SIGAR

Special Inspector General for Afghanistan Reconstruction

SIGAR Inspection – 13-1

KUNDUZ ANA GARRISON: ARMY CORPS OF ENGINEERS RELEASED DYNCORP OF ALL CONTRACTUAL OBLIGATIONS DESPITE POOR PERFORMANCE AND STRUCTURAL FAILURES

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WHAT SIGAR REVIEWED

The Combined Security Transition Command-Afghanistan, through the Afghanistan Security Forces Fund, provided $72.8 million to the U.S. Army Corps of Engineers (USACE), Afghanistan Engineer District-North (TAN) to construct an Afghan National Army garrison (Camp Pamir) in Kunduz province. USACE-TAN awarded two construction contracts to DynCorp International LLC (DynCorp).

As part of its inspection program, the Special Inspector General for Afghanistan Reconstruction (SIGAR) followed up on actions USACE-TAN took to respond to a 2010 SIGAR audit recommendation to address soil instability at Camp Pamir and determine the corrective actions required to complete construction.

SIGAR conducted its work in Kunduz province and Kabul, Afghanistan from January to September 2012, in accordance with *Quality Standards for Inspection and Evaluation* published by the Council of the Inspectors General on Integrity and Efficiency.

WHAT SIGAR RECOMMENDS

This report makes three recommendations to the Commanding General, USACE, to (1) justify the cost of further repairs and remediation and ensure that further construction is warranted, (2) submit the contract settlement proceedings with DynCorp for review, and (3) explain in writing why the settlement was determined to be fair and reasonable. In responding to a draft of this report, USACE-TAN concurred with the recommendations and noted the steps it is taking under current contracts to address the soil instability, site grading, and other concerns identified during SIGAR's inspection. It also agreed to review the rationale for the DynCorp settlement by November 9, 2012.

WHAT SIGAR FOUND

In April 2010, SIGAR reported that the facilities at Camp Pamir were at risk of structural failure because of poor site grading and serious soil stability issues. During its follow-up inspection of Camp Pamir in March 2012, SIGAR identified additional structural failures, improper grading, and new sink holes. USACE-TAN failed to adequately mitigate the collapsible soil conditions as recommended by SIGAR in April 2010, and structural failures and improper site grading continue to be serious concerns. Despite the unsatisfactory performance of the contractor, DynCorp, USACE-TAN released DynCorp from further contractual liability in December 2011, when it entered into a settlement, paying DynCorp $70.8 million on the construction contracts and releasing it from any further liabilities and warranty obligations. In agreeing to the settlement, USACE-TAN did not comply with the provisions of FAR 49.107(a), which require an independent audit and review of a settlement proposal exceeding $100,000. USACE-TAN's position is that the FAR provisions did not apply because the contracts ended through a negotiated modification rather than being terminated for convenience or default. However, based on SIGAR's review, this was clearly a final settlement between USACE-TAN and DynCorp that appears to be on unfavorable terms to the U.S. government.

Exterior Structural Failure, Building 603 (latrine), Kunduz Army Garrison, March 2012

October 25, 2012

General James N. Mattis
Commander, U.S. Central Command

General John R. Allen
Commander, U.S. Forces-Afghanistan,
and Commander, International Security Assistance Force

Lieutenant General Daniel P. Bolger
Commanding General, NATO Training Mission-Afghanistan/
Combined Security Transition Command-Afghanistan

Lieutenant General Thomas P. Bostick
Commanding General and Chief of Engineers
U.S. Army Corps of Engineers

This report discusses the results of an inspection by the Office of the Special Inspector General for Afghanistan Reconstruction (SIGAR) to follow-up on a prior SIGAR recommendation pertaining to the U.S. Army Corps of Engineers (USACE) ANA garrison construction project in Kunduz province, Afghanistan. We found that USACE did not address the soil instability issues as recommended in our prior report, and we observed additional structural failures, improper site grading, and new sink holes. Despite poor performance and continuing structural problems, USACE agreed to a "fair and reasonable" settlement that released the contractor, DynCorp, from all contractual obligations to repair or remediate these conditions. This report includes recommendations to the Commanding General, USACE, to justify the cost of further repairs and remediation and submit the settlement with DynCorp to an appropriate government audit agency for review, in accordance with FAR 49.107(a). Because of the questionable terms of the settlement and the lack of an adequate explanation, we are also recommending that the Commanding General, USACE, provide an explanation of why USACE agreed to the settlement terms.

SIGAR conducted this inspection under the authority of Public Law 110-181, as amended; the Inspector General Act of 1978; and the Inspector General Reform Act of 2008.

John F. Sopko

Special Inspector General
for Afghanistan Reconstruction

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ABBREVIATIONS & ACRONYMS

ANA	Afghan National Army
CSTC-A	Combined Security Transition Command-Afghanistan
ETTC	embedded training team compound
PRT	provincial reconstruction team
QAR	quality assurance report
SIGAR	Special Inspector General for Afghanistan Reconstruction
USACE-TAN	U.S. Army Corps of Engineers, Afghanistan Engineer District-North

An objective of coalition efforts in Afghanistan is to build the country's capacity to provide for its own security by training and equipping the Afghan National Security Forces, which includes the Afghan National Army (ANA) and the Afghan National Police (ANP).[1] The Combined Security Transition Command-Afghanistan (CSTC-A), through the Afghanistan Security Forces Fund, provided $72.8 million to the U.S. Army Corps of Engineers (USACE), Afghanistan Engineer District-North (TAN)[2] to construct an ANA garrison in Kunduz province on Afghanistan's northern border. In April 2010, SIGAR reported that the facilities at the ANA garrison (Camp Pamir) in Kunduz province were at risk of structural failure because of poor site grading and serious soil stability issues.[3] We initiated this inspection to follow up on one of the recommendations from that report—that USACE resolve the soil stability issue and determine the mitigation or corrective actions required to complete the garrison, including ensuring that the site was properly graded.

We conducted this inspection in Kabul, Afghanistan, the USACE-TAN Resident Office at Kunduz and Camp Pamir from January to September 2012, in accordance with the *Quality Standards for Inspection and Evaluation*, published by the Council of the Inspectors General on Integrity and Efficiency. The engineering assessments were conducted by professional engineers in accordance with the *National Society of Professional Engineers Code of Ethics for Engineers.*

BACKGROUND

The Kunduz ANA contracts included the design and construction of Camp Pamir to support the ANA garrison in Kunduz Province on Afghanistan's northern border.[4] Camp Pamir was designed to house approximately 1,800 ANA personnel.[5]

The construction project was divided into two phases of construction:

- Phase I. USACE-TAN awarded a firm, fixed-priced design-build contract (W917PM-08-C-0033) to DynCorp on February 28, 2008, for almost $30.3 million. Facilities included barracks, storage facilities, a dining facility, and an embedded training team compound. USACE-TAN later exercised a series of options to upgrade and expand the project, increasing the total contract amount to almost $47.5 million. Based on our review of the master plan, 92 buildings were constructed during this phase.
- Phase II. USACE-TAN awarded a firm, fixed-priced design-build contract (W917PM-08-C-0070) to DynCorp on July 6, 2008, for almost $23.3 million, to construct additional barracks, the medical clinic,

[1] According to the April 2012 *Report on Progress Toward Security and Stability in Afghanistan*, the Afghan National Security Forces are ahead of schedule to achieve the end-strength of 352,000 by October 2012.

[2] In 2009, the Afghanistan Engineer District was divided into two districts—the North (now referred to as USACE-TAN) was established in 2004 and the South was added in 2009.

[3] SIGAR Audit-10-09, *ANA Garrison at Kunduz Does Not Meet All Quality and Oversight Requirements; Serious Soil Issues Need to Be Addressed*, April 30, 2010.

[4] Other construction in the area includes German provincial reconstruction team facilities constructed in 2004, an airport constructed by the Russians about 30 years ago, a DynCorp compound adjacent to the airport, and a base built by the Dutch in 2004 and occupied in part by the U.S. Drug Enforcement Administration in 2008.

