

SIGAR

**Special Inspector General for
Afghanistan Reconstruction**

SIGAR Inspection 13-9

Sheberghan Teacher Training Facility: U.S. Army Corps of Engineers Paid Contractors and Released Them from Contractual Obligations before Construction Was Completed and without Resolving Serious Health and Safety Hazards



JULY
2013

SIGAR

Special Inspector General for Afghanistan Reconstruction

WHAT SIGAR REVIEWED

In May 2008, the U.S. Agency for International Development (USAID) and the U.S. Army Corps of Engineers (USACE) agreed to construct education facilities in Afghanistan. In February 2009, USACE-Afghanistan Engineer District-North (USACE-TAN) awarded Mercury Development, an Iraqi company, a \$2.9 million contract to build three teacher training facilities, one of which was to be located in Sheberghan in Jawzjan province. Originally planned to be completed in January 2010, the contract was subsequently extended to June 2011 and its value increased to \$3.4 million.

This report assesses (1) whether construction was completed in accordance with contract requirements and applicable construction standards and (2) whether the facilities are being used as intended and maintained. SIGAR conducted its work in Kabul, Afghanistan; the USACE-TAN Resident Office at Camp Spann, near Mazar-e-Sharif; and in Sheberghan from September 2012 through July 2013, in accordance with *Quality Standards for Inspection and Evaluation* published by the Council of the Inspectors General on Integrity and Efficiency.

WHAT SIGAR RECOMMENDS

SIGAR recommends that the Commanding General, USACE direct USACE-TAN to (1) determine, and report the results to SIGAR, on the reasons why two contractors were released from their contractual obligations and liabilities despite poor performance, unfinished construction, and electrical problems and determine appropriate actions, if any, against the contracting officer(s) responsible for making these decisions. The report also recommends that the USAID Mission Director for Afghanistan (2) conduct a site inspection to determine whether sanitary sewer lines were improperly placed in relation to the water well, posing a health risk to the faculty and students, (3) take appropriate measures to minimize the health and safety risks arising from faculty and students' current unauthorized use of the facility, (4) complete construction of the Sheberghan teacher training facility and expedite its turnover to the Afghan government, and (5) provide adequate project oversight.

In commenting on a draft of this report, USACE agreed to review the circumstances surrounding the close-out of the Mercury and Zarfarkhaliq contracts and report its results to SIGAR. SIGAR initially directed recommendations 2 and 3 to USACE. However, USACE no longer has the authority to conduct work on the project or control the facility's usage. As a result, SIGAR directed these recommendations to the USAID Mission Director. In its comments, USAID concurred with recommendations 4 and 5. USAID also provided information on its efforts and plans to award a contract to complete the project, provide oversight, and transfer the facility to the Afghan government.

July 2013

Sheberghan Teacher Training Facility: U.S. Army Corps of Engineers Paid Contractors and Released Them from Contractual Obligations before Construction Was Completed and without Resolving Serious Health and Safety Hazards

SIGAR INSPECTION 13-9

WHAT SIGAR FOUND

The Sheberghan teacher training facility remains incomplete 4 years after the start of construction. Water, sewage, and electrical systems remain unfinished and the lack of electricity hindered SIGAR's ability to test lighting, water, heating, and other systems. The facility's electrical wiring does not meet the U.S. National Electrical Code, as the contract required, and an improper entry, known as a "tap," into the electrical system exposes occupants to potential electrocution and fire hazards. Also, the facility's water well may have been placed too closely to its sewage system, raising potential health issues for the building's occupants.

USACE-TAN's contractor, Mercury Development, abandoned the project in late 2011. Despite the contractor's failure to complete construction and resolve health and safety issues, USACE-TAN closed out the contract and released Mercury from further contractual liability. USACE-TAN officials were unable to explain this decision because they were not the responsible officials in Afghanistan at that time. A second contractor, Zafarkhaliq Construction Company, also failed to complete construction at Sheberghan. SIGAR was unable to determine why, but as it did with the first contractor, USACE-TAN released Zafarkhaliq from further contractual liability. This inspection report identifies a disturbing trend on which SIGAR has previously reported, in which USACE fails to hold contractors accountable for completing the work they were paid to perform. USAID has terminated its agreement with USACE and now plans to seek a third contractor to finish the facility, including the faulty electrical wiring.

Despite construction being incomplete and despite health and safety hazards at the facility and despite being told by USAID not to occupy the site, Afghans are using it. The U.S. government is still responsible for operation and maintenance because USAID has not transferred the facility to the Afghan government. Further, while the Afghans occupying the facility want the U.S. government to fund the \$50,000 per month fuel costs for the electrical generator, by agreement the Afghan government is responsible for all operation and maintenance costs after it takes occupancy of the facility.



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

July 17, 2013

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Ms. Sarah W. Wines
Acting Mission Director for Afghanistan, U.S. Agency for International Development

This report discusses SIGAR's inspection results of the Sheberghan teacher training facility in Jawzjan province, Afghanistan. The report includes a recommendation to the Commanding General, USACE, to direct the Commander, USACE-Afghanistan Engineer District-North, to determine, and report the results to SIGAR within 90 days, (a) why its contractors, Mercury and Zafarkhaliq, were released from their contractual obligations despite poor performance; (b) why contract close out files showed that Mercury and Zafarkhaliq completed all work and all outstanding issues had been resolved despite unfinished construction and electrical problems that remain to this day; (c) why USACE-TAN released Mercury from any outstanding claims, remediation, and warranty items; and (d) identify the USACE contracting officer(s) involved in the decision to pay the contractors and release them from all contractual liability. Based on the results of the investigation, SIGAR also recommends that USACE determine whether disciplinary action would be appropriate against the contracting officer(s) responsible for making the decision.

The report also includes four recommendations for the USAID Mission Director for Afghanistan to determine whether the placement of the sanitary sewer lines poses a health risk to the faculty and students, take appropriate measures to minimize the health and safety risks arising from Afghan faculty and students' current unauthorized use of the facility; complete construction of the Sheberghan teacher training facility and expedite its turnover to the Afghan government; and provide adequate oversight to ensure that the facility is properly completed before paying for contractor services.

