SIGAR

Special Inspector General for Afghanistan Reconstruction

SIGAR 14-26 Audit Report

Support for Afghanistan's Justice Sector: State Department Programs Need Better Management and Stronger Oversight

JANUARY
2014

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WHAT SIGAR REVIEWED

Since 2005, the Department of State (State) has spent at least $223 million on justice sector development programs in Afghanistan, including State's Bureau of International Narcotics and Law Enforcement Affairs' (INL) programs to train Afghan justice sector personnel such as judges, prosecutors, and defense attorneys. The Justice Sector Support Program (JSSP) is one of these programs and is comprised of three main components: regional training of justice sector officials, developing a case management system, and building administrative capacity at Afghan ministries.

In January 2013, INL signed a letter of agreement with the International Development Law Organization (IDLO), a public international organization with a mission to promote the rule of law worldwide, which transferred the regional justice training component from the contractor that previously implemented the JSSP—PAE Incorporated (PAE)—to IDLO.

This audit assesses (1) INL's management of the JSSP contract and the extent to which the JSSP's contribution to the development of the Afghan justice sector can be measured, (2) the extent to which INL's decision to transfer the JSSP's Regional Justice Sector Training component—now known as the Justice Training Transition Program (JTTP)—from PAE to IDLO affects INL' s oversight of the program, and (3) State's efforts to coordinate justice sector programs in Afghanistan across U.S. government agencies.

JANUARY 2014

Support for Afghanistan's Justice Sector: State Department Programs Need Better Management and Stronger Oversight

SIGAR 14-26 AUDIT REPORT

WHAT SIGAR FOUND

The Department of State's (State) Bureau of International Narcotics and Law Enforcement Affairs' (INL) management and oversight of the Justice Sector Support Program (JSSP) contract with PAE Incorporated (PAE) limited its ability to assess the contractor's performance and the JSSP's contribution to justice sector development. For example, PAE was required to develop a case management system to track and record cases throughout Afghanistan's justice system and propose a robust plan for ensuring the Afghan government could sustain the system. However, the statement of work did not define what would be considered "robust" or "sustainable." The requirement to deploy the system nationwide was also unrealistic and required subsequent modification. Specifically, under the May 2011 statement of work agreed to between INL and PAE, the case management system was supposed to be completed nationwide by May 2012. However, geographic, logistical, and other challenges prevented PAE from expanding the electronic, internet-based case management system beyond 7 of 34 of Afghanistan's provinces. As a result, INL modified the contract by replacing the requirement for a nationwide system with one that required implementation in only the seven provinces where it had already been installed.

INL was also required to track contract costs, but State officials said it is difficult to determine whether contract invoices and payments are accurate. Therefore, the risk remains that State could reimburse PAE for costs that have already been reimbursed or that are not allowable under the contract. Moreover, INL could not provide SIGAR PAE's required monthly quality assurance reports covering nearly half the period of contract performance. INL could have used these reports to monitor the progress of the JSSP and the quality of PAE's work.

In addition, some of the performance metrics in the PAE contract, such as the number of classes taught or hours PAE staff spent advising trainees, focus on short-term outputs rather than long-term outcomes of the program. INL officials told SIGAR that developing long-term outcome-oriented performance metrics for JSSP is challenging because the results from justice sector development efforts cannot be determined in the short-term because they take many years, if not decades, to fully realize. As a result, JSSP's contribution to the development of the Afghan justice sector is unclear.

INL's decision to transfer the Regional Justice Sector Training component of the JSSP to the International Development Law Organization (IDLO) raises concerns about INL's oversight of the $47.8 million IDLO program. This component, now known as the Justice Training Transition Program (JTTP), was transferred from PAE to IDLO in January 2013, despite the management and financial challenges IDLO was facing at the time. For

example, according to a State official working closely with the program, IDLO has faced high leadership turnover and budgetary shortfalls that, according to IDLO's Audit and Finance Committee, raise serious questions about the future sustainability of the organization. Furthermore, although INL officials stated that the transfer to IDLO would result in lower costs, INL did not conduct a formal cost/benefit analysis to support this assertion or a "lessons learned" evaluation of the work performed by PAE that could have been used to help develop the JTTP. INL originally required PAE to conduct a detailed evaluation of the JSSP's Regional Justice Sector Training component in 2012. However, it is now expected to be completed by the end of 2013.