[5] These were design-build contracts to house the 2/209th ANA Battalion, with the camp located on the Eshantop Plateau in Kunduz province. The camp was one square kilometer enclosed, surrounded by stone walls, with four guard towers evenly spaced on each side. The site was used for agriculture prior to construction. Based on our analysis of contract data, 129 buildings were constructed during the two phases.

and a detention facility. Based on our review of the master plan, 37 buildings were constructed during this phase.[6]

See table 1 for project timeline. Appendix II contains additional information regarding the different types of structures; appendix III provides more detailed information on the contracts and amendments.

Table 1 - Timeline of Key Events

Date	Event
February 28, 2008	W917PM-08-C-0033, phase I, awarded to DynCorp
March 17, 2008	First quality assurance report (QAR)
April 13, 2008	Geotechnical report[7] by original sub-contractor
July 6, 2008	W917PM-08-C-0070, phase II, awarded to DynCorp
May 11, 2009	Guard tower 511 sinking according to QAR reference
November 2009	USACE-TAN identifies soil subsidence following heavy snowfall accompanied by heavy rain
December 5, 2009	Multiple sink holes reported in QAR
September 2010	DynCorp notified USACE that it would not use mitigating techniques, constructing 60 buildings without modifying its methods or providing adequate onsite drainage
December 8, 2011	W917PM-08-C-0033 settlement; modification P00004 ends DynCorp phase I
December 8, 2011	W917PM-08-C-0070 settlement; modification P00001 ends DynCorp phase II

Source: Contract documents for W917PM-08-C-0033 and W917PM-08-C-0070, provided by USACE-TAN; Omran's April 13, 2008 *Geotechnical Report, Field Investigations, Field & Lab Test Results, and Geotechnical Recommendations for Kunduz ANA Base*, provided by USACE-TAN; W917PM-08-C-0033 QARs provided by USACE-TAN; SIGAR Audit 10-09; and SIGAR Record of Site Visit to Kunduz, Camp Pamir.

Problems at Kunduz ANA Garrison Reported by SIGAR in April 2010

In April 2010,[8] we reported that several structures (see figure 3) had failed[9] following a December 2009 rainfall. We also observed severe settling and improper soil grading and noted that the probable cause for the settling was lack of adequate site preparation. We reported that the soil at the site appeared to have the characteristics of collapsible soil—loose, dry, low-density materials that collapse and compact if exposed to water. According to USACE-TAN documentation and SIGAR analysis, the sinkholes appeared after DynCorp mobilized onsite and began removing a half meter of topsoil, thereby changing localized drainage patterns.

[6] The contract amount for phase I and phase II construction was $72.8 million; under the terms of the settlement, $2 million was de-scoped from one DynCorp contract. DynCorp therefore received a total of $70.8 million on the two contracts. See appendix III for contract details.

[7] The geotechnical report is used to communicate site conditions and design and construction recommendations. The purpose of a geotechnical investigation during project design is to determine the character and physical properties of soil deposits and evaluate the soil's potential as foundation for the structure or as material for earthwork construction.

[8] SIGAR Audit 10-09.

[9] For purposes of this report, failure is defined as a structure that is unsafe, uninhabitable, or unusable.

DynCorp dug piping trenches and foundation holes without providing proper grading and drainage of the site. Without proper site grading and drainage, water pooled and caused the sinkholes.

The roadbed at an intersection adjacent to these structures had also settled, and a large area appeared to be collapsing into a cavity under this roadbed. We observed similar collapses at other locations throughout the construction site. In December 2009, DynCorp indicated that as many as 48 sites in and around the garrison showed signs of collapsed soil. USACE-TAN documentation indicated that the probable cause for the severe settling was inadequate site preparation before building construction, and we reported that a future rainfall would likely cause the soil and additional areas to collapse, jeopardizing other structures. Improper grading also failed to allow rainwater to run off the site, further exacerbating the soil issues.

Although DynCorp was responsible for conducting a geotechnical report—including subsurface exploration—as part of design and construction, it had not identified the soil subsidence issue.[10] After a December 2009 rainfall, the company submitted a request to USACE-TAN to modify the contract due to "differing site conditions" to cover the costs of repairing damages resulting from the settling. By April 2010, although USACE-TAN and DynCorp agreed that the soil under the site was a collapsible soil, they had not agreed upon corrective action. Phase I was about 20 months past the completion date, and the contract cost had increased by $19 million. Phase II was nearly 14 months past its completion date, the U.S. government had paid more than $51 million of the $72.8 million contracted value for construction, and ANA troops were being housed in tents outside the garrison. At the time of our inspection site visit in March 2012, SIGAR noted troops living inside the compound.

In addition to the severe settling and site grading issues, we noted examples of inadequate construction quality and noncompliance with contract specifications, such as poor quality welds and rust forming on steel roof support beams and other structural bracing in barracks and other facilities on the garrison. Further, based on our review of oversight documentation, the lack of daily quality assurance reports (QARs) indicated that quality management was virtually non-existent during the first 9 months of the project. Because there were no reports, we could not verify if construction materials were substituted or if foundations and other covered work were constructed to contract requirements.

Soil Instability Mitigation Techniques Used in Camp Pamir Area

Soil subsidence was a well-known and documented problem in the Camp Pamir vicinity. For example, German coalition forces, building on the same plateau, identified this problem as early as 2004 and, along with other construction contractors in the area, had used mitigating construction techniques, including elevated building pads and proper drainage, to counter the risk of collapsible soil. When the German coalition forces experienced soil issues at the provincial reconstruction team (PRT) site in 2004,[11] they stopped work, investigated the problem, and implemented measures to mitigate effects of the collapsible soils on their compound. As a result, the design of the German PRT facilities implemented several methods to lessen the risk, including

- removing and replacing soil with potential subsidence issues;
- constructing elevated pads for building foundations;
- sloping the soil for the elevated pads so that water drains away from building foundations; and

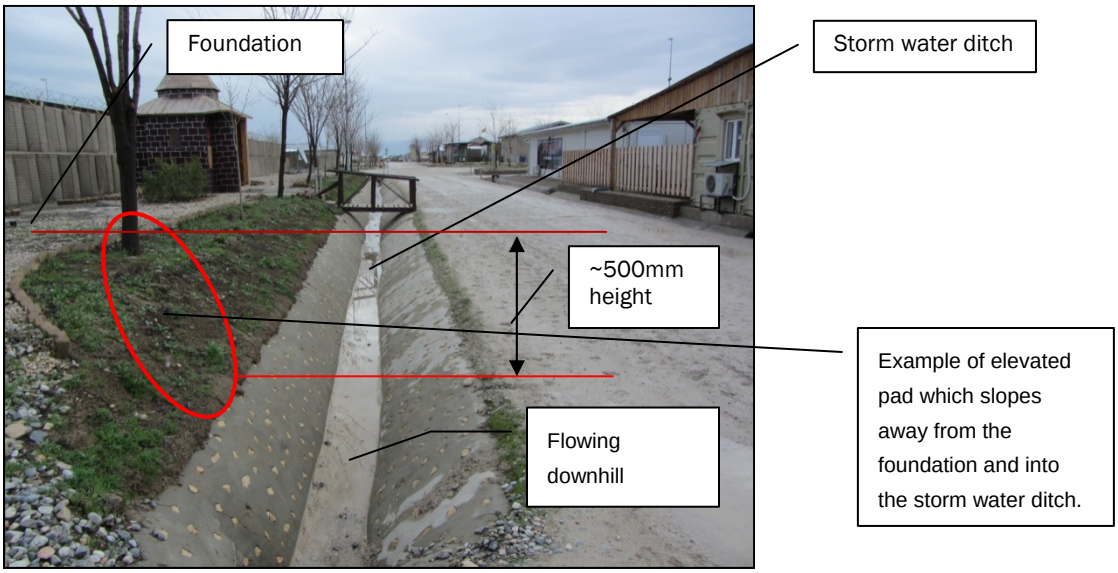
[10] The contractor was responsible for visiting the site and determining the proper soil type, as noted in Section 5.1 General: *"Site specific geotechnical information necessary to design and construct the foundations, pavements and other geotechnically related items contained in this project shall be the Contractor's responsibility."* In addition, Section 3.10.5 states "*The Design-Build Contractor will be responsible for Geotechnical Investigation, including subsurface explorations…"*

[11] The German PRT is located 4 kilometers (approximately 2.5 miles) from Camp Pamir.