In commenting on a draft of this report, USACE agreed to review the circumstances surrounding contract close-outs and report its results to SIGAR. USACE also noted that it no longer had the authority to conduct work on this project or control the facility's usage. As a result, the recommendations concerning the sewer lines and measures to minimize health and safety risks have been addressed to the USAID Mission Director. USAID, in commenting on a draft of this report, concurred with recommendations 4 and 5. USAID provided information on its efforts and plans to award a contract to complete the project, provide oversight, and complete the steps necessary to formally transfer the facility to the Afghan government. USACE and USAID also provided technical comments, which we incorporated as appropriate. USACE's comments are reproduced in appendix III; USAID's comments are reproduced in appendix IV.

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

John F. Sopko
Special Inspector General
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ABBREVIATIONS

USACE	U.S. Army Corps of Engineers
USACE-TAN	U.S. Army Corps of Engineers, Afghanistan Engineer District-North
USAID	U.S. Agency for International Development

In May 2008, the U.S. Agency for International Development (USAID) and the U.S. Army Corps of Engineers (USACE) entered into a Participating Agency Program Agreement¹ in which USACE agreed to provide contract administration, construction management, and related services for the design and construction of education facilities at institutes of higher learning in Afghanistan. Specifically, USACE was to construct three teacher training facilities: one in Sheberghan in Jawzjan province, one in Mazar-e-Sharif in Balkh province, and one in Meymaneh in Faryab province. On February 7, 2009, USACE District-North (USACE-TAN)² awarded Mercury Development (Mercury), an Iraqi company, a firm fixed-price contract (W917PM-09-C-0017), with an 11 month

Photo 1 - One of Sheberghan's Ten Classrooms



Source: SIGAR, November 28, 2012.

period of performance, for \$2.9 million to build all three facilities no later than January 12, 2010. After nine modifications, the contract's value was increased to \$3.4 million and its period of performance was extended to June 19, 2011. Each of the three teacher training facilities was to consist of a two-story building with ten classrooms, four laboratories, a library, and an administration office (see photo 1 showing one of Sheberghan's ten classrooms).

For this inspection, we focused on the Sheberghan teacher training facility.³ Our inspection assessed whether (1) construction was completed in accordance with contract requirements and applicable construction standards, and (2) the facilities were being used as intended and maintained.

We conducted our work in Kabul, Afghanistan; at the USACE-TAN Resident Office at Camp Spann, near Mazar-e-Sharif; and at the Sheberghan teacher training facility⁴ from September 2012 through July 2013, in accordance with the *Quality Standards for Inspection and Evaluation*, published by the Council of the Inspectors General on Integrity and Efficiency. The engineering assessment was conducted by professional engineers in accordance with the National Society of Professional Engineers' *Code of Ethics for Engineers*. Appendix I provides a more detailed discussion of our scope and methodology, and appendix II shows a layout of the Sheberghan teacher training facility's first and second floors.

¹ A Participating Agency Program Agreement is a type of interagency agreement under FAA section 632(b) that USAID uses when another federal agency is expected to implement a program with relatively little day-to-day oversight or direct supervision by USAID and the other agency's functions will be primarily performed at a place other than at USAID.

² In 2009, the Afghanistan Engineer District was divided into two districts—North and South. The North District is referred to as USACE-TAN.

³ We planned to inspect all three teacher training facilities. However, due to the turnover of security from coalition forces to the Afghan government in Faryab province, we were precluded from inspecting the Meymaneh facility. We conducted an inspection of the Mazar-e-Sharif facility in March 2013, which we will be separately reporting on at a later date.

⁴ During the exit conference, USAID informed us that they track the name of the facility as the "Jawzjan Faculty of Higher Education." During the site visit and in discussions with USACE, the term "teacher training facilities" was used; other terms used in contract and project documents included "education facilities," "faculty of higher education facilities," and "teacher education facilities." For consistency within this report, we use the term "Sheberghan teacher training facility."

UNFINISHED CONSTRUCTION LIMITED SIGAR'S INSPECTION AND RAISED SAFETY CONCERNS

We conducted our inspection of the Sheberghan teacher training facility on November 28, 2012. The building structure—interior and exterior walls, ceiling, floors, staircases, and roof—had been completed. In addition, doors, windows, bathroom sinks, toilets, lighting fixtures, and heating and overhead fans were installed and the electrical generator was on-site. However, despite construction beginning in February 2009, the facility was still not complete. Specifically, the water, sewage, and electrical systems were unfinished. As recently as June 13, 2013, USAID officials informed us that the facility remains incomplete.

Our ability to properly inspect the building was hindered by the incomplete construction. Specifically, because there was no water supply, we were unable to determine whether the sewage system was functional, even though the construction of the bathrooms was complete. In addition, because there was no electricity, we could not test the water pump and water system to determine whether the well was working properly. Similarly, without electricity, we could not test the lighting, the heating, or the overhead fans. Furthermore, while the electrical generator was in place, we noted that items from it were missing, and faculty representatives told us that the batteries and control panel had been stolen.

USACE-TAN officials had identified electrical problems and reported them to Mercury as early as February 2011. For example, on February 8, 2011, USACE-TAN sent a written notification to Mercury expressing concern that the electrical work was not being completed in conformance with the National Electrical Code as specified in the contract.⁵ During our site visit in November 2012, the USACE-TAN resident engineer told us that the electrical wiring needed to be replaced. We followed up with the resident engineer in March 2013, and were told that the faulty electrical wiring had still not been replaced.⁶

During our inspection, we saw other issues that raise concerns about the safety of the building. For example, we observed a potentially dangerous situation in one laboratory where an electrical line had been improperly tapped into an electric junction box to supply electricity to a power strip sitting on one of the laboratory tables (see photo 2). The USACE resident engineer stated that someone was probably bringing a small electrical generator on-site to provide limited electricity because the facility's main electrical generator was not functional. While we did not observe any portable generators at the time of our site visit, we did note other classrooms where small incandescent lights were tapped into the electrical system. Generally, any unauthorized taps into an electrical system raise safety concerns. However, in this situation, the safety concerns are even more serious, given Mercury's failure to install wiring that conforms to the contract specifications and the National Electrical Code. Consequently, occupants of the facility may be exposed to electrical shock resulting from uncovered electrical connections and to fire resulting from substandard wiring and overloaded electrical circuits.

Photo 2 - Laboratory with Electrical Tap Visible from the Junction Box and Wire Leading to Power Strip



Source: SIGAR, November 28, 2012.

