



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

June 17, 2013

The Honorable John Kerry
Secretary of State

The Honorable Charles T. Hagel
Secretary of Defense

General Joseph F. Dunford, Jr.
Commander, U.S. Forces–Afghanistan, and
Commander, International Security Assistance Force

The Honorable James B. Cunningham
U.S. Ambassador to Afghanistan

Dr. Rajiv Shah
Administrator, U.S. Agency for International Development

Ms. Sarah W. Wines
USAID Acting Mission Director for Afghanistan

This alert letter is to inform you of complaints received through our hotline program or identified during the course of SIGAR criminal or civil investigations regarding subcontractor nonpayment issues. Nearly a quarter of SIGAR's hotline complaints from 2009 through October 2012 have been related to Afghan prime contractor and subcontractor nonpayment issues.¹ SIGAR opened 52 investigations based on these complaints, reflecting \$69 million in claimed monies owed. In addition, as of February 2013, the Department of State, U.S. Agency for International Development (USAID), and Inspector General for the Department of Defense (DOD) reported receiving 44 nonpayment related complaints during the past six years.

The information that SIGAR has received suggests that there is a serious problem in Afghanistan related to disputes regarding the payment of Afghan subcontractors by prime contractors. SIGAR has received testimonial and documentary evidence from credible sources alleging death threats, work stoppages, and strikes in connection with allegations of nonpayment of subcontractors, as well as allegations of questionable intervention by the Afghan Attorney General's Office. Recent reports by the news media have also highlighted

¹ SIGAR's Hotline provides a confidential means for reporting fraud, waste, mismanagement, abuse of authority, and reprisals for programs associated with U.S. funded Afghanistan reconstruction efforts.

the problem of subcontractor nonpayment.² While a subcontractor may always face the risk of nonpayment by its prime contractor, Afghan subcontractors may be particularly at risk due to a lack of adequate legal protections and limitations placed on the U.S. government's ability to intervene on their behalf. We have identified a number of long standing remedies that the U.S. government could use more aggressively and suggestions for new potential remedies to help address the problem of subcontractor nonpayment and related negative effects. (See enclosure 1 for a detailed discussion of the risks, barriers to addressing the problem, and possible remedies.)

We urge you to determine the extent of this problem in the contracts your agency has awarded for Afghanistan reconstruction projects and to use any and all possible remedies to (1) more aggressively oversee these contractors and help ensure that Afghanistan subcontractors receive prompt payment for their work and (2) ensure that parties with contract payment disputes resolve these issues according to contract terms. SIGAR is available to assist with the development of criminal, civil, and administrative responses to these problems.

This product was completed under SIGAR's Office of Special Projects, the SIGAR response team created to examine emerging issues in prompt, actionable reports to federal agencies and the Congress. The work was conducted under the authority of Public Law No. 110-181, as amended; the Inspector General Act of 1978; and the Inspector General Reform Act of 2008. Major contributors to this report were Kenneth Fredrick and William Gaertner. Technical assistance was provided by Jim Amoroso, Kim Corthell, and Angelina Johnston. Please contact my Director for Special Projects, Ms. Monica Brym, at Monica.j.brym.civ@mail.mil or 703-545-6003 if you have any questions or concerns regarding this work.



John F. Sopko
Special Inspector General
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² See Hodge, Nathan, "Afghans Jail U.S. Man in Business Dispute," *The Wall Street Journal*, April 5, 2013; Magnier, Mark, "U.S. Contractor illegally detained in Afghanistan, officials say," *Los Angeles Times*, April 5, 2013; and Aitoro, Jill, "Dyncorp International sued by Turkish subcontractor," *Washington Business Journal*, June 13, 2013.

cc:

General Lloyd J. Austin III
Commander, U.S. Central Command

Brigadier General James Simpson
Commander, U.S. Central Command Joint Theater Support Contracting Command

Lieutenant General Kenneth E. Tovo
Commanding General, NATO Training Mission-Afghanistan/
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Commander, International Security Assistance Force Joint Command

Lieutenant General Thomas B. Bostick
Commanding General and Chief of Engineers
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General Dennis L. Via
Commanding General
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Major General Camille M. Nichols
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Mr. Joe Sciabica
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Mr. Charlie Williams, Jr.
Director, Defense Contract Management Agency