- extending building roof gutter drains, enabling drainage out beyond the sloped, elevated pads.

Figure 1 illustrates a typical drainage channel and elevated building pad at the Kunduz PRT.

Figure 1 - Kunduz PRT March 2012 with Elevated Building Pad and Positive Drainage System



Source: SIGAR photo March 25, 2012.

ACTIONS TAKEN BY USACE-TAN DID NOT MITIGATE SOIL INSTABILITY ISSUES, AND STRUCTURAL FAILURE OF FACILITIES AT THE ANA GARRISON CONTINUE TO OCCUR

During our follow-up site visit on March 25, 2012, we found that USACE-TAN had not adequately addressed soil stability and site grading issues identified in our prior report and had not taken steps to ensure that structural failures did not reoccur. We noted that structural failures have continued and that other deficiencies, including improper landscaping; off-road driving; and inadequate sidewalk construction, paving, and road grading are placing additional loads on the collapsible soil and increasing the risk of additional structural failures.

We reviewed DynCorp's pre-construction geotechnical report issued in April 2008 and USACE-TAN documentation and determined that adequate information was available for the contractor to have known of the collapsible soil risk.[12] USACE-TAN noted that if the subcontractor that prepared the report had followed USACE standards,[13] the existence of collapsible soil would have been discovered using the data on hand and

[12] The report, subcontracted to Omran Geotechnical Company, cited that over 80 percent of the soil sampled consisted of fine silt and that the soil was very porous. The combination of a soil made up from mostly fine silt with high porosity, and additional water and structural loading, increases risk of sinkholes forming, followed by building foundation collapse.

[13] U.S. Army Corps of Engineers, Engineer Manual 1110-1-1904, *Engineering and Design, Settlement Analysis*, September 30, 1990.

also noted that the report included an unapproved testing procedure.[14] Nonetheless, USACE-TAN noted that the geotechnical report contained sufficient information on soil conditions to cause great concern and force an in-depth review of foundation design and drainage considerations. However, DynCorp reports that we reviewed did not mention the collapsible soil risk, and DynCorp grading plans did not mention any mitigation procedures related to the collapsible soil conditions. USACE-TAN reports in 2009 and 2010 discussed concerns regarding soil instability in the vicinity.[15] Moreover, in a November 2010 memorandum, a USACE-TAN engineer indicated that DynCorp was aware that the German coalition forces had used mitigating techniques in constructing the PRT. DynCorp continued to construct over 60 buildings without modifying construction methods and without providing adequate onsite drainage.[16]

Soil instability continues to cause sink holes and structural failures at Camp Pamir, as can be seen in figure 2. Based on our review of data provided by USACE-TAN, we have noted sink holes and structural failures over a 2-year period, highlighted in yellow. We also noted our observations from the site visit on March 25, 2012, highlighted in blue. These included new sink holes occurring at various locations, including the ETTC. During the site visit, we also observed structural failures at transformer 8 and building 603 (latrine), and noted that building 604 (barracks) was visibly beginning to settle.

Embedded Training Team Compound

The embedded training team compound (ETTC) is a separate compound within Camp Pamir and consists of an entry control point, barracks, perimeter wall, guard towers, and a dining facility. During our site visit on March 25, 2012, we noted that USACE-TAN had repaired the failing guard tower and the perimeter wall. Figure 3 shows the tower and perimeter wall during the site visit in January 2010, and figure 4 shows the result of the repairs in March 2012. Although we identified no additional structural failures within the compound, we did identify new sink holes,[17] which are noted in figure 2. We also observed that, with the exception of the entry control point, none of the ETTC facilities were being used by the ANA.[18] Although the compound was designed and constructed to be used by German army trainers, it did not meet their security requirements and, therefore, had not been occupied as planned. The dining facility was being used as billeting by a group of training contractors.

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[14] USACE-TAN documentation indicates that Omran used an unapproved hand-operated "light cone" drop hammer test instead of a standard penetration test.

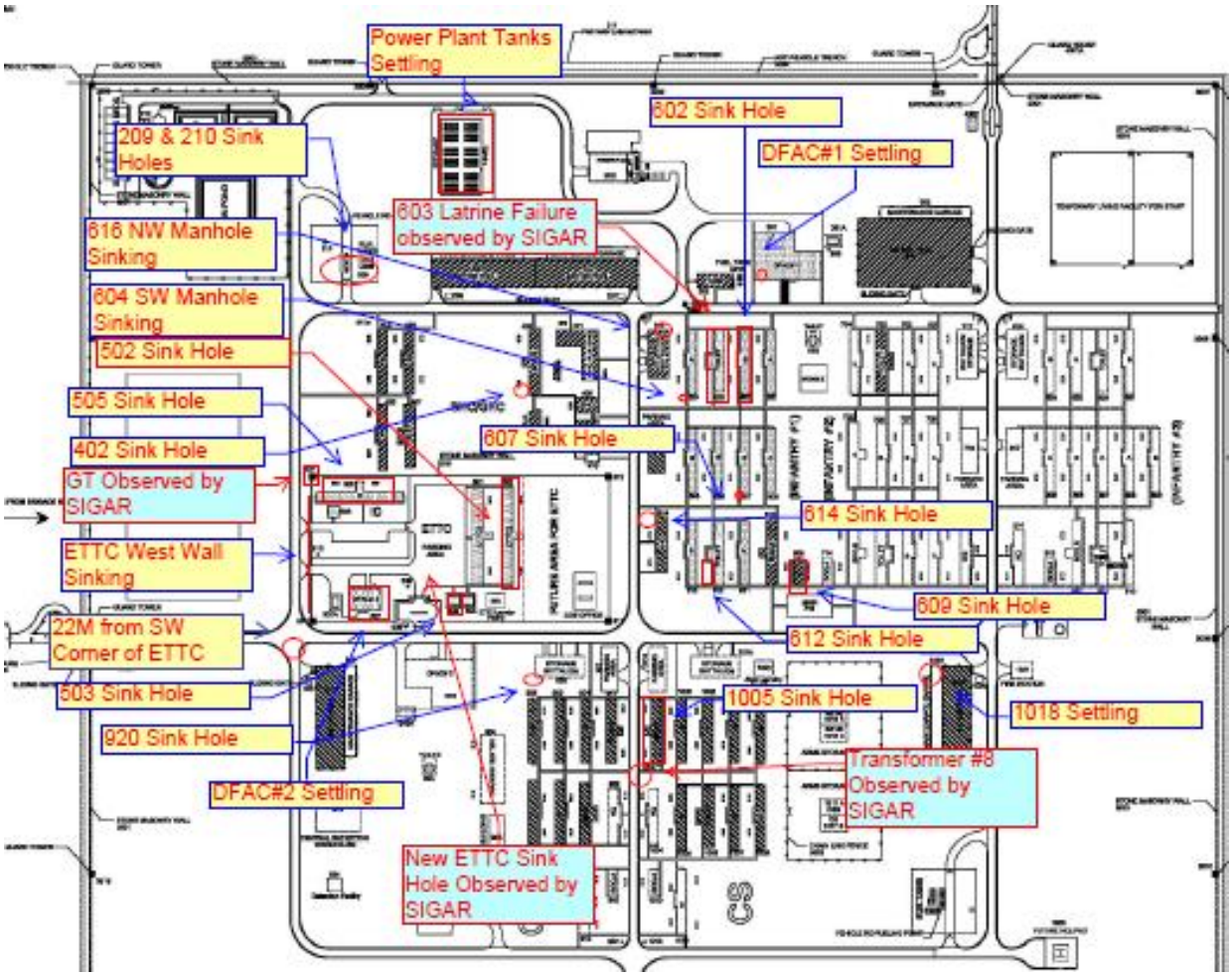
[15] These reports were addressed in SIGAR Audit-10-09: AED-North (now referred to as USACE-TAN), *Trip Report for Kunduz Investigation of Soil Surface Depressions,* Dec. 19, 2009; *Second Trip Report for Kunduz Investigation of Soil Subsidence-DynCorp's Engineering Efforts for Their Defense of Claims and an Interim Site by QAB,* Feb. 4, 2010; and AED-North, *Third Report for Kunduz Investigation of Soil Subsidence-Summary of the German Soils Report,* Feb. 12, 2010.