⁵ The American National Standards Institute approved the National Electrical Code, which is the benchmark for safe electrical design, installation, and inspection to protect people and property from electrical hazards. Mercury's contract required that all electrical design and installation work conform to the National Electrical Code.

⁶ We also conducted a briefing for USAID on March 18, 2013. At that time, USAID officials informed us that they were aware of the electrical problems and were taking steps to address the problem with a new contract that USAID plans to award to a local firm.

Based on our review of project documentation, we also noted concerns with the quality of the water supply from the well serving the facility. In May 2011, USACE notified Mercury that its site plans did not indicate the well location in relation to the sewage system. USACE expressed concerns that the sewage lines could be located too close to the water well, a violation of contract requirements that could affect the quality of the water supply and health of the building’s faculty and students.⁷ USACE further directed Mercury to submit a proposed plan to protect the water well from potential sanitary sewer contamination. However, based on our review, the project files did not provide any follow-up documentation on the issue. When we discussed this issue with USACE-TAN officials in March 2013, they indicated that the issue had not yet been resolved.

First Contractor Did Not Complete the Sheberghan Project

Mercury walked away from the Sheberghan teacher training facility project in late 2011, without completing its work.⁸ At the time that Mercury left, USACE-TAN estimated that construction was between 92 percent and 97 percent complete in total for the three teacher training facilities in Sheberghan, Mazar-e-Sharif, and Meymaneh. Most of the remaining work to be accomplished involved Sheberghan. Our review of the project files shows that USACE-TAN had paid Mercury \$3.1 million of the \$3.4 million contracted for the three facilities, before it walked away from the project.⁹ Table 1 shows key events involving the Mercury contract.

Through a series of 62 letters to Mercury, USACE-TAN noted concerns with the contractor’s performance as early as July 2009, or about 6 months after project construction began.¹⁰ Our review of the letters uncovered a multitude of issues related to the Sheberghan facility—as well as the other two sites—including a notice of unsatisfactory performance, non-payment to subcontractors, reporting more workers than were actually on-site, unauthorized purchase of window glass from Iran, and electrical issues such as those discussed earlier.¹¹ USACE-TAN also cited Mercury for safety violations and failing to provide adequate oversight. In particular, USACE-TAN noted

Table 1 - Key Events for Mercury Contract

Year	Key Event
February 2009	USACE-TAN awards Mercury a \$2.9 million contract, with an 11 month period of performance, to build three teacher facilities in Afghanistan. Through 9 modifications the period of performance is extended another 17 months and the contract amount increased to \$3.4 million.
June 2009	USACE-TAN sends first of 62 letters to Mercury regarding performance issues.
September-November 2011	Mercury walked away from the project with unfinished work; prior to that, USACE-TAN had paid Mercury \$3.1 million. USACE-Tan closes out the contract as complete, and releases Mercury from further liability.

Source: SIGAR analysis of contract data.

⁷ Serial Letter C-0041, May 2, 2001, noted that the signed contract, section 2.3.4.5 “Sanitary Sewer,” required the protection of potable water sources and strictly prohibited locating sanitary sewer and manholes in close proximity to water wells.

⁸ USACE-TAN did not document the exact date that Mercury walked away from the Sheberghan project. However, it estimated that Mercury left all three projects in the September-November 2011 timeframe.

⁹ Project files indicate that USACE-TAN paid Mercury the total contract value, less \$191,853 in liquidated damages.

¹⁰ Serial Letter C-007, dated July 29, 2009, notes that Mercury did not adhere to contract requirements and did not respond to USACE requests, and that little progress had been made 166 days into the 330 day contract. Serial Letter C-009, dated August 8, 2009, provided the contractor with an Interim Unsatisfactory Notice, along with an attached deficiency list.

¹¹ Serial Letter C-0039, dated March 27, 2011, noted “significant issues with the single conductor wires in the cable trays, panel board cabinets, and the feeder cable.” Other correspondence noted the use of single conductor wire that was a smaller gauge than the contract required, installation of unapproved electrical panels, feeder cable installed in undersized conduit and without a ground wire, cable placed in direct contact with the ground, the main electrical feed to the circuit

that Mercury did not have enough qualified and trained safety managers to oversee on-site activities. In some cases, safety violations resulted in USACE-TAN temporarily shutting down operations. For example, in July 2011, USACE-TAN stopped work at all three teacher training facility construction sites when one of three minors illegally working at one of the sites cut himself with a saw. The quality assurance report concerning the incident noted that no contract manager, quality control engineer, safety officer, or foreman was present at the site on the day of the accident.

In spite of Mercury’s performance issues and abandonment of the project, USACE-TAN closed out the contract and released Mercury from further liability on November 19, 2011.¹² The contract close-out documents stated that construction was physically completed and that all outstanding issues had been resolved. The documents further stated that the U.S. government had no outstanding claims against the contractor. Nevertheless, our site visit and review of project documents clearly showed that construction remains incomplete and significant issues remain. USACE-TAN officials we spoke with stated that they were not in Afghanistan at the time of contract closeout and thus were unable to explain USACE-TAN’s decision to close out the contract and release the contractor from liability. USACE’s decision for this project is similar to our finding in an October 2012 inspection report that USACE released its contractor from further contract obligations and paid the contractor in full despite performance issues and construction defects.¹³

Second Contractor Was Dismissed for Poor Performance

After Mercury’s departure, USACE contracted with a second company, Zafarkhaliq Construction Company (Zafarkhaliq), an Afghan firm, to finish the work at Sheberghan. On January 23, 2012, USACE-TAN awarded Zafarkhaliq a firm fixed-price contract (W5J9JE-12-C-0043) valued at \$153,000. Zafarkhaliq was responsible for correcting the faulty electrical wiring and completing the facility, including the water and sewage systems, within 30 days of contract award. However, USACE-TAN documents show that Zafarkhaliq had difficulties executing the contract. For example, an August 2012 USACE-TAN project status report stated that Zafarkhaliq had only completed about 65 percent of the required work 8 months after the contract was awarded. The report also noted that the faulty electrical wiring had still not been corrected. Because Zafarkhaliq was not performing the work correctly, USACE terminated the contract on December 1, 2012, after having paid the contractor over \$130,000 and released it from further contractual liability. Table 2 shows key events involving the Zafarkhaliq contract.