ENCLOSURE: PROBLEMS OF NONPAYMENT OF AFGHAN SUBCONTRACTORS BY PRIME CONTRACTORS

Non-payment of subcontractors is a serious problem. This enclosure presents information reported to and gathered by SIGAR on the risks, barriers, and possible remedies regarding the problem of subcontractor nonpayment by prime contractors. In October 2012, SIGAR conducted an internal review of its investigations and hotline complaints in order to identify trends and areas of investigative interest. The SIGAR hotline received 753 complaints from 2009 to October 2012. A quarter of these complaints—183 complaints—were related to Afghan prime contractor and subcontractor nonpayment issues. SIGAR opened 52 investigations involving allegations of \$69 million in claimed monies owed.³ In February 2013, the Department of State, U.S. Agency for International Development (USAID), and Inspector General for the Department of Defense (DOD) reported that they have received 44 nonpayment related hotline complaints during the past six years. The quantity of complaints, both to the SIGAR hotline and other agencies, investigations opened, and validated cases of nonpayment to subcontractors raise legitimate concerns about the extent of this problem in Afghanistan.

Subcontractor Nonpayment Poses Risks for Subcontractors, Prime Contractors, and the U.S. Reconstruction Effort

The failure of prime contractors to pay their Afghan subcontractors is a serious problem, one that poses risks to subcontractors, prime contractors, the U.S. government, and the people of Afghanistan. Based on information from the complaints received and gathered during our investigations, we have identified a range of potential risks associated with subcontractor nonpayment that include predatory contracting, death and kidnapping threats, self-injury, work stoppages, denial of access to work sites, the inability to bid on new jobs, difficulty in purchasing necessities, removal of property, misuse of the Afghan criminal justice system, incomplete projects, and fraud.⁴ The problem of subcontractor nonpayment has allegedly also led to corruption within the Afghan Attorney General's Office and the Afghan National Police, including instances of bribery, kickbacks, and extortion.

Risks to Subcontractors

Subcontractors who are not paid for the goods or services they deliver are subject to the risk of business disruption and failure. These subcontractors have claimed that, as a result of nonpayment, they may find themselves unable to pay their own employees and subcontractors, unable to bid on new jobs because of inadequate cash flow, or unable to support their families with necessities (clothing, food and firewood) due to

³ Since 2009, SIGAR has opened a total of 517 investigations.

⁴ SIGAR investigations work has found cases where contractors have engaged in "predatory contracting" practices harmful to the reconstruction effort. In particular, these practices take the form of contractors obtaining prime or sub-contracts for construction projects with no intention of completing the projects or paying subcontractors or suppliers, while seeking payment for as much of the contract price as possible. Predatory contracting of this type is especially prevalent where reconstruction projects are to be performed in locations where contracting oversight is minimal and the contractor can exert maximum influence over its subcontractors or suppliers. Often, the end result is not only a loss to the government of time and money, but also losses to the Afghan suppliers and subcontractors who are not paid for work that they performed. These losses have the collateral effect of eroding support for U.S. and coalition forces due to perceptions among the population that coalition forces failed to pay for projects that Afghans have worked on.

the lack of funds.⁵ For example, one Afghan construction company that contracted to provide aggregate and crushed sand for Camp Bastion reported to SIGAR that it was unable to bid for new jobs because the bulk of its budget was tied up in a payment dispute with its prime contractor. Another Afghan subcontractor working on a U.S. Army Corp of Engineers construction contract in Helmand province made a plea to SIGAR for payment, describing the poor families of his suppliers and workers who needed to be paid in order to buy necessities for their families. This same subcontractor threatened to set himself on fire in front of the U.S. embassy in protest of nonpayment. SIGAR reported both the allegation and threat to the U.S. Army Corp of Engineers and to the U.S. Embassy Kabul for action.

Subcontractors may also face serious threats from their employees, second tier subcontractors, or creditors when they are unable to pay them. In one case, an Afghan subcontractor reported that it purchased vehicles on credit in order to establish a car leasing company in Kabul. According to the subcontractor, he leased the cars to a prime contractor who, as of September 2011, had not paid the subcontractor or returned the vehicles. Consequently, the subcontractor reported he was not able to pay his creditors who he claims threatened to kill him.

Risks to Prime Contractors and Their Employees

The risks, as reported to SIGAR investigations, to prime contractors accused of not paying their subcontractors include threats to their employees, property damage, and work site disruptions. Employees of prime contractors have reportedly been subject to death and kidnapping threats by subcontractors who alleged they have not been paid. In one example reported to SIGAR, after the prime contractor offered mediation and arbitration to solve a contract dispute, the subcontractor threatened to use a suicide bomb to blow up himself and the prime contractor's offices. In another case, a prime contractor told SIGAR that a subcontractor threatened to blow up a compound of U.S. contractors and government agencies and another subcontractor threatened to kill the attorney for the prime contractor over nonpayment issues.