[16] On November 14, 2010, USACE-TAN reviewed a geotechnical report and noted that DynCorp had still not implemented a site grading plan to ensure adequate drainage. Other contract requirements to ensure proper drainage had not been met, including many building foundations which were not 150 mm above grade, and slope away from buildings on all sides at a minimum of 3 percent for 3 meters was not present on the site.

[17] In its response to this report, USACE-TAN stated that it was addressing the drainage issues through the ANA Building Repair contract (W5J9JE-12-C-0031).

[18] In its response to this report, USACE-TAN stated that it is not responsible for facility use and sustainment after the post-beneficial occupancy date.

Figure 2 - SIGAR Analysis of Historical Sink Holes and Structural Failures



Source: USACE-TAN, Kunduz ANA-Master Plan phase II, submitted by DynCorp on September 28, 2008. Note: We highlighted sink holes and structural failures discussed in Q-01 QA Daily Reports (0033) and SIGAR Record of Site Visit to Kunduz, Camp Pamir. Yellow background callouts are sourced from historical QARs over a 2-year period. Blue background callouts indicate areas observed during the March 25, 2012 site inspection.

Transformer 8

During the March 25, 2012 inspection, we observed a sink hole developing and general structural settling around transformer 8 due to collapsible soil conditions.[19] As a result, the transformer concrete pad is at risk of structural failure. Failure of this transformer would result in a loss of electrical power over a large portion of Camp Pamir, causing significant financial loss and increasing the risk of injury through fire and electrical shock. The location of transformer 8 is noted in figure 2. Figure 5 shows the area surrounding transformer 8 and some of the problems that we observed, including a sink hole, sidewalk settlement, and standing storm water.

[19] In its response to this report, USACE-TAN stated that it has submitted a basic contract change to ANA Kunduz Garrison Utility Upgrade (W5J9JE-12-C-0021) to Omran Holding Group to repair the referenced sinkhole.

Figure 3 - Guard Tower and Wall, January 2010

Source: SIGAR photo January 27, 2010 (from SIGAR Audit 10-09).

Figure 4 - Guard Tower and Wall, March 2012

Source: SIGAR photo March 25, 2012 (individual in photo blurred for security reasons).

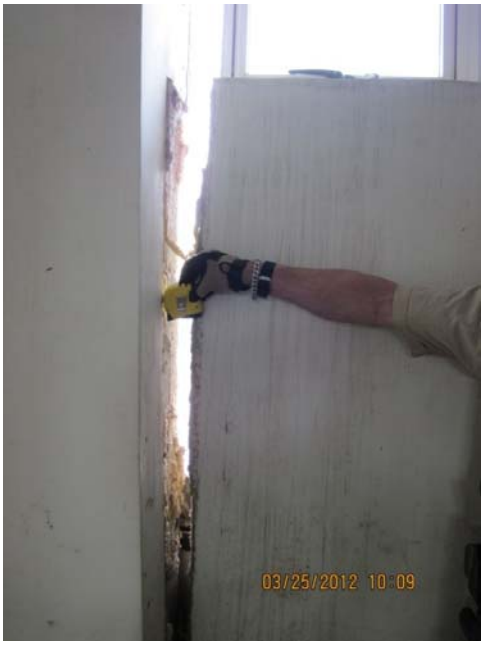
Figure 5 - Soil Failure around Transformer 8

Source: SIGAR photo March 25, 2012.

Buildings 603 and 604

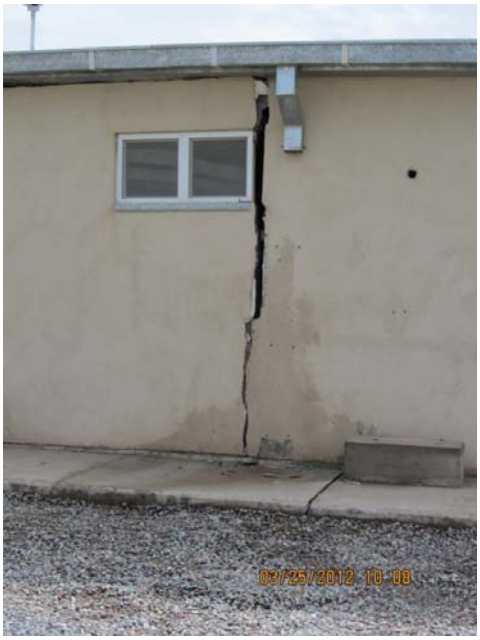
During our inspection on March 25, 2012, we observed that building 603 (latrine)[20] was unusable due to structural failure because of soil subsidence.[21] We also noted that building 604 (barracks)[22] adjacent to the latrine was beginning to settle and was at risk of failure. USACE-TAN officials attributed the structural failure to water infiltrating into the soil underneath the building. The location of these facilities is noted in figure 2. Figures 6 and 7 are examples of wall separation, both inside and outside building 603.

Figure 6 - Interior of Building 603



Source: SIGAR photo March 25, 2012.

Figure 7 - Exterior of Building 603



Source: SIGAR photo March 25, 2012.

Lack of Proper Landscaping, Site Grading, and Sidewalk Construction Also Affect Soil Instability

During our site inspection on March 25, 2012, we observed improper landscaping and site grading, which further exacerbated the impact of collapsible soil conditions at Camp Pamir. In accordance with the contract technical requirements, DynCorp was to design and provide landscaping for the compound and provide grading around facilities to slope away from all sides of the buildings at a minimum of 3 percent for 3 meters. We did

[20] In its response to this report, USACE-TAN stated that a replacement latrine is included in a modification to contract W5J9JE-11-C-0076, Biltek, Garrison Expansion (phase III) project.

[21] Under the terms of the settlement of the phase I and phase II contracts, DynCorp was specifically relieved from repair of latrines, including building 603.

[22] We were not able to physically enter building 604. From observations through the windows, we could see that it was being used by the ANA.

not observe any contractor-installed landscaping or graded sloping away from buildings.[23] The lack of adequate landscaping, along with improper grading, enables water to infiltrate under buildings and camp facilities, placing extra loading on the collapsible soil and further contributing to soil subsidence and structural failures.

Sidewalks were also not built in accordance with contractual specifications, which required them to be wide enough to be used as fire lanes and service roads for vehicle access close to camp facilities. We noted off-road vehicle traffic and vehicle parking adjacent to camp facilities instead of in authorized parking areas, which left deep ruts in the soil. Shipping containers were placed in improper locations as well. These practices, along with the relatively flat terrain and improper grading, further contribute to soil subsidence and structural failures by putting extra loading on the soil and allowing water to infiltrate under building foundations.

Figure 8 - Improper Grading and Landscaping

Source: SIGAR photo March 25, 2012.

Figure 9 - Ruts from Off-Road Driving

Source: SIGAR photo March 25, 2012.