SIGAR also found that INL has limited its authority to oversee IDLO's work on the JTTP. In particular, INL's letter of agreement with IDLO omits provisions that would give INL the authority to access IDLO records that is similar to its authority to access PAE records related to the JSSP. The letter of agreement with IDLO includes no clear provisions securing INL's right to directly audit IDLO or to access all records showing how U.S. taxpayer funds are being spent. Such provisions are normally required by State to be included in letters of agreement with other nations, but State officials told SIGAR that this policy is not binding on agreements with international organizations. State officials also told SIGAR that the approved JTTP program proposal prepared by IDLO includes plans for conducting oversight, but SIGAR's review of IDLO's proposal found that these plans describe how IDLO will monitor and evaluate the JTTP, not how State will monitor and evaluate IDLO.

State is taking action to coordinate justice sector programs in Afghanistan across different U.S. government agencies. Through the U.S. Embassy in Kabul, State created the Office of the Coordinating Director of Rule of Law and Law Enforcement (CDROLLE) in July 2010 to better coordinate justice sector programs. CDROLLE marked the first time that the Embassy made rule of law a specific portfolio to be handled by an ambassador-rank official. Greater coordination resulted in INL and U.S. Agency for International Development (USAID) officials realizing both agencies were providing support for female Afghan judges. This led to INL ending its work in this area and allowing USAID to assume full responsibility for that initiative. Embassy officials told SIGAR they are currently updating the 2009 U.S. Government Rule of Law Strategy for Afghanistan to, among other things, assist them to identify overall goals for the Afghan justice sector and help them develop policies and programs to achieve those goals. However, this strategy has not been finalized and there is no clear timeline for its completion.

WHAT SIGAR RECOMMENDS

SIGAR recommends that the Secretary of State (1) include in future JSSP and/or successor program contracts specific, detailed explanations of the requirements to which the contractor will be held accountable as well as baseline data and target indicators to be used for evaluating program success; (2) expedite completion of PAE's evaluation of the JSSP's Regional Justice Sector Training component and ensure it is shared with IDLO immediately upon its completion so that oversight can be provided in a timely, effective manner, and that the lessons learned identified in this evaluation are used in the design and implementation of the JTTP; (3) renegotiate INL's letter of agreement with IDLO to include provisions that would secure the right of the U.S. government to audit and inspect IDLO records related to funds furnished to IDLO under the JTTP, and to obtain any information from IDLO necessary to evaluate the performance and effectiveness of IDLO's implementation of the JTTP and safeguard U.S. funds dedicated to the program; and (4) in cooperation with other U.S. agencies managing rule of law programs in Afghanistan, finalize the updates to the 2009 U.S. Government Rule of Law Strategy within 3 months, so that timely decisions can be made to guide the development and coordination of current and future justice sector programs in Afghanistan.

In its comments on a draft of this report, State agreed with recommendations one, two, and four, and partially agreed with recommendation three. State's comments and SIGAR's response are reproduced in appendix III. This report also includes, in appendix IV, a July 2013 alert letter to the Secretary of State regarding IDLO's work on the JTTP. State's comments on that alert letter, and SIGAR's response to State's comments, are in appendix V.