Subcontractors also have threatened to destroy or sabotage equipment and other property belonging to prime contractors when payments were not made for their services. For example, in September 2009, a multi-million dollar contract funded by the U.S. Army Corp of Engineers to build Afghanistan National Police stations in Badakhshan, Afghanistan, was reduced in scope after unpaid subcontractors walked away with equipment belonging to the prime contractor, according to a representative of the Army Corps of Engineers. The prime contractor was removed from the project in May 2010, six months past the completion date with only an estimated 40 percent of the work completed.

SIGAR investigators have also been told that subcontractors have threatened to deny employees of the prime contractor and other subcontractors access to work sites. A prime contractor working on a U.S. Army Corp of Engineers project at Forward Operating Base (FOB) Rocco, in Surobi, Afghanistan, for example, received a "stop work" order served by the Afghan National Police on behalf of a subcontractor, which prevented the prime contractor from accessing the work site.

In addition to investigating allegations of procurement fraud, SIGAR is looking into allegations that subcontractors have attempted to use the Afghan Attorney General's Office to extort payment from prime contractors. Some Afghan subcontractors have allegedly turned to the Afghan Attorney General's office to seek arrest warrants against employees of prime contractors who have allegedly not paid them. In one example, a

⁵ A subcontractor for the purposes of a contract with a prime contractor can itself become a prime contractor with regard to other companies or individuals with whom it subcontracts.

prime contractor has reported to SIGAR that its subcontractor persuaded the Attorney General's office to issue an arrest warrant for the prime contractor's project manager, allegedly for nonpayment to the subcontractor. Reportedly, the subcontractor attempted to serve the warrant himself by chasing the project manager in his vehicle and trying to force him off the road in order to have him arrested; the project manager escaped to a German forward operating base. According to the prime contractor, this subcontractor has also used the Afghan National Police to serve fake subpoenas on and harass employees of the prime contractor. According to this prime contractor, the Afghan Attorney General's Office has stated that the contractual disputes will be handled as a criminal matter if the matter is not resolved favorably for the Afghan firm; has confiscated the passports of contractor personnel in lieu of incarceration to keep them in the country pending settlement of a contractual dispute involving their company; and has placed the names of senior contractor management employees on the "No Fly List" at Kabul International Airport.

Risks to the U.S. Reconstruction Effort in Afghanistan

The failure of prime contractors to pay their subcontractors has resulted in projects promoting the stability of Afghanistan being delayed or not completed, and contracts being terminated and government agencies having to pay additional funds to complete the projects. One U.S. Army Corp of Engineers project came to a halt after the subcontractors abandoned the work site alleging that the prime contractor owed them money. Unpaid subcontractors who remove equipment or other property belonging to prime contractors, or who deny workers access to work sites place those sites and projects at risk. Worksite security also may be put at risk. For example, during the course of an investigation SIGAR became aware of nonpayment complaints submitted by two Afghan companies that provide worksite security services. In one of the situations, an Afghan security company's employees reportedly threatened the company's management at gunpoint at the worksite and the company's management later reported to SIGAR that assault rifles, ammunition, and uniforms were missing from the worksite. According to the employee, the incident was directly attributable to the prime contractor's failure to pay.

SIGAR has received testimonial evidence from prime contractors and U.S. government contracting attorneys that the risks posed to contractors have resulted in U.S. prime contractors becoming less willing to work with Afghan subcontractors. This situation frustrates the intended goals of the Afghan First Initiative, which was designed to support U.S. counterinsurgency objectives by helping create job opportunities for Afghans and to improve the Afghan economy.⁶ When subcontractors are not paid, their employees, second tier subcontractors, and suppliers may not be paid, which causes further economic disruption and financial hardship. Subcontractor nonpayment could also lead Afghan businesses to lose the financial resources and confidence in the U.S. government's commitment to economic development in Afghanistan that are necessary to sustain current and future reconstruction projects. SIGAR investigators have found that the prime contractor's failure to pay is often viewed by the Afghan subcontractor as a failure on the part of the U.S. government.