Roads Not Constructed or Graded as Designed Resulted in Improper Drainage, and Unpaved Roads Affected Soil Stability

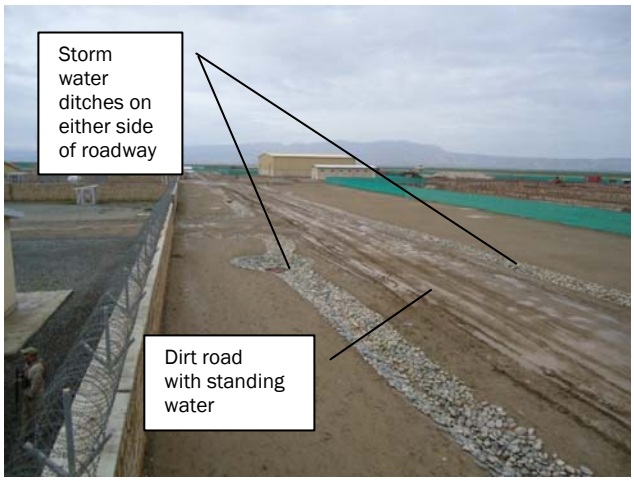
As part of the design of Camp Pamir, the contract required DynCorp to develop a road network to support vehicle traffic; and the drainage plan indicated that all roads were to be constructed so that water would drain into the storm water ditches. Our review found the contractor's drainage plan was designed to divert all storm water off-site in an efficient manner. However, we observed that actual road construction and grading did not reflect this design.[24] The entire site was relatively flat, instead of having the required slope. Without the

[23] In its response to this report, USACE-TAN stated that it is addressing the drainage issues through the ANA Building Repair contract (W5J9JE-12-C-0031). It further noted its contractor will extend concrete aprons around the perimeters of 61 buildings to a minimum slope of 0.5 percent and a distance of 1.5 meters away from the building foundation.

[24] In response to this report, USACE-TAN indicated that it is addressing the road grading issue under contract W5J9JE-11-C-0076, Biltek, Garrison Expansion (phase III).

appropriate road grading, water accumulated on the road surfaces and drainage channel, indicating improper drainage. Figure 10 illustrates standing water on one of the road surfaces.

Figure 10 - Standing Water on Road Indicating that Water is Not Draining into Storm Water Ditches as Designed



Source: SIGAR photo March 25, 2012.

Lack of paving on the road network also had a negative effect on the collapsible soil conditions. During construction, USACE-TAN chose not to exercise an option to pave the roads with asphalt or concrete. As a result, vehicle traffic on the road network, along with the lack of proper drainage and pavement, has placed additional loads on the collapsible soil, which is evidenced by the rough condition of the road surfaces.

DESPITE PERFORMANCE ISSUES, USACE-TAN RELEASED DYNCORP FROM FURTHER CONTRACT OBLIGATIONS

In December 2011, USACE-TAN, despite contract performance issues under contract phases I and II, released DynCorp from further work, including any further contractual requirements, warranties, and latent defects. While the Price Negotiation Memorandum indicated that the settlement was a "fair, reasonable, and equitable adjustment to the contract," it did not provide an explanation of how USACE reached that conclusion. The results of the settlement mean that the U.S. government has no recourse against the contractor for structural defects related to phase I and phase II construction. This includes failures that may result from the lack of adequate site preparation by DynCorp prior to commencing construction, as well as failure to use mitigating construction techniques. Because DynCorp was released from any further contractual obligations under the two contracts, remediation of structural failures will require additional funding above the $70.8 million that the U.S. government has already paid to DynCorp.[25]

It is not clear why USACE-TAN agreed to a settlement that released DynCorp from further work and liability,[26] especially when the contracts were closed out with known deficiencies and performance issues.[27] Of further concern are the known construction deficiencies and warranty and latent defects that USACE-TAN de-scoped from the phase I contract. USACE-TAN subsequently awarded a contract, for nearly $1.9 million, to Hazheer Construction and Engineering Company to complete work that DynCorp had not completed in accordance with contract requirements.

[25] The contract amount for phase I and phase II construction was $72.8 million; under the terms of the settlement, $2 million was de-scoped from one DynCorp contract. DynCorp therefore received a total of $70.8 million on the two contracts. See appendix III for contract details.

[26] The USACE-TAN representatives who participated in the settlement are no longer in Afghanistan. In its response to this report, USACE-TAN agreed to initiate an in-depth review of the rationale for the settlement.

[27] As of December 8, 2011, DynCorp was over 948 days late in completing work deliverables for phase I, had received a partial termination for default for phase I, a letter of concern for phase II, and had received interim unsatisfactory performance evaluation rating for phase II. The settlement released DynCorp from all previously assessed liquidated damages and retainage.

Based on our review of the settlement documentation, the U.S. government was in a strong position to enforce repair costs and warranty and latent defect issues on the phase I and phase II contracts when USACE representatives met with DynCorp on October 6, 2011. However, on December 8, 2011, USACE-TAN entered into a mutual settlement with DynCorp and terminated both contracts, paying DynCorp in full.[28] The contractor was released from any further contract work, as well as existing or future warranty obligations. For example, DynCorp was released from any obligations to repair and refurbish latrines,[29] improve storm water drainage around the power plant and transformers, and update as-built drawings to reflect actual in-place construction. In addition, USACE-TAN agreed to retroactively extend the contract duration date by 948 days; i.e., 2 and a half years.[30] The effect of this change was that DynCorp was no longer considered to be late in its contract deliverables. USACE-TAN also changed interim unsatisfactory ratings to satisfactory on both contracts, across all performance measures, including "Quality Control," "Timely Performance," "Effectiveness of Management," and "Compliance with Safety Standards."

USACE-TAN also failed to comply with FAR provisions[31] to submit the settlement proposal to an audit agency for review. Under these provisions, the termination contracting officer is required to refer each prime contractor settlement proposal of $100,000 or more to the appropriate audit agency for review and recommendations. After the review, the audit agency is required to submit written comments and recommendations to the termination contracting officer. Because there was no referral to an audit agency, an independent review of the following issues was not conducted:

- DynCorp's failure to adequately consider soil subsidence in its site preparation;
- the repair, warranty, and latent defects issues not addressed by DynCorp during the contract period;
- the subsequent award of a contract to Hazheer to address the repair, warranty, and latent defects issues;
- the retroactive extension of the contract deliverable dates to make it appear that DynCorp had met the deliverable deadlines;
- the change of performance assessments from unsatisfactory to satisfactory; and
- an explanation why, despite being in a strong position to enforce construction deficiencies, warranties, and latent defects, USACE-TAN chose to enter into in a mutual settlement with DynCorp for closeout of the two contracts.

USACE-TAN stated that this was a negotiated contract modification, and not a settlement and termination, and therefore did not require an audit. However, the terms negotiated in the agreement with DynCorp are indicative of a settlement and termination. For example, DynCorp was released from any further obligation to perform work under the contract. DynCorp was also released from its obligation to repair existing structural failures and other construction defects, and the contract was closed out. Moreover, USACE's own contemporaneous documents repeatedly refer to the agreement as a "settlement" or "final settlement."[32]

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[28] USACE-TAN paid the contractor $1.2 million remaining on the contract, for a total of $70.8 million; as well as liquidated damages of $2.7 million which had been previously assessed, and $3.6 million remaining in retainage.

[29] This included building 603, which was noted during our site visit on March 25, 2012, as unusable due to structural failure because of soil subsidence.

[30] On May 21, 2008, the contract scope was increased and an additional 50 days was added to the period of performance. As of October 5, 2011, DynCorp was 948 days late. This was codified in a contract modification dated December 8, 2011.

[31] FAR 49.107(a).

[32] The Price Negotiation Memorandum, dated December 8, 2011, contains numerous references to the negotiations as a final settlement or settlement of the two contracts: Project Description, *"Final settlement for contract closeout;"* Purpose, *"to try and negotiate a settlement agreement,"* Notes within the memorandum, *"the meeting eventually resulted in a settlement agreement being reached"* and *"the Contracting Officer's Decision that a negotiated global settlement…is a fair*

SIGAR believes that the requirement for an independent audit of the final settlement of a multi-million dollar contract, as required by the FAR, cannot be circumvented by USACE calling the settlement a "contract modification." This would negate the purpose of FAR 49.107(a).

In addition, the circumstances surrounding the settlement with DynCorp reinforce the need for an independent audit. The settlement appears to be on unfavorable terms for the U.S. government. While the settlement closed out both contracts and relieved DynCorp of substantial current and future contractual liability for construction defects and other issues, USACE appears to have received little or nothing in return. The settlement is even more questionable, given that structural failures continue to occur at the Kunduz site, resulting from the lack of adequate site preparation prior to construction and the failure to use mitigating construction techniques.