Table 2 - Key Events for Zafarkhaliq Contract

2012	Key Event
January	USACE-TAN awards a \$153,000/30-day contract to Zafarkhaliq.
August	USACE-TAN inspection finds electrical problems have still not been corrected, and contract work has not been completed.
December	USACE-TAN closes out the contract, releasing Zafarkhaliq from further contract liability.

Source: SIGAR analysis of contract data.

Contract for Third Contractor Is Pending

USACE-TAN planned to solicit a third contractor to complete the Sheberghan teacher training facility. However, at a March 2013 briefing we provided USAID on the electrical issues we found during our site visit and the performance problems we noted with Mercury and Zafarkhaliq, USAID officials told us they had decided to

panel installed with plumbing fixtures instead of electrical fixtures, plugs installed that were not standard Afghanistan 220 volt; and cable trays and wiring that did not meet contract or code specifications.

¹² Serial Letter C-0062 “Final Payment with Release of Claims” states “all work associated with the above contract is physically complete and all issues have been resolved.”

¹³ SIGAR Inspection 13-1, *Kunduz ANA Garrison: Army Corps of Engineers Released DynCorp of All Contractual Obligations despite Poor Performance and Structural Failures*, October 25, 2012.

eliminate further construction work under the agreement with USACE. Instead, these officials said they were in the process of developing a request for proposals for two local firms to complete the Sheberghan facility; but, as of June 13, 2013, no contracts had been awarded.

SHEBERGHAN FACILITY IS BEING USED IN UNFINISHED CONDITION AND NOT BEING MAINTAINED

The Sheberghan teacher training facility is being used even though the facility has not been completed. USAID officials told us that they had instructed local Afghan officials not to use the school until it was completed. However, when we discussed this with the faculty members at the facility, they told us they repeatedly asked USAID and USACE officials to complete the teacher training facility but had not received a clear response. Not knowing when the facility would be completed, faculty members decided to move in and start using it. During our inspection, we noticed that because of the lack of electricity, the halls and classrooms were dimly lit by natural light coming through the windows (see photo 3). In addition, it was cold and most faculty and students wore coats because the heating system was not operational. Further, because there was no running water, the bathroom facilities were locked and not accessible to faculty or students, requiring them to leave the school area to find toilet facilities.

Photo 3 - Students Studying in an Unlit Classroom



Source: SIGAR, November 28, 2012.

Although the Sheberghan facility is being occupied in its current unfinished state, the U.S. government is still responsible for its operation and maintenance because USAID has not transferred the facility to the Afghan government. The agreement between USAID and USACE states that the Afghan government is not responsible for operation and maintenance until beneficial occupancy is transferred to it. USACE-TAN and USAID officials told us that the transfer of the facility to the Afghan government will not take place until facility construction has been completed and any outstanding issues resolved. As a result, health and safety concerns associated with the lack of electricity, including the substandard electrical wiring and unauthorized taps into the electrical system, as well as the lack of operational water and sewage systems, may pose future costs to the U.S. government if the decision is made to compensate Afghans for injuries sustained because of these substandard facilities.

During our site visit, faculty members also stated that the U.S. government would need to provide funds to fuel the school's 450 kilowatt electrical generator because the school has no fuel budget. These faculty members estimated that the generator would run about 10 hours per day. Based on our calculations, fuel for operating the generator 10 hours a day, at 75 percent capacity, would cost about \$50,000 per month.¹⁴ When we discussed this with USACE-TAN officials, they stated that the coalition forces will not pay for fuel because this is an educational facility which will be turned over to the Afghan government. Our review of the May 2008 agreement between USAID and USACE related to the construction of education facilities at institutes of higher learning in Afghanistan shows that the Ministry of Higher Education is responsible for all operation and

¹⁴ SIGAR used \$1.90 per liter for the cost of diesel fuel. Based on the manufacturer's information, it would cost about \$123,329 per month to operate a 450 kilowatt generator, running at 75 percent capacity, 24 hours per day. Given the 10 hours per day the faculty estimated that the generator would be running, fuel costs would be about \$50,000 per month (\$1.90 per liter x 887 liters of fuel needed for 10 hours of operation per day x 30 days = \$50,572).

maintenance, which would include fuel for the generator, after the Afghan government takes beneficiary occupancy of the facility.

CONCLUSION

More than 4 years after construction began, the Sheberghan teacher training facility remains incomplete. Its history is one of broken promises and undelivered results. One contractor walked away from the project after being paid \$3.1 million despite poor performance and unresolved electrical issues. Another contractor was dismissed for its inability to complete the project. However, in both cases, USACE-TAN inexplicably closed out both contracts and released the contractors from further liability. This raises concerns because we have previously reported instances in which USACE failed to hold its contractors accountable for accomplishing the work they were paid to perform. SIGAR believes that USACE must take immediate action to hold contractors accountable when they fail to deliver on their commitments.

Substandard wiring that does not conform to code and improper taps into the electrical system expose occupants of the Sheberghan facility to potential electrocution and fire hazards. In addition, there may be other problems that our inspection was unable to uncover because the lack of electricity at the site prevented us from testing electrical, water, and sewage systems. The relative proximity between the facility's sewage lines and its water well may also result in future hazards to occupants' health. Furthermore, contrary to USACE-TAN's plans, Afghans at the facility assume that the U.S. government will provide funding to fuel the facility's electrical generator—the facility's sole source of power once the electrical wiring issues are resolved—even after the facility is turned over to the Afghan government. As a result, whether the site will have electricity is questionable. In our view, the Sheberghan teacher training facility does not serve as an example of a well-planned or executed project whose operation and maintenance is sustainable following the departure of coalition forces.