Finally, prime contractors who have been paid by the U.S. government but who do not pay their subcontractors in full or in a timely manner for work performed or goods provided may be unjustly enriched at the expense of their subcontractor(s), and they may be making false claims to the U.S. government in order to be paid. SIGAR

⁶ The Afghan First Initiative, also referred to as the Afghan First Program and Afghan First Policy, refers to the collective efforts since March 2006 by U.S. military and civilian agencies operating in Afghanistan to ensure that a greater number of contracts are awarded to Afghan companies. For more information on the Afghan First Initiative see National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 886, 122 Stat. 3, 266 (2008), and SIGAR Audit-12-06, *Afghan First Initiative Has Placed Work with Afghan Companies, but is Affected by Inconsistent Contract Solicitations and Vetting, and Employment Data Is Limited*, January 31, 2012.

has opened a number of investigations involving such allegations including, for example, a case involving a prime contractor who allegedly owes 33 subcontractors over \$13 million. The investigation is currently looking into violations of the False Claims Act.⁷

Possible Actions for Mitigating the Problem of Subcontractor Nonpayment

Although the contracting environment in Afghanistan is often a challenging one, there are a number of long standing remedies that are available to U.S. government agencies that provide possible avenues for addressing the problem of subcontractor nonpayment. These remedies include the pursuit of civil penalties under the False Claims Act and initiating suspension and debarment actions. In addition, the government could use current FAR remedies to encourage prime contractors to make timely payments to subcontractors. Finally, the National Defense Authorization Act of 2012 has provided contracting officers in the Department of Defense with greater leverage in seeking compliance from prime contractors.⁸ In addition, a U.S. official shared some additional steps or actions—gathered from US contracting officials—that could be taken to mitigate some issues that impact subcontractor nonpayment or payment disputes. These suggested steps include a requirement to translate into Dari all contracts with Afghan companies, instituting the use of fingerprints of the corporate officers of Afghan companies, as well as their written signatures, in the acceptance of a subcontract; and encouraging dispute resolution through private arbitration.

Pursuit of Civil Penalties under the False Claims Act

The U.S. government and private parties can seek recovery under the False Claims Act (FCA) from prime contractors who have refused to pay their subcontractors for work performed.⁹ Broadly, the FCA imposes liability on any person who (1) knowingly participates in presenting a false or fraudulent claim for payment or approval; (2) knowingly makes or causes to be made a false record or statement material to a false or fraudulent claim; or (3) conspires to commit a violation of any part of the FCA.¹⁰ Knowingly means the person (1) has actual knowledge of the claim's falsity, (2) acts in deliberate ignorance of the information's falsity, or (3) acts in reckless disregard of the falsity of the information. The person violating the statute is liable to the U.S. government for a civil penalty and three times the amount of damages sustained by the government as a result of the false claim.

⁷ The False Claims Act imposes liability upon any person who knowingly presents or causes to be presented a false or fraudulent claim for payment to an officer, employee, or agent of the U.S. government, or to a contractor, grantee or other recipient if the money is to be used on the government's behalf. 31 U.S.C. §§ 3729-3733 (2013).

⁸ National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, §§ 841-842, 125 Stat. 1298, 1510 (2011).

⁹ 31 U.S.C. § 3729 (2013).

¹⁰ Congress amended the FCA in 2009 by passing the Fraud Enforcement and Recovery Act (FERA) of 2009, Pub. L. No. 111-21, § 4, 123 Stat. 1617, 1621-25 (2009). In response to cases that strictly interpreted the statute and assessed liability only to first-tier prime contractors who presented claims directly to a government official, the FERA clarified the scope of the FCA to include subcontractors working on government projects. See *Allison Engine Co. v. United States ex rel. Sanders*, 553 U.S. 662 (2008); *United States ex. Rel. Totten v. Bombardier Copr.*, 380 F.3d 488 (D.C. Cir. 2004). See also Jeffrey L. Handwerker et al., *Congress Declares Checkmate: How the Fraud Enforcement and Recovery Act of 2009 Strengthens the Civil False Claims Act and Counters the Courts*, 5 J. Bus. & Tech. L. 295 (2010). The FERA eliminates the requirement that the claim be presented directly to a government employee and extends liability to anywhere in the series of prime and subcontractors so long as the money is to be used on the government's behalf or to advance a government program or interest. 31 U.S.C. § 3729(a)(1)(A) (2009); 31 U.S.C. § 3729(b)(2)(A)(ii) (2009).

The U.S. Attorney General has a statutory obligation to diligently pursue FCA actions; however, private individuals may also bring civil suits concurrently for themselves and the United States government.¹¹ Private individuals bringing suit must serve a copy of their complaint in a court of competent jurisdiction and on the government along with all material evidence.¹² The government can elect to intervene and proceed with the action on its own behalf.¹³ The private individual bringing a successful action has a right to receive portions of the proceeds of the suit depending on the involvement of the government and the source of the information supporting the successful claim.¹⁴ The provisions allowing private individuals to pursue FCA claims and recover portions of the proceeds encourage individuals in positions of unique access to information to come forward to the government's benefit. Subcontractors who have completed their subcontracts but have not been paid could pursue FCA actions where the subcontractors can show that the higher-tier contractors knew they were submitting invoices for work completed by a subcontractor whom they had not paid. As with contract disputes, however, the costs of pursuing a FCA claim in a U.S. district court may be prohibitive for smaller Afghan subcontractors.

Initiating Suspension & Debarment Actions

Contractors who engage in activities that demonstrate a lack of business integrity or business honesty or that otherwise call into question their responsibility as government contractors are subject to suspension and debarment.¹⁵ Contractors deemed not responsible can be excluded from conducting business with the government for a set period of time. The government may suspend or debar a contractor when it is in the public interest and for a variety of other causes including failure to pay subcontractors.

Since June 2011, SIGAR referred 50 companies and individuals for debarment, resulting in 4 suspensions, 20 proposed debarments, and 16 finalized debarments.¹⁶ In addition, SIGAR has also used show cause letters and requests for information to inform contractors that their responsibility as contractors may be called in question due to failures to make payments to subcontractors, possibly leading to suspension or debarment. For example, SIGAR issued a show cause letter to a U.S. prime contractor in May 2012 that identified almost \$250,000 in payments made to the contractor by the U.S. government. These payments included payment for work performed by a subcontractor who the prime contractor had not yet paid. SIGAR placed the contractor on notice that this failure to pay the subcontractor could provide a basis for debarment. The contractor responded in June 2012, acknowledging that the company owed funds to the subcontractor and payment was subsequently made.

SIGAR has found that, in multiple cases, contractors have made efforts to make payments to subcontractors in order to avoid being suspended or debarred. Based on this past experience, we believe that aggressive use of suspension and debarment is a useful tool for not only excluding contractors engaged in predatory contracting practices such as nonpayment of subcontractors, but in influencing contractors to correct their behavior and ensure that they live up to their obligations to pay for goods and services they receive.

¹¹ 31 U.S.C. § 3730(a) (2013); 31 U.S.C. § 3730(b) (2013).

¹² 31 U.S.C. § 3730(b)(2) (2013).

¹³ 31 U.S.C. § 3730(b)(2) (2013).

¹⁴ 31 U.S.C. § 3730(d)(1)-(2) (2013); See also 31 U.S.C. § 3730(d)(3) (2013) (allowing the court to lower the award to the plaintiff if it finds the plaintiff planned or initiated the violation of § 3729).

¹⁵ See FAR 9.104-1 (2013) (listing the seven criteria for determining responsibility).

¹⁶ See *SIGAR Quarterly Report to the United States Congress*, January 30, 2013, p 43.

Using Remedies Identified in the Federal Acquisition Regulation

The Federal Acquisition Regulation provides contracting officers with multiple tools to help ensure that prime contractors adhere as closely as possible to payment schedules as defined in the individual contracts.¹⁷ These tools include a provision giving contracting officers the authority to compel contractors to set up monitored bank accounts, which allow the contracting officer to closely supervise the contractor's withdrawals.¹⁸ This clause should be incorporated in new contracts to help ensure payment to subcontractors.¹⁹ The FAR also authorizes contracting officers to reduce or suspend progress payments to a contractor, initiate administrative and other remedial action, or otherwise encourage the contractor to make timely payments in an effort to ensure that subcontractors are paid in accordance with the terms of a subcontract, purchase order, or other agreement with the prime contractor.²⁰

In some cases of subcontractor nonpayment, contracting officers have issued letters to prime contractors that have prompted partial payment. These letters have included references to the FAR provisions that outline a prime contractor's payment obligations to its subcontractors and suppliers as well as the contracting officer's ability to withhold payment to the prime in order to compensate the unpaid subcontractors.²¹ For example, in December 2011, the Regional Contracting Command based at Camp Leatherneck issued a letter of concern to a prime contractor who was embroiled in a nonpayment dispute with an Afghan subcontractor. The letter placed the prime contractor on notice that he was responsible for payment to the subcontractor and the two companies settled the dispute in February 2012.