More Scrutiny Is Needed over Further Investment at Camp Pamir

The failure by USACE-TAN to ensure that DynCorp, as the construction contractor, appropriately addressed the collapsible soil conditions within Camp Pamir prior to building construction increases the risk that structural failures will continue to occur. USACE-TAN officials told us that, in the future, construction contractors will be required to use soil instability mitigation techniques similar to those used by the German coalition forces to construct the Kunduz PRT. Each building pad will be over-excavated by 3 meters, the collapsible soil will be hauled off-site, and laboratory-verified backfill material will be brought back to the site.

The use of these mitigating techniques to remediate phase I and phase II construction issues will require increased site excavation, transportation, and laboratory expenses. Further, due to the increased measures and technical procedures required, additional oversight of the construction contractor will be necessary to ensure quality control by the contractor and quality assurance by USACE-TAN. Accordingly, additional U.S. investment at Camp Pamir to remediate phase I and phase II construction issues needs to be closely scrutinized. Specifically, decisions to repair existing facilities or build new ones should be adequately documented and justified and subjected to a rigorous review, including cost-benefit analysis.[33] Doing so would help quantify the further costs necessary to address the impact of the collapsible soil conditions within the camp and determine whether additional U.S. government funds are warranted.

CONCLUSIONS

USACE-TAN failed to adequately mitigate the collapsible soil conditions at Camp Pamir, and structural failures and improper site grading continue to be serious concerns. Despite unsatisfactory performance, USACE-TAN released the construction contractor, DynCorp, from further contractual liability. Contract issues included inadequate site preparation prior to construction to address the risk of collapsible soil; failure to use appropriate mitigating construction techniques; and failure to properly grade the site to ensure adequate drainage. As techniques to mitigate the unstable soil conditions have been successful for other contractors in the vicinity of Camp Pamir, we question why they were not addressed as part of USACE-TAN's oversight of DynCorp during the construction period, the warranty and latent defect period, or in closing out the two contracts. Moreover, in accordance with FAR 49.107(a), the USACE-TAN termination contracting officer failed to submit the settlement with DynCorp to an appropriate audit agency for review and recommendations. Therefore, no independent review was conducted to assess what appears to be a questionable settlement in

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and reasonable settlement", and Conclusion, *"the final negotiated settlement…was fair, reasonable, and an equitable adjustment to the contract."*

[33] Guidelines for producing an economic analysis are outlined in *Department of Defense Instruction Number 7041.3.*

favor of the contractor and against the interests of the U.S. government. As a result, the camp is at risk of further structural failures, the construction contractor is not liable, and further remediation to protect the initial U.S. investment of $72.8 million will require additional funds that should be justified and closely monitored.

RECOMMENDATIONS

To ensure the structural integrity of the construction of the ANA garrison at Camp Pamir and that additional investment is in the best interest of the U.S. government, SIGAR recommends that the Commanding General, USACE, direct USACE-TAN to take the following actions:

1. **Justify the cost of further repairs and remediation of structural failures at Camp Pamir funded with Afghan Security Forces Fund appropriations to ensure that further construction is warranted, at reasonable cost to the U.S. government.**
2. **Submit the DynCorp settlement to an appropriate audit agency for review, in accordance with FAR 49.107(a). Based on the review, the audit agency should submit written comments and recommendations. While the audit results would normally be communicated to the termination contracting officer, due to the questionable nature of the settlement, we further recommend that the audit results and recommendations be reviewed by the Commanding General**

To fully document the reason that USACE released DynCorp from its contract, SIGAR recommends that the Commanding General, USACE:

3. **Explain in writing why the settlement was determined to be fair and reasonable.**

AGENCY COMMENTS

In commenting on a draft of this report, USACE-TAN concurred with the recommendations and noted steps it has taken or plans to take to address drainage and road grading issues under current contracts. For example, USACE-TAN stated that it is addressing the drainage issues at Camp Pamir through an existing ANA building repair contract. Among other things, its contractor will supply and install 600 downspouts to ensure that rainwater is diverted away from the buildings. USACE-TAN further noted that its contractor will construct an asphalt paving system designed to carry 40 metric ton five-axle vehicles over roads within the existing garrison compound and including a storm drainage system.

USACE-TAN also commented that its engineers were unaware of the soil subsidence problem until the rainfall event of December 2009. However, in our view, USACE-TAN should have been aware of the soil subsidence problem when it awarded the DynCorp contracts in 2008, based on available documentation and the fact that subsidence was a well known and documented problem in the area as early as 2004.

With regard to our recommendations, USACE-TAN concurred with recommendation 1 to justify the cost of further repairs and remediation of structural failures at Camp Pamir. However, USACE-TAN did not discuss any new actions it plans to take in response to the recommendation. Instead, USACE-TAN noted that it had already performed a detailed independent estimate of the costs of repairing and replacing items where completed construction may not have met required standards. In our view, a more current justification of the costs and need for further repairs is warranted.

USACE-TAN concurred with recommendation 2 and agreed to request a DCAA audit of the DynCorp settlement, despite its position that FAR 49.107(a) does not apply because the contract ended through a negotiated modification and was not terminated for convenience or default. We disagree that the requirement for an audit does not apply. As we note in our report, the agreement with DynCorp had the characteristics of a

settlement agreement and contract termination. Moreover, USACE's own contemporaneous documents clearly referred to the agreement as a final settlement to end these contracts. SIGAR believes that USACE cannot circumvent the audit requirements of FAR 49.107(a) merely by characterizing a settlement and termination as a contract modification. We welcome USACE-TAN's intention to submit the settlement for review. It is not clear, however, when USACE-TAN plans to request the DCAA audit or whether the reviewing official will be the Commanding General, USACE, as we recommended.

USACE-TAN concurred with recommendation 3, noting that it has initiated an in-depth review of the rationale for the settlement to be completed by November 9, 2012. Upon completion of that review, we will decide whether to further examine the circumstances surrounding this settlement.

USACE-TAN also provided technical comments, which we incorporated into this report as appropriate

APPENDIX I - SCOPE AND METHODOLOGY

In April 2010, the office of the Special Inspector General for Afghanistan Reconstruction (SIGAR) reported that the Afghan National Army (ANA) facilities at the Kunduz garrison were at risk of structural failure because of serious soil issues.[34] We initiated this inspection to follow up on one open recommendation that pertained to resolving the soil stability issue and determining what mitigating or corrective actions were required under the construction contract awarded to DynCorp International LLC (DynCorp) to complete phases I and II, including ensuring that the site was properly graded.

To address our objective, we

- reviewed SIGAR Audit-10-09 for background;
- reviewed contract documents, design submittals, geotechnical reports and quality assurance and quality control documentation to understand project requirements and administration;
- interviewed U.S. government officials responsible for the construction projects being assessed, to get the agencies' perspectives of the project; and
- visited the project site to observe the current status of soil instability and grading.

To determine what mitigation procedures and actions were being performed to counter the problems associated with soil stability and improper grading, we reviewed relevant documentation and met with program and engineering officials at the Combined Security Transition Command-Afghanistan (CSTC-A) and U.S. Army Corps of Engineers, Afghanistan Engineer District-North (USACE-TAN) offices in Kabul, Afghanistan, and engineers at USACE-TAN's Kunduz Resident Office. We also conducted a site inspection of Camp Pamir on March 25, 2012. We reviewed construction quality control and quality assurance reports to determine where new soil stability issues were occurring, so that we could direct our attention to those areas during our limited time onsite. Using these reports as a guide, we were able to map where new sink holes and structural failures had occurred after the 2010 SIGAR site visit (see figure 2). During our March 25, 2012 site inspection, we were able to use this information to help determine which specific areas we would inspect. We considered the impact of compliance with laws and fraud risk. We did not rely on computer-processed data in conducting this inspection.

We conducted this inspection from January to September 2012, in accordance with the *Quality Standards for Inspection and Evaluation*, published by the Council of the Inspectors General on Integrity and Efficiency. These standards were established to guide all inspection work performed by the Offices of Inspector General. The engineering assessments were conducted by Professional Engineers 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. This inspection was conducted by the office of the Special Inspector General for Afghanistan Reconstruction under the authority of Public Law 110-181, as amended, the Inspector General Act of 1978, and the Inspector General Reform Act of 2008.