RECOMMENDATIONS

To ensure that the Sheberghan teacher training facility is operated and maintained to meet the needs of the faculty and students, and to protect the U.S. government investment, we recommend that the Commanding General, USACE, direct the Commander, USACE-TAN, to

- 1. Determine, and report the following information to SIGAR within 90 days:**
 - (a) Why USACE-TAN's contractors, Mercury and Zafarkhaliq, were released from their contractual obligations despite poor performance;**
 - (b) Why contract close out files stated that Mercury and Zafarkhaliq completed all work and all outstanding issues had been resolved despite unfinished construction and electrical problems that remain to this day;**
 - (c) Why USACE-TAN released Mercury from any outstanding claims, remediation, and warranty items; and**
 - (d) The identity of the USACE contracting officer(s) involved in the decision to pay the contractor and release it of all contractual liability. After determining why the contractor was paid and released of all liability before completing the project, determine what disciplinary action is appropriate, if any, against the contracting officer(s) responsible for making the decision.**

In addition, to ensure project completion and to protect U.S. government interests, we recommend that the USAID Mission Director for Afghanistan:

2. **Coordinate with USACE to review project documentation, and conduct a site inspection to determine whether the sanitary sewer lines were improperly placed in relation to the water well and pose a health risk to the faculty and students. If so, determine and take the appropriate actions required to remediate the situation.**
3. **Take appropriate measures to minimize existing health and safety risks, including accidents that could arise from the faculty and students' continued unauthorized use of the facility.**
4. **Complete construction of the Sheberghan teacher training facility and expedite its official turnover to the Afghan government.**
5. **Provide adequate oversight to ensure that the facility is properly completed before paying for contractor services.**

AGENCY COMMENTS

We received comments on a draft of this report from USACE and USAID, which we incorporated into the final report, as appropriate. USACE and USAID comments are reproduced in appendices III and IV, respectively.

In its comments, USACE noted that it would address the questions raised in recommendation 1 by conducting further review of the circumstances associated with the close-out of the Mercury and Zafarkhaliq contracts and provide the results to SIGAR by October 15, 2013. Upon completion of that review, we will decide whether to further examine the circumstances surrounding the close-out of the Mercury and Zafarkhaliq contracts.

USACE concurred with recommendation 2 to determine whether the sanitary sewer lines were improperly placed in relation to the water well and identify if remedies were needed. USACE noted that it had completed a review of the sewer lines placement and determined that the well and septic tank have adequate separation. Based on the review, USACE stated that no substantial impact to the water system would be expected under normal operating circumstances. However, when we asked USACE officials to provide documentation of this review, they indicated that they had only reviewed the design plans. This step is insufficient to address the problems we identified in this report. Serial Letter C-0041, dated May 2, 2011, specifically stated that USACE had concerns with the well and septic system "as installed," and directed Mercury Development to submit a proposed plan to protect the water well from potential sanitary sewer contamination no later than May 12, 2011. Our review of the project files indicates that the plan was never submitted and that the issue was not satisfactorily resolved. As of March 2013, USACE-TAN officials indicated that this was still an open issue. Further, because Mercury Development abandoned the project, we were not able to review "as-built" drawings. As a result, we maintain that the only way to satisfactorily resolve this issue is to conduct a site inspection. Because USAID terminated the Participating Agency Program Agreement with USACE, we have revised the report to direct the recommendation to the USAID Mission Director for Afghanistan.

USACE acknowledged recommendation 3, but stated that it no longer has authority to conduct further work because USAID terminated the Participating Agency Program Agreement. Accordingly, we have revised the report to direct the recommendation to the USAID Mission Director for Afghanistan. USACE stated that it is prepared to work with USAID at its request to develop and implement solutions to address deficiencies in the project and to minimize risk.

USAID concurred with recommendation 4, noting that it has been working on a separate contract to complete the project following the termination of the Participating Agency Program Agreement with USACE. USAID estimated that the contract award would be made by the end of July 2013, and that the project would take about 90 days to complete following the award. Upon completion of the project, USAID plans to inspect the facility, require correction of punch list items by the contractor, and provide an implementation letter to the Ministry of Higher Education to formally transfer the facilities to the Afghan government.

USAID also concurred with recommendation 5, noting that the new contract will be performance-based, with the contractor paid for completion of specific project components. USAID further stated that it would assign project oversight by a quality contracting officer's representative and contract for third party quality assurance and quality control.

APPENDIX I - SCOPE AND METHODOLOGY

This report provides the results of SIGAR's inspection of the Sheberghan teacher training facility in Jawzjan province, Afghanistan. This represents one of a series of inspections of construction projects contracted by the U.S. Army Corps of Engineers in the northern provinces of Afghanistan.

To determine whether the construction was completed in accordance with contract requirements and applicable construction standards as well as whether the facilities are being used as intended and maintained, we:

- reviewed contract documents, design submittals, and geotechnical reports to understand project requirements and contract specifications;
- interviewed U.S. and Afghan officials concerning operation and maintenance of the facility; and
- conducted a physical inspection and photographed the project site to observe the current status and the quality of construction.