January 24, 2014

The Honorable John F. Kerry
Secretary of State

This report discusses the results of SIGAR's audit of the State Department's Bureau of International Narcotics and Law Enforcement Affairs' (INL) management of programs to support the development of Afghanistan's justice sector, specifically its management of the Justice Sector Support Program (JSSP) and Justice Training Transition Program (JTTP). The report includes four recommendations to (1) include in future JSSP and/or successor program contracts specific, detailed explanations of the requirements to which the contractor will be held accountable as well as baseline data and target indicators to be used for evaluating program success; (2) expedite completion of PAE's evaluation of the JSSP's Regional Justice Sector Training component and ensure it is shared with IDLO immediately upon its completion so that oversight can be provided in a timely, effective manner, and that the lessons learned identified in this evaluation are used in the design and implementation of the JTTP; (3) renegotiate INL's letter of agreement with IDLO to include provisions that would secure the right of the U.S. government to audit and inspect IDLO records related to funds furnished to IDLO under the JTTP, and to obtain any information from IDLO necessary to evaluate the performance and effectiveness of IDLO's implementation of the JTTP and safeguard U.S. funds dedicated to the program; and (4) in cooperation with other U.S. agencies managing rule of law programs in Afghanistan, finalize the updates to the 2009 U.S. Government Rule of Law Strategy within 3 months to guide the development and coordination of current and future justice sector programs in Afghanistan.

We received written comments on a draft of this report from State, which we incorporated, as appropriate. State agreed with recommendations one, two, and four, and partially agreed with recommendation three. State's comments, along with our response, are reproduced in appendix III. In addition, State included a September 11, 2013, correspondence responding to SIGAR's July 22, 2013, alert letter to the Secretary of State regarding our concerns with the decision to transfer responsibility for the JSSP's Regional Justice Sector Training component from PAE to IDLO. The July 2013 alert letter is reproduced in appendix IV. State's September 2013 correspondence and our response are reproduced in appendix V.

SIGAR conducted this work under the authority of Public Law No. 110-181, as amended, and the Inspector General Act of 1978, as amended; and in accordance with generally accepted government auditing standards.

John F. Sopko
Special Inspector General
for Afghanistan Reconstruction

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ABBREVIATIONS

CDROLLE	Coordinating Director of Rule of Law and Law Enforcement
COR	Contracting Officer's representatives
IDLO	International Development Law Organization
INL	Department of State's Bureau of International Narcotics and Law Enforcement Affairs
JSSP	Justice Sector Support Program
JTTP	Justice Training Transition Program
PAE	PAE Incorporated
State	Department of State
USAID	U.S. Agency for International Development

Since reconstruction efforts in Afghanistan began in 2001, the U.S. government, the international community, and the Afghan government have made improving Afghanistan's justice system a priority. Key documents have noted the importance of the justice sector, including the U.S. government's Integrated Civilian-Military Campaign Plan for Support to Afghanistan and the Afghan Government's National Priority Programs focus on strengthening Afghan rule of law and Afghan citizens' access to justice.

The Department of State (State) has invested in a variety of rule of law programs since 2005, including programs managed by its Bureau of International Narcotics and Law Enforcement Affairs (INL) to train Afghan justice sector personnel.[1] State also serves as the lead coordinator for U.S. justice sector development efforts in Afghanistan, responsible for coordinating the activities of several U.S. agencies, including the U.S. Agency for International Development (USAID) and the Department of Justice.

INL has spent approximately $205.5 million on its Justice Sector Support Program (JSSP) to provide training to Afghan justice sector officials, to develop a case management system to track cases throughout Afghanistan's justice system, and to build the capacity and administrative skills of officials within Afghan ministries.[2]

DESCRIPTION OF JUSTICE SECTOR SUPPORT PROGRAM (JSSP) COMPONENTS	
Component 1	**Regional Justice Sector Training:** Providing training for justice sector officials, including providing the Advanced Continuing Legal Education for Afghanistan (ACLEA) course and conducting shorter trainings and seminars on specific topics such as trial advocacy, crime scene management, and various other select topics
Component 2	**Case Management System:** A case management system designed to track criminal cases across justice institutions, from investigations through sentencing, appeal, and release from prison
Component 3	**Institutional/Administrative Capacity Building:** Providing capacity building training and administrative skills development for Afghan ministries' officials in areas such as understanding and developing budgets

Source: SIGAR analysis of State data.

Note: The Advanced Continuing Legal Education for Afghanistan course is an approximately 8 week course that covers a variety of legal subject material.

Prior to January 2013, INL's JