelligence and Investigation Unit, Judicial Security Unit, Major Crimes Task Force, National Interdiction Unit, and Special Investigation Unit.

³ Under a contract awarded on September 18, 2007, USACE oversaw the installation of approximately 5.3 kilometers of a 15/20 kilovolts overhead line that bridges the gap between the Kabul North Electric Substation and the Strip Mall. USACE's contract did not require that the line be connected to the substation.

⁴ The contract modification did not detail the nature of these excusable delays.

⁵ “The term ‘substantial completion’ is used synonymously with the term “substantial performance” to mean performance that is in good faith and in compliance with the contract but that falls short of complete performance due to minor and relatively unimportant deviations.” John Cibinic, Jr., et al., *Administration of Government Contracts* 899 (4th ed. 2006).

We conducted our work in Kabul, Afghanistan, from July 2014 through August 2015, in accordance with the *Quality Standards for Inspection and Evaluation*, published by the Council of the Inspectors General on Integrity and Efficiency. The engineering assessment was conducted by a professional engineer in accordance with the National Society of Professional Engineers' *Code of Ethics for Engineers*. Appendix I provides additional details on our scope and methodology.

POWER GRID PROJECT MET CONTRACT REQUIREMENTS

During our site visit on January 26, 2015, we found that BSCEC had, as required by the contract, (1) constructed and installed transformer substations and 15/20 kilovolt-rated control panels in each of the eight compounds, (2) installed a 15/20 kilovolt overhead power line within the Strip Mall, and (3) connected the 15/20 kilovolt power line built by USACE to the Strip Mall line and the Kabul North Electric Substation. Photo 2 shows a transformer substation at the Strip Mall.

We inspected the substation and found that the transformer and control panel showed no rust. The substation was linked to power lines and was protected by a fence and locked gate, as required by the contract. A visual inspection of the seven other compounds showed the same required setup.⁶ Our engineer's review of project

Photo 2 - Compound Transformer Substation



Source: SIGAR, January 26, 2015

documents showed that the power lines, transformer substations, and control panels all conformed to contract requirements. Our analysis showed, and INL officials confirmed, that the location and security of the facility, within a heavily guarded compound in Kabul, allowed INL officials to routinely visit the site, resulting in robust oversight throughout the contract period of performance. Although we found that the project's construction fulfilled requirements, we could not ensure the electrical system was operational during our site visits because no commercial power was available to the system at those times. However, INL officials stated that the system was tested on January 14, 2015, and all electrical components functioned properly.⁷

⁶ We were not able to gain access to one compound controlled by British authorities.

⁷ INL officials stated that the successful testing of the system did not result in any written certificate or other type of document.

POWER GRID WAS DEEMED OPERABLE 18 MONTHS AFTER PROJECT COMPLETION, YET THE STRIP MALL REMAINS WITHOUT COMMERCIAL POWER

INL designed the power grid project to supply the eight counter narcotics compounds at the Strip Mall with commercial power from the local electrical grid. Although the contracting officer's representative determined that the contract was substantially complete and INL accepted the power grid project from the contractor in June 2013, the electrical system powering the compounds was not tested and deemed operable until January 2015. INL officials attributed this delay to protracted discussions and negotiations with the Afghan power authority (Da Afghanistan Breshna Sherkat/Kabul Electricity Department or DABS/KED)⁸ regarding (1) a hook-up fee to bring commercial power to the new electrical system, and (2) actions needed to repair the existing USACE-built power lines, which run from the Kabul North Electrical Substation to the new system built within the Strip Mall. Under a written agreement between INL and DABS/KED—signed on January 8, 2014—INL agreed to pay a one-time hook-up fee of approximately \$48,000, and DABS/KED agreed to make the needed repairs to the power lines. INL officials noted that both set of actions were completed by the end of October 2014. One consequence of the protracted discussions between INL and DABS/KED was that the contractor's 1-year warranty period expired on June 12, 2014, without any testing during that time to determine if the electrical system was in operable condition.

According to INL officials, the electrical system was subsequently tested and found to be operable in January 2015; however, the eight compounds served by the project are still not connected to the local power grid. INL officials explained that Afghan government authorities still need to put in place billing arrangements with DABS/KED to pay for any supplied commercial power. It is expected these arrangements will be made prior to the turnover of these compounds to the Afghan government, which is expected to occur by December 2015.

Payment Dispute between INL and BSCEC Led to Delayed Payment of Final Invoice

A payment dispute between INL and BSCEC led indirectly to INL incurring a penalty under the Prompt Payment Act, 31 U.S.C. §§ 3901–3905. The dispute centered on a conflicting interpretation of the Federal Acquisition Regulation regarding what type of payment adjustments can be made to a firm-fixed-price design/build contract. INL officials stated that deviations from the bill of quantities submitted by BSCEC as part of its original bid proposal meant that the contractor owed the government a credit of \$328,000 at the contract's completion. BSCEC asserted that it was owed nearly \$507,000 for additional work INL requested that fell outside the approved final design. INL and the contractor negotiated a settlement agreement in April 2014 that resulted in no money owed by either party. One consequence of the dispute was that the contractor did not submit its final invoice to INL until September 28, 2014, just two days before the end of the fiscal year. INL stated it was unable to process this final invoice in this limited time period and funding authority for the contract expired. INL officials stated that they do not expect current year funds to become available until perhaps August 2015, at which at which time the BSCEC's final invoice for approximately \$53,000 will be paid and the applicable Prompt Payment Act payment will be made.^{9,10}

⁸ INL documents suggest that these discussions began as early as April 2013.