[34] SIGAR Audit-10-09, *ANA Garrison at Kunduz Does Not Meet All Quality and Oversight Requirements; and Serious Soil Issues Need to Be Addressed*, April 30, 2010.

APPENDIX II - SUMMARY OF PHASE I AND PHASE II CONSTRUCTION

Table I shows the buildings, facilities, and structures that were included during phase I construction.

Table I - Phase I Buildings, Facilities, and Structures

Description	Building Number	Quantity
Anti-vehicle trench	5002	
Bachelor officer quarters	402, 407, 609, 610, 901, 1005	6
Barracks	403, 404, 405, 501, 502, 601, 602, 603, 604, 605, 606, 607, 608, 611, 902, 903, 904, 907, 908, 1001, 1002, 1003, 1004, 1007, 1009, 1010	26
Battalion storage	616	1
Chemical building	102	1
Communication building	302	1
Dining facility	301, 507	2
Fuel storage building	201	1
Garrison/brigade headquarters	401, 408	2
Guard house	4001A, 4001B, 508	3
Guard towers	511 – 514, 3001 – 3008,	12
Headquarters building	614	1
Interpreter barracks	505	1
Interpreter compound storage building	506	1
Morale, welfare, and recreation building	504	1
Motor pool building	204, 206, 304, 916, 1019	5
Operator room	210	1
Parking lot	615, 921, 1014	3
Perimeter road	211	1
Perimeter wall	515, 5001	
Petroleum, oil, and lubricants storage	207, 208, 305	3
Prime power plant	202	1
Propane storage	301A, 507A	2
Reception center	4002	1
Solid waste collection point	306, 509, 510, 617	4

Table I - Phase I Buildings, Facilities, and Structures

Description	Building Number	Quantity
Storage facility	503	1
Toilet/shower building	406, 603, 612, 703, 909, 1008	6
Vehicle refueling point	209	1
Waste water treatment plant	101	1
Water tank	618	1
Water tank and pump house	816	1
Well house	815	1
Total Phase-I		**92**

Source: USACE, Kunduz ANA Master Plan, September 28, 2008.

Table II shows the buildings, facilities, and structures that were included during phase II construction.

Table II - Phase II Buildings, Facilities, and Structures

Description	Building Number	Quantity
Arms storage	409, 1016A, 1016B, 1016C, 1017B, 1017A	6
Bachelor officer quarters	911, 912, 1012	3
Barracks	1011	1
Battalion storage	920, 1015	2
Detention facility	1021	1
Department of public works building	906	1
Fire station	1022	1
Guard towers	3009 - 3016	8
Headquarters building	910, 1006	2
Laundry	516	1
Maintenance garage	917, 1018	2
Medical clinic	913	1
Operator room	1025	1
POL storage	918, 1020	2
Solid waste collection point	922, 1013	2
Training center	905	1
Vehicle refueling point	1024	1

Table II - Phase II Buildings, Facilities, and Structures

Description	Building Number	Quantity
Warehouse/central receiving	915	1
Total Phase-II		**37**

Source: USACE, Kunduz ANA Master Plan, September 28, 2008.

APPENDIX III - SUMMARY OF PHASE I AND PHASE II CONTRACTS

The United States Army Corps of Engineers (USACE), Afghanistan Engineer District-North[35] awarded three contracts related to phase I and phase II construction at Camp Pamir in Kunduz Province. We list the details for each contract in the following sections.

W917PM-08-C-0033

On February 28, 2008, USACE awarded a fixed-price contract (W917PM-08-C-0033) for nearly $30.3 million, to DynCorp International LLC for the design and construction of the 2/209th Headquarters facilities Afghan National Army (ANA) Kunduz installation, Kunduz, Afghanistan. As of December 8, 2011, USACE had amended the contract 12 times. The amendments increased by $17.2 million to nearly $47.5 million and extended the period of performance to 998 days. The amendments are listed in table III.

Table III - Amendments to Contract W917PM-08-C-0033

Modification Number	Effective Date	Contract Time Change	Contract Price Change
A00001	May 21, 2008	+50 Days	No price change
A00002	May 24, 2008		No price change
A00003	June 30, 2010		No price change
A00004	August 7, 2010		No price change
A00005	May 3, 2011		No price change
A00003	May 25, 2011		No price change
P00001	April 8, 2008		+$1,131,954.66
P00002	June 14, 2008		+$18,099,895.70
P00002	May 3, 2011		No price change
P00003	May 24, 2008		No price change
P00003	December 7, 2011		No price change
P00004	December 8, 2011	+948 Days	-$2,000,000.00
Total		**998 Days**	**$17,231,850.36**

Source: SIGAR summary of contract amendments as of April 29, 2012.

[35] In 2009, the Afghanistan Engineer District was divided into two districts—the North (now referred to as USACE-TAN) was established in 2004 and the South was added in 2009.

W917PM-08-C-0070

On July 6, 2008, USACE awarded a fixed-price contract (W917PM-08-C-0070) for nearly $23.3 million, to DynCorp International LLC for the design and construction of the 2/209th Headquarters facilities, ANA Kunduz installation phase II, Kunduz, Afghanistan. As of December 8, 2011, USACE amended the contract three times. The amendments did not increase the contract cost or the period of performance. The amendments are listed in table IV.

Table IV - Amendments to Contract W917PM-08-C-0070

Modification Number	Effective Date	Contract Time Change	Contract Price Change
A00001	July 8, 2010		No price change
R00002	May 1, 2011		No price change
P00001	December 8, 2011		No price change
Total		**0 Days**	**$0.00**

Source: SIGAR summary of contract amendments as of April 29, 2012.

W5J9JE-12-C-0031

On December 18, 2011, USACE awarded a fixed-price contract (W5J9JE-12-C-0031) for nearly $1.9 million, to Hazheer Construction and Engineering Co. for the design, drawings, construction, supervision, labor, materials, equipment, supplies, and transportation necessary to make repairs to the buildings at Kunduz ANA 2/209th, Kunduz, Afghanistan. This contract was awarded to address the unresolved issues with the phase I and phase II contracts. The contract period was for 410 days after receipt of notice to proceed, with an estimated completion date of February 2013. As of April 29, 2012, this contract had not been amended.

APPENDIX IV - COMMENTS FROM THE U.S. ARMY CORPS OF ENGINEERS

DEPARTMENT OF THE ARMY
UNITED STATES ARMY CORPS OF ENGINEERS
TRANSATLANTIC DIVISION
255 FORT COLLIER ROAD
WINCHESTER, VIRGINIA 22603-5776

REPLY TO
ATTENTION OF

CETAD-IR

MEMORANDUM FOR Special Inspector General for Afghanistan Reconstruction (SIGAR)
ATTN: Benjamin J. Piccolo, Assistant Inspector General for Audit
2530 Crystal Drive, Arlington, VA 22202-3940

SUBJECT: U.S. Army Corps of Engineers (USACE) Response to SIGAR Draft Report 12-02, Kunduz Afghan National Army (ANA) Garrison: Army Corps of Engineers Released DynCorp of All Contractual Obligations Despite Poor Performance and Structural Failures

1. Enclosed is USACE Transatlantic Division response to the SIGAR Draft Report, SIGAR 12-02, "Kunduz ANA Garrison: Army Corps of Engineers Released DynCorp of All Contractual Obligations Despite Poor performance and Structural Failures."

See SIGAR Comment 1

2. My point of contact for these comments is Mr. George Sullivan, Chief, Internal Review at 540-665-2117, George.a.Sullivan@usace.army.mil.

Encl

JOHN S HURLEY
Colonel, USA
Deputy Commander

USACE Comments to SIGAR Draft Report 12-02, Kunduz ANA Garrison: Army Corps of Engineers Released DynCorp of All Contractual Obligations Despite Poor Performance and Structural Failures, 16 Sep 12

USACE comments are provided for the draft report results per the paragraphs identified and for the recommendations as shown.