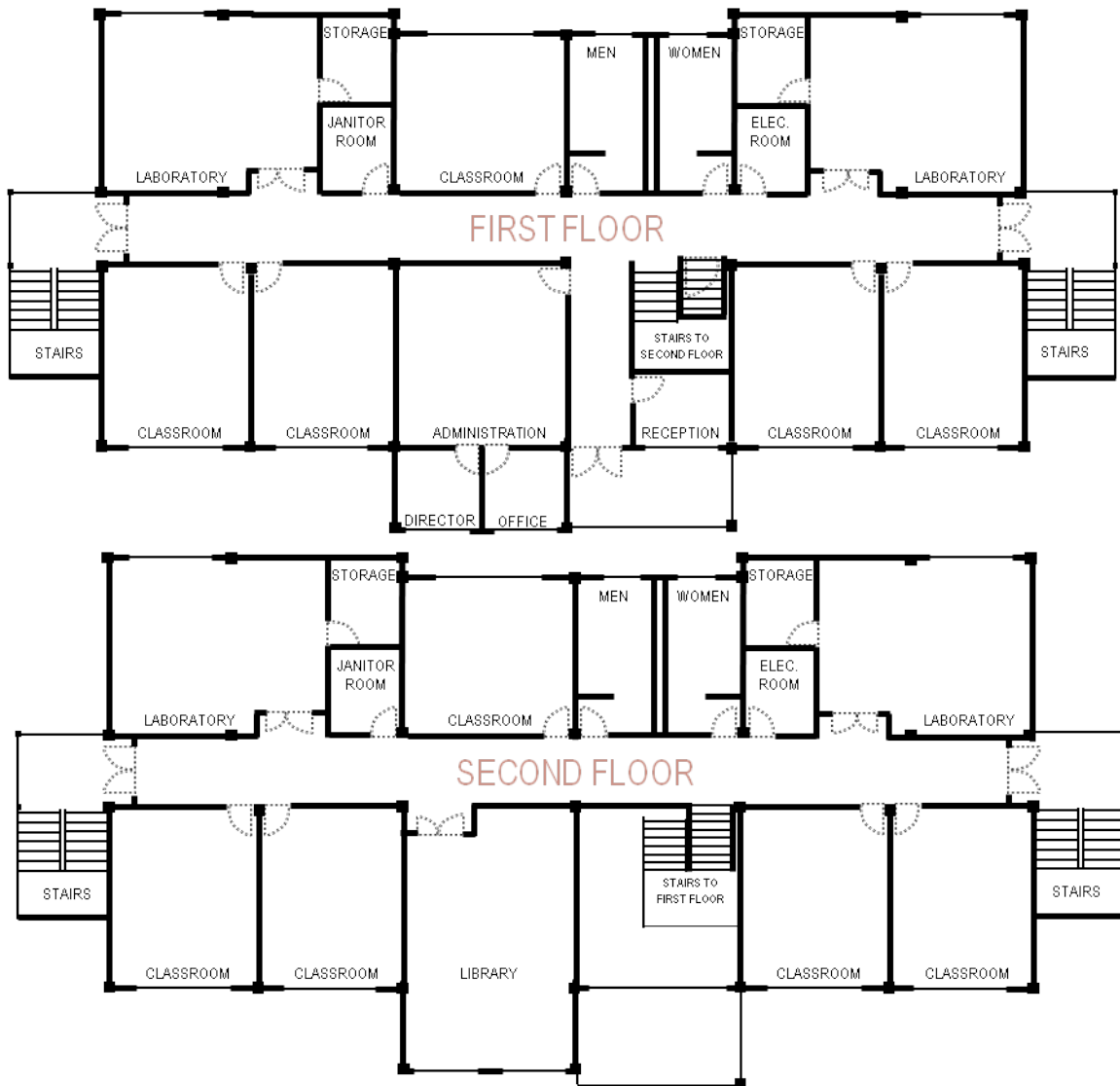
Our inspection was limited because the facility did not have functioning electricity. Due to the lack of electricity, we could not test the building's water, lighting, heating and overhead fans, and sewage systems.

SIGAR conducted its inspection in Kabul, Afghanistan; the USACE-TAN Resident Office at Camp Spann; and the Sheberghan teacher training facility from September 2012 through July 2013. We conducted a site visit on November 28, 2012, and performed our work in accordance with the *Quality Standards for Inspection and Evaluation*, published by the Council of the Inspectors General on Integrity and Efficiency. The engineering assessment was conducted by professional engineers in accordance with the National Society of Professional Engineers' *Code of Ethics for Engineers*. We did not rely on computer-processed data in conducting this inspection. However, we considered the impact of compliance with laws and fraud risk.

We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our inspection objectives. The inspection was conducted under the authority of Public Law No. 110-181, as amended, and the Inspector General Act of 1978, as amended; and in accordance with the *Quality Standards for Inspection and Evaluation*, published by the Council of the Inspectors General on Integrity and Efficiency.

APPENDIX II - SHEBERGHAN TEACHER TRAINING FACILITY FIRST AND SECOND FLOOR PLANS

Figure 1 - Sheberghan Teacher Training Facility Layout



Source: SIGAR analysis of USACE design documents.

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



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
UNITED STATES ARMY CORPS OF ENGINEERS
TRANSATLANTIC DIVISION
255 FORT COLLIER ROAD
WINCHESTER, VIRGINIA 22663

10 JUL 2013

Internal Review Office

Mr. John F. Sopko
Special Inspector General for Afghanistan Reconstruction
2530 Crystal Drive,
Arlington, Virginia 22202-3940

Dear Mr. Sopko:

Enclosed is U.S. Army Corps of Engineers (USACE), Transatlantic Division response to SIGAR Draft Inspection Report 13-9, Sheberghan Teacher Training Facility: USACE Paid Contractors and Released Them from Contractual Obligations Before Construction Was Completed and Without Resolving Serious Health and Safety Hazards.

My point of contact for this correspondence is Mr. George Sullivan, Chief, Internal Review at

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Cook".

MARK A. COOK, PE
COL, EN
Deputy Commander

Enclosure

USACE Comments to SIGAR Draft Inspection Report 13-9, Sheberghan Teacher Training Facility: USACE Paid Contractors and Released Them from Contractual Obligations Before Construction Was Completed and Without Resolving Serious Health and Safety Hazards.

NOTE: The training facility discussed in SIGAR's draft report is referred to as the "Jawzjan Project" by USACE, rather than as the Sheberghan Teacher Training Facility as referred to in SIGAR's draft report.

USACE comments are provided for the draft report and each recommendation as shown.

Key SIGAR Points and USACE Comments:

Operability of Water, Sewage and Electrical Systems:

SIGAR: Water, sewage, and electrical systems remain unfinished and the lack of electricity hindered SIGAR's ability to test lighting, water, heating and cooling, and other systems.

USACE Comments: USACE is aware that the electrical system is incomplete. The lack of electrical power is the reason the water and sewer systems are not working. USACE required the contractor to disconnect the fuel delivery system to the generators as risk mitigation for safety assurances until such time as the electrical upgrades and replacement were fully executed. USACE awarded another contract on 30 December 2012, which required the new contractor to remedy the electrical problems associated with the project. However, USACE was notified by USAID on 9 January 2013, to cease all activities, including rewiring of the Jawzjan facility, effective 15 January 2013. Accordingly, USACE terminated the contract on 16 January 2013.

SIGAR: In addition, doors, windows, bathroom sinks, toilets, lighting fixtures, and heating and air conditioning systems were installed and the electrical generator was on-site.

USACE Comments: No air conditioning systems were included in the scope of work/contract documents. Wall mounted cabinet heaters and ceiling fans were the only systems provided to control temperature.

Safety Hazards and Maintenance:

SIGAR: The facility's electrical wiring does not meet the U.S. National Electrical Code, as the contract required, and an improper entry, known as a "tap," into the electrical system exposes occupants to potential electrocution and fire hazards.