⁹ The Prompt Payment Act requires federal agencies to automatically pay interest on contractor invoices that are not paid within 30 days of receipt and acceptance by the contracting entity.

¹⁰ As of July 31, 2015, the penalty due the contractor was approximately \$1,200.

CONCLUSION

Although the power grid project was completed within budget and met contract performance standards, we found that the power grid was not tested and deemed operable until January 2015, or over 18 months after its completion in June 2013. During that delay, BSCEC's 1-year warranty period expired without any testing of the electrical system to determine if it was in operable condition. Fortunately, when the power grid was tested, it worked. If it had not worked, the U.S. government's ability to recover the cost of fixing the system from the contract would have been severely limited due to the expiration of the warranty. In addition, we found that a protracted payment dispute with INL led BSCEC to delay its final invoice until just prior to the expiration of the funds appropriated for the project. INL officials are seeking current-year funds to pay the contractor's final invoice and acknowledge that a minor Prompt Payment Act penalty will be due to the contractor.

AGENCY COMMENTS

We provided a draft of this report to State INL. INL provided written comments, which are reproduced in appendix II. In its comments, INL stated that completing the power grid project after the warranty period had expired was not the ideal situation, but the reasons for the delay were largely beyond its control.

APPENDIX I - SCOPE AND METHODOLOGY

This report provides the results of SIGAR's inspection of the power grid project constructed at the Counter Narcotics Strip Mall in Kabul, Afghanistan. To determine whether the work was completed in accordance with contract requirements and applicable construction standards, and the compounds have access to commercial power, we:

- reviewed contract documents, design submittals, site visit reports, and other relevant project documentation;
- conducted an engineering assessment of the project drawings and construction methods used;
- interviewed U.S. government officials concerning the project's construction; and
- conducted a physical inspection at the site on January 26, 2015.

We did not rely on computer-processed data in conducting this inspection. However, we considered the impact of compliance with laws and fraud risk.

We conducted our work in Kabul, Afghanistan, from July 2014 through August 2015. This work was conducted in accordance with the *Quality Standards for Inspection and Evaluation*, published by the Council of the Inspectors General on Integrity and Efficiency. The engineering assessment was conducted by a professional engineer in accordance with the National Society of Professional Engineers' *Code of Ethics for Engineers*. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our inspection objectives. We conducted this inspection under the authority of Public Law No. 110-181, as amended; and the Inspector General Act of 1978, as amended.

APPENDIX II - COMMENTS FROM THE DEPARTMENT OF STATE



United States Department of State

Washington, D.C. 20520

JUL 20 2015

Ms. Gabriele A. Tonsil
Assistant Inspector General for Audits and Inspections
Special Inspector General for Afghanistan Reconstruction
1550 Crystal Drive, Suite 900
Arlington, VA 22202

Dear Ms. Tonsil:

This letter conveys comments from the U.S. Department of State's Bureau of International Narcotics and Law Enforcement (INL) in response to the Special Inspector General for Afghanistan Reconstruction's (SIGAR) draft inspection report titled *Power Grid Project at the Counter Narcotics Strip Mall in Kabul: Construction Met Contract Requirements but Electrical System Was Not Deemed Operable Until More Than 18 Months After Project Completion* (dated July 2015). The Department respects SIGAR's role in safeguarding U.S. taxpayer investment, and we share your goals of implementing programs free from waste, fraud, and abuse.

As the draft report highlights, SIGAR found that the power grid project was completed within budget and met contract performance standards. INL acknowledges and appreciates SIGAR's positive comments concerning this issue. We also appreciate comments regarding our completion of the power grid project in good faith even though the warranty period had expired. INL agrees that this situation was not ideal, and notes that the reasons for delay were largely beyond our control.

We appreciate the opportunity to comment on this draft report.

Sincerely,

A handwritten signature in black ink, appearing to read "Max Aguilar".

Max Aguilar
Acting Executive Director
Bureau of International Narcotics and
Law Enforcement Affairs

APPENDIX III - ACKNOWLEDGMENTS

Scott Harmon, Senior Inspections Manager

Michael ten Kate, Inspector-in-Charge

Melissa McAllister, Professional Engineer

Ahmad Javed Khairandish, Engineer

Hasibullah Zeer, Program Analyst

This inspection was conducted
under project code SIGAR-I-021b.

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The mission of the Special Inspector General for Afghanistan Reconstruction (SIGAR) is to enhance oversight of programs for the reconstruction of Afghanistan by conducting independent and objective audits, inspections, and investigations on the use of taxpayer dollars and related funds. SIGAR works to provide accurate and balanced information, evaluations, analysis, and recommendations to help the U.S. Congress, U.S. agencies, and other decision-makers to make informed oversight, policy, and funding decisions to:

- improve effectiveness of the overall reconstruction strategy and its component programs;
- improve management and accountability over funds administered by U.S. and Afghan agencies and their contractors;
- improve contracting and contract management processes;
- prevent fraud, waste, and abuse; and
- advance U.S. interests in reconstructing Afghanistan.

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