Actions Taken by USACE-TAN Did Not Mitigate Soil Instability Issues, and Structural Failure Of Facilities at the ANA Garrison Continue to Occur (pages 4-6 in the draft)

USACE/TAN engineers were unaware of the soil subsidence problem until the rainfall event of December 2009, which was after the preparation of the Request for Solicitation, contractor submittal of his Geotechnical Report, and completion of a significant percentage of buildings. Following the rainfall event it became evident that extensive analysis and research of site conditions, contractor design/plans and specs, and actual construction completion through December 2009 was required. The conclusion that soil subsidence was the problem at the site was not determined until after completion of these reviews. By then, DynCorp had completed a significant percentage of building and all perimeter walls.

See SIGAR Comment 2

ETTC (pages 6-7 in the draft)

USACE/TAN is not responsible for facility use and sustainment after the post-beneficial occupancy date. USACE/TAN is addressing the drainage issues through the ANA Building Repair contract W5J9JE-12-C-0031.

Transformer 8 (pages 7-8 in the draft)

USACE/TAN submitted a basic contract change to W5J9JE-12-C-0021, ANA Kunduz Garrison Utility Upgrade, to Omran Holding Group to repair the referenced sinkhole.

Buildings 603 and 604 (pages 8-9 in the draft)

A latrine to replace the condemned latrines is included in a modification to contract W5J9JE-11-C-0076, Biltek, Garrison Expansion (Phase III) project.

Lack of Proper Landscaping, Site Grading, and Sidewalk Construction Also Affect Soil Instability (pages 9-10 in the draft)

USACE/TAN is addressing the drainage issues at Camp Pamir through the ANA Building Repair contract W5J9JE-12-C-0031.

- The contractor will supply and install an extension to approximately 600 downspouts (approximately 3 meters in length each) to ensure rainwater is diverted away from the buildings.
- The contractor will extend concrete aprons around the building perimeter that slope down and away from buildings with a minimum slope of 0.5 percent and at a distance of 1.5 meters away from the building foundation. The 61 buildings to be modified include: Type A barracks (10), Type B barracks (13), Type A bachelor officers' quarters (BOQs) (4), Type B BOQs (5), ETTC barracks (2), interpreter barracks (1), Garrison HQ (1), Brigade HQ (1), Battalion HQ (3), and other miscellaneous buildings (21).

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• The contractor will complete work on storm water drainage to eliminate the water that ponds behind the power plant. Natural drainage is blocked by the day tank storage area. In addition, we've consistently advised ANA Garrison leadership to stop planting vegetation and washing cars next to buildings to avoid additional unnecessary ponding.

Roads Not Constructed or Graded as Designed Result in Improper Drainage, and Unpaved Roads Affect Soil Stability (pages 10-11 in the draft)

USACE/TAN is addressing the road grading issue at Camp Pamir under contract W5J9JE-11-C-0076, Biltek, Garrison Expansion (Phase III). The contractor will construct asphalt paving over the existing unpaved ring road, cross streets within the ring road, and roads leading to the primary and secondary entry control points; all within the existing garrison compound and as indicated in the Conceptual Site Plan. The paving system will be designed to carry 40 metric ton five-axle vehicles and will include a storm drainage system. The contractor will also provide a graded, compacted, crushed aggregate access road around the entire exterior perimeter of the existing garrison and sufficient drainage ditches to receive expected runoff from the road and will grade the road surface to direct water runoff to these ditches. Finally, the contractor will provide culverts where required to ensure proper drainage outward from the garrison.

Despite Performance Issues, USACE-TAN Released DynCorp from Further Contract Obligations (pages 11- 13 in the draft)

USACE has initiated an in-depth review of the rationale for the settlement. At this time many of the key players involved with the settlement are no longer in country and arrangements are being made to obtain and evaluate their rationale to clarify information presented in the PNM.

The following additional comments are provided: Although SIGAR identifies that "additional funding above the $70.8 million" will be required; the footnote indicates that $2M was "de-scoped" from the contract. Since SIGAR later mentions that the subsequent repair contract for the remaining work was *less* than the amount de-scoped, the inference made about "additional funding" seems to be inappropriate

See SIGAR Comment 3

FAR Part 49 would not apply unless USACE/TAN terminated the contracts for convenience (T4C) or for default (T4D) and executed the terminations under FAR 52.249-2 Alt I or FAR 52.249-10, respectively. Although USACE/TAN executed a partial T4D modification on Contract No. 0033 for the latrines on 5 Oct 11, the partial T4D was rescinded by the P0004 modification on 8 Dec 11. The modifications settling the two contracts were executed under FAR 52.243-1, Change – Fixed Price; again, not governed by FAR Part 49, specifically FAR 49.107(a).

See SIGAR Comment 4

USACE Comments to SIGAR Draft Report 12-02, Kunduz ANA Garrison: Army Corps of Engineers Released DynCorp of All Contractual Obligations Despite Poor Performance and Structural Failures, 16 Sep 12

Conclusion (pages 13-14 of the draft)

The conclusion restates information we've responded to in the preceding comments. Therefore, no additional comments are provided.

Recommendations (page 14 in the draft)

To ensure the structural integrity of the construction of the ANA garrison at Camp Pamir and that additional investment is in the best interest of the U.S. government, SIGAR recommends that the Commanding General, USACE, direct USACE-TAN to take the following actions:

1. Justify the cost of further repairs and remediation of structural failures at Camp Pamir funded with Afghan Security Forces Fund appropriations to ensure that further construction is warranted, at reasonable cost to the U.S. government.

Concur. USACE/TAN engineers performed a detailed independent estimate of the costs of repairing and replacing items identified in the current contracts where construction completed may not have met the standards required. The cost estimate and analysis were included in the POM, which was approved in December 2011.

2. Submit the DynCorp settlement to an appropriate audit agency for review, in accordance with FAR 49.107(a). Based on the review, the audit agency should submit written comments and recommendations. While the audit results would normally be communicated to the termination contracting officer, due to the questionable nature of the settlement, we further recommend that the audit results and recommendations be reviewed by the Commanding General, USACE.

Concur. Although an audit is not required because the modifications settling the two contracts were not governed by FAR Part 49, USACE will request that DCAA perform an audit of the settlement. The results of DCAA's audit will be reviewed by USACE.

To fully document the reason that USACE released DynCorp from its contract, SIGAR recommends that the Commanding General, USACE:

3. Explain in writing, either in response to this draft report or in separate correspondence, why the settlement was determined to be fair and reasonable.

Concur. USACE has initiated an in-depth review of the rationale for the settlement. At this time many of the key players involved with the settlement are no longer in country and arrangements are being made to obtain and evaluate their rationale to clarify information presented in the PNM. Target date for completing the review is 9 November 2012.

SIGAR RESPONSE TO USACE COMMENTS

1. SIGAR Inspection Report 12-02 is now SIGAR Inspection Report 13-1.
2. As we note in our report, the pre-construction geotechnical report available in April 2008 contained sufficient information on soil instability issues, and soil subsidence was a well-known and documented problem in the Camp Pamir vicinity as early as 2004.
3. The $2 million de-scoping refers to the need to award a separate contract to address unresolved repairs and issues from the phase I and phase II construction projects that were identified as USACE-TAN was closing the DynCorp contracts. Since that time, soil instability and inadequate site preparation not addressed during phase I and phase II construction have led to additional sink holes, structural failures, and drainage problems, requiring further U.S. investment for corrective action. As USACE-TAN notes in its response, these problems are being addressed under current contracts.
4. FAR Subpart 49.1 includes settlement agreements as part of its scope. As noted in this report, we maintain that the DynCorp settlement was clearly an agreement to end these contracts and therefore subject to FAR 49.107(a). For example, the Price Negotiation Memorandum, dated December 8, 2011, has numerous statements throughout the document that the negotiations were for a final settlement on the two contracts.

APPENDIX V - ACKNOWLEDGMENTS

Crawford "Les" Thompson, Senior Inspections Manager

Milton Naumann, Auditor-in-Charge

Warren Anthony, Senior Auditor

William "Lee" Dillingham, Senior Engineer

Lise Pederson, Senior Engineer

This inspection report was conducted under project code SIGAR-I-001.

SIGAR's Mission

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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