USACE Comments: The Mercury contract was closed out with known deficiencies and modifications were issued to de-scope and obtain credits for the incomplete work. In November 2011, a bi-lateral modification was issued de-scoping the remaining work items with credits retained for deficiencies and liquidated damages. USACE took action to remedy the electrical deficiencies by awarding another contractor on 30 December 2012. However, USAID notified USACE on 9 January 2013 to terminate the contractor. USACE terminated the contractor on 16 January 2013. USAID also ended its Participating Agency Program Agreement (PAPA) with USACE to complete this project and requested that remaining funds be returned to USAID. USACE has since returned all remaining funds (\$1.37M) for this project to USAID. The improper entries or taps into the electrical system, identified by SIGAR, were not authorized by USACE and were not on the project when USACE controlled the facilities.

SIGAR
comment 1

USACE Comments to SIGAR Draft Inspection Report 13-9, Sheberghan Teacher Training Facility: USACE Paid Contractors and Released Them from Contractual Obligations Before Construction Was Completed and Without Resolving Serious Health and Safety Hazards.

USACE no longer controls the project site as USACE no longer has an agreement with USAID to perform work on the project.

SIGAR: Despite construction being incomplete and despite health and safety hazards at the facility, Afghans are using it.

USACE Comments: USACE reported the unauthorized occupancy to USAID by email correspondence, dated 24 October 2011, indicating that: 1) the Ministry of Higher Education (MoHE) stated that they did not have the resources to fund filling of the generator fuel tank and would be forced to utilize the facility with no power until such time as the facility could connect to the city's power grid and 2) that MoHE, in anticipation of the turnover, converted the existing classrooms into living spaces/dormitories for the students. Concerns were expressed to the USAID regarding the unauthorized occupancy and use of the facilities in their unfinished state. Mitigation steps were taken to ensure that the power source (generator) was not connected to the facilities (therefore rendering them inoperable) by disconnecting the fuel system to the generator until all electrical concerns had been remedied. The generator remained unconnected through the duration of USACE construction oversight responsibility, which was terminated upon cancellation of the third contract in January 2013.

SIGAR: The U.S. government is still responsible for operation and maintenance because USACE has not transferred the facility to the Afghan government.

USACE Comments: USACE does not transfer facilities to the Afghan government. USACE transfers facilities to the U.S. customers; in this case, USAID. Since USAID terminated its PAPA agreement with the USACE, the facilities belong to USAID. Although the U.S. government may continue to serve a role in the operation and maintenance aspect, the USACE has no current oversight of the facilities due to contract termination in January 2013. Operations and maintenance have been the responsibility of MoHE from the initial planning and agreement between USAID and MoHE. USAID can provide more specific information regarding the Government's current role and responsibilities for the referenced facilities to specifically address O&M responsibilities.

SIGAR
comment 2

Property Transfer:

SIGAR: USACE-TAN officials told us that the transfer of the facility to the Afghan government will not take place until facility construction has been completed and any outstanding issues resolved.

USACE Comments: As stated previously, USACE does not transfer facilities to the Afghan government. USACE transfers facilities to the U.S. customers; in this case, USAID. Since USAID terminated its PAPA agreement with the USACE, the facilities belong to USAID. The USACE lacks contractual authority to perform any aspect of construction or oversight for the facilities at this time.

USACE Comments to SIGAR Draft Inspection Report 13-9, Sheberghan Teacher Training Facility: USACE Paid Contractors and Released Them from Contractual Obligations Before Construction Was Completed and Without Resolving Serious Health and Safety Hazards.

SIGAR Recommendations and USACE Comments:

Recommendations: To ensure that the Sheberghan teacher training facility is operated and maintained to meet the needs of the faculty and students, and to protect the U.S. government investment, we recommend that the Commanding General, USACE, direct the Commander, USACE-TAN, to:

1. Determine, and report the results to SIGAR within 90 days:
 - (a) Why USACE-TAN's contractors, Mercury and Zafarkhaliq, were released from their contractual obligations despite poor performance;
 - (b) Why contract close out files stated that Mercury and Zafarkhaliq completed all work and all outstanding issues had been resolved despite unfinished construction and electrical problems that remain to this day;
 - (c) Why USACE-TAN released Mercury from any outstanding claims, remediation, and warranty items; and
 - (d) The identity of the USACE contracting officer(s) involved in the decision to pay the contractor and release it of all contractual liabilities. After determining why the contractor was paid and released of all liability before completing the project, determine what disciplinary action is appropriate, if any, against the contracting officer(s) responsible for making the decision.

USACE Comments to Recommendation 1. To develop answers to the questions in this recommendation, USACE will conduct further review of the circumstances associated with close out of the Mercury and Zafarkhaliq contracts. Target date for completing the review and providing the results to SIGAR is 15 October 2013.

2. Determine whether the sanitary sewer lines were improperly placed in relation to the water well and pose a health risk to the faculty and students. If so, determine the appropriate actions required to remediate the situation.

USACE Response to Recommendation 2. Concur. USACE has completed a review of the sewer lines placement and provides the following information. The typical required distance between septic drain/leachfield and a water well is 15m-30m of separation. The U.S. Environmental Protection Agency (USEPA) and the Center for Disease Control and Prevention (CDC) recommend that the minimum distance from the septic tank (and the leach-field) to the well is 50 feet (15 meters). The well and septic at this site have more than 30m of separation. No substantial impact to the water system would be expected under normal operating circumstances. The well head is located inside a building and the separation distance exceeds requirements in the U.S.

SIGAR
comment 3

USACE Comments to SIGAR Draft Inspection Report 13-9, Sheberghan Teacher Training Facility: USACE Paid Contractors and Released Them from Contractual Obligations Before Construction Was Completed and Without Resolving Serious Health and Safety Hazards.

3. Take appropriate measures to minimize existing health and safety risks, including accidents that could arise from the faculty and students' continued unauthorized use of the facility.

USACE Response to Recommendation 3. USACE acknowledges SIGAR's recommendation; however, USACE has no authority to conduct any further work on this project or control who occupies the facilities. As discussed previously, USAID requested that USACE terminate the contract that was in place to complete the facilities. USAID also ended the PAPA with USACE to continue work on this project. As a result USACE terminated the contract on 16 January 2013 and has no further authority to perform work on the project. Nevertheless, USACE is prepared to work with USAID at its request in order to develop and implement solutions to address deficiencies in this project and minimize risk.