Using Strengthened Oversight Capabilities in the National Defense Authorization Act for Fiscal Year 2012

The National Defense Authorization Act for Fiscal Year 2012 expanded the oversight capabilities that the Department of Defense has regarding how its contractors do business with their subcontractors.²² Section 842 requires a clause in every DOD contract, grant, and cooperative agreement granting the Secretary of Defense the ability to examine any records of a contractor or recipient of a grant or cooperative agreement, and any subcontractor thereof, for certain purposes. These purposes include ensuring that funds available under the contract, grant, or cooperative agreement have not fallen prey to extortion or corruption and that the funds are not provided directly or indirectly to persons or entities actively supporting an insurgency or otherwise actively opposing the United States or coalition forces.²³

¹⁷ The Federal Acquisition Regulation governs the process by which the U.S. government procures goods and services.

¹⁸ FAR 32.409-3(a) (2013).

¹⁹ FAR 32.411 (2013) (providing sample wording for the required contract clause).

²⁰ FAR 32.112-1 (2013).

²¹ See FAR 52.232-27 (2013); FAR 52.232-5(d) (2013).

²² National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, §§ 841-842, 125 Stat. 1298, 1510 (2011).

²³ The National Defense Authorization Act for Fiscal Year 2012 includes a prohibition on contracting with the enemy in the U.S. Central Command theater of operations, and it authorizes the Secretary of Defense to restrict the award of, terminate, or void any contract, grant, or cooperative agreement to ensure none of the funds are provided to a person or entity identified as actively supporting an insurgency or otherwise actively opposing the United States or coalition forces. National Defense Authorization Act for Fiscal Year 2012, § 841. Section 842 authorizes additional access to contractor and subcontractor records in the U.S. Central Command theater of operations. *Id.* at § 842.

According to section 842, the Secretary of Defense may examine records only after the contracting officer (or comparable official responsible for a grant or cooperative agreement) makes a written determination that there is reason to believe the funds have been subject to extortion or corruption or have been provided to persons or entities actively supporting an insurgency or otherwise actively opposing United States or coalition forces.²⁴ Such a determination must be based on a finding by the Commander of U.S. Central Command (CENTCOM). The act also contains a provision that requires the same clause be included in any subcontract or sub-grant with an estimated value in excess of \$100,000. If fully utilized, these provisions would allow the Department of Defense a new level of visibility into the financial records of prime contractors and create a tool to ensure valid proof of payment to their subcontractors. According to a Department of Defense report to congressional committees in March 2013, the Department did not utilize section 842 in a single instance to inspect the records of a contractor or subcontractor during fiscal year 2012.²⁵

In an April 2013 audit report, SIGAR suggested that the provisions of the National Defense Authorization Act could be strengthened to ensure that all contracts in Afghanistan and other countries in the CENTCOM theater of operations—specifically those of the Department of State and U.S. Agency for International Development—are subject to its provisions.²⁶ The report also suggested that Congress may wish to consider revising the law to eliminate the \$100,000 threshold value for contracts. On April 9, 2013, the Never Contract with the Enemy Act was introduced in the Senate, intended to broaden the scope of the existing prohibition on contracting with the enemy to cover contracts administered by all government agencies, and lower the minimum threshold of covered contracts to \$20,000. Identical legislation was introduced in the House of Representatives on April 23, 2013.

²⁴ The Commander of U.S. Central Command (CENTCOM) must establish a program to identify any recipients of U.S. funds who are actively supporting an insurgency or otherwise actively opposing United States or coalition forces. National Defense Authorization Act for Fiscal Year 2012, § 841(c). Upon making such identification, the Commander may notify the appropriate contracting officials and request that they exercise the authority provided in the act. *Id.*

²⁵ Department of Defense, *Report to Congress on Department of Defense FY 2012 Prohibition on Contracting with the Enemy and Additional Access to Contractor and Subcontractor Records in the United States Central Command Theater of Operations*, 2 (2013). The Department did utilize section 841 eleven times in fiscal year 2012 to take actions against subcontractors—in ten instances subcontracts were terminated and in the other instance funds were withheld as part of contract close out.

²⁶ See SIGAR Audit 13-06, *Contracting with the Enemy: DOD Has Limited Assurance that Contractors with Links to Enemy Groups Are Identified and their Contracts Terminated*, (2013).