SIGAR
comment 4

SIGAR's Response to Comments from the U.S. Army Corps of Engineers

1. USACE states that the improper taps into the electrical system identified by SIGAR were not on the projects when USACE controlled the facilities. However, at the time of our inspection in November 2012, USACE was still implementing the project for USAID under the Participating Agency Program Agreement, which was not terminated until January 2013. In fact, our draft report noted that, during SIGAR's inspection, the USACE resident engineer surmised that the improper tap to supply electricity to a power strip was likely due to a limited supply of electricity from the main generator.
2. Technical correction made.
3. When we followed up with USACE officials, they indicated that their review focused on the design plans. However, documentation we had reviewed in the project files showed that, in May 2011, USACE had concerns with the water well and septic systems "as installed" and directed Mercury Development to submit a proposed plan to protect the water well from potential sanitary sewer contamination. Based on our review of the project files, the plan was never submitted and the issue was never satisfactorily resolved. Because Mercury Development abandoned the project and we were not able to review "as-built" drawings, we maintain that the only way to satisfactorily resolve this issue is to conduct a site inspection. Because USAID has terminated the Participating Agency Program Agreement with USACE, we have revised the report to direct this recommendation to the USAID Mission Director for Afghanistan.
4. We have revised the report to direct this recommendation to the USAID Mission Director for Afghanistan.


APPENDIX IV - COMMENTS FROM THE U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT



MEMORANDUM

July 10, 2013

TO: John F. Sopko
Special Inspector General for
Afghanistan Reconstruction (SIGAR)

FROM: Kathleen Campbell, Acting Deputy Assistant to the Administrator 

SUBJECT: Draft SIGAR Report titled, "Sheberghan Teacher Training Facility: U.S. Army Corps of Engineers Paid Contractors and Released Them from Contractual Obligations before Construction Was Completed and Without Resolving Serious Health and Safety Hazards". (SIGAR Inspection 13-9)

REFERENCE: SIGAR Transmittal email dated 06/26/2013

Thank you for providing USAID with the opportunity to review the subject draft inspection report. Discussed below are our comments on the findings and recommendations in the report.

USAID had already undertaken several actions on this program before SIGAR provided USAID and USACE its corrective audit, including terminating the agreement with USACE in January 2013 and beginning procurement of new construction services to finish the electrical work on the three faculty buildings.

To provide context, USAID entered into a Participating Agency Program Agreement with the US Army Corps of Engineers (USACE) in 2008. Under this agreement, USACE took on the responsibility for contracting, quality assurance, and supervision of the construction of up to sixteen faculties of higher education as part of a larger USAID Higher Education Program. USACE was not to perform the construction activity but was to provide the contract management for it. The agreement was subsequently descoped to six faculties of higher education in 2010 and USAID bolstered USACE quality assurance with our own quality assurance contractor, to ensure optimal construction oversight.

As this report notes, after several problems with contractors – one of whom left and whose successor was dismissed for non-performance – delayed the completion of this program, USAID decided to terminate this agreement with

USACE. USAID is now in the final stages of procurement for a contract to complete the electrical work on the three remaining facilities. We expect that this contract to be awarded by the end of July.

PART I: COMMENTS ON SIGAR'S FINDINGS

1. ***Summary page, third paragraph:*** *"The U.S. government is still responsible for operation and maintenance because USACE has not transferred the facility to the Afghan government."*

USAID Response: USAID concurs. As this is a USAID funded project, USAID is responsible for transferring the facility to the Afghan Government, not USACE. The Ministry of Higher Education is the line ministry with authority for university programs.

2. ***Summary page, fifth paragraph:*** *"The report also recommends that the USAID Mission Director for Afghanistan (4) complete construction of the Sheberghan teacher training facility and expedite its official turnover to the Afghan government."*

USAID Response: USAID concurs; this is in line with what USAID has been working on. Following the termination of the agreement with USACE in January 2013, USAID has been preparing for a separate contract to complete the work on this and two other facilities. We issued a Request for Task Order Proposals (RFTOP) to a pool of Indefinite Quantity Contractors (IQC) for this work in February 2013, and received only one proposal which we evaluated in April 2013. The proposal did not comply with the requirements and was canceled.

USAID has reissued the RFTOP, and an award is expected by the end of July 2013. Once an award is made, work will commence and take approximately 90 days to complete. Upon completion, inspection of the facilities, and correction of punch list items by the contractor, an implementation letter will be provided to the Ministry of Higher Education to formally transfer the facilities to the Afghan Government.

3. **Summary page, fifth paragraph:** *“and (5) provide adequate oversight to ensure that the facility is properly completed before paying for contractor services.”*

USAID Response: USAID concurs. As is the case with all our construction awards, USAID will assign a Contracting Officer’s Representative (COR) to monitor and evaluate progress on the project and will contract for quality assurance (QA) services to provide on-site daily monitoring of activities and reporting until the project is completed. All systems, including electrical, sewerage, water, and mechanical, will be tested to ensure that all are fully operational. USAID will ensure the terms and conditions set forth are enforced and payment made only upon completion of all activities outlined in the statement of work.

4. **Page 5, second paragraph:** *“Although the Sheberghan facility is being occupied in its current unfinished state, the U.S. government is still responsible for its operation and maintenance because USACE has not yet transferred the facility to the Afghan government.”*

USAID Response: See comment one. As this is a USAID-funded project, USAID will transfer the facility to the Afghan Government, not USACE.

PART II: COMMENTS ON SIGAR’S RECOMMENDATIONS

The report recommends that the USAID Mission Director for Afghanistan:

- 4) *Complete construction of the Sheberghan teacher training facility and expedite its official turnover to the Afghan government.*

USAID Comments: USAID concurs with the recommendation. Upon termination of the USACE agreement in January 2013, USAID has been working on a separate contract for the completion of this work. We expect an award to be made by the end of July.

- 5) *Provide adequate oversight to ensure that the facility is properly completed before paying for contractor services.*

USAID Comments: USAID concurs with the recommendation, as it is entirely consistent with USAID standard implementation and

management practice. Once a new contract is awarded, USAID will assign project oversight by a qualified COR and will contract third party quality assurance and quality control. The contract will be performance based; the contractor will be paid for completion of specific project components.

cc: CCDEA

APPENDIX V - ACKNOWLEDGEMENTS

Crawford “Les” Thompson, Senior Inspections Manager

Brian M. Flynn, Senior Audit Manager

Milton Naumann, Auditor-in-Charge

Warren Anthony, Senior Auditor

William “Lee” Dillingham, Professional Engineer

This inspection report was conducted
under project code SIGAR-I-006D.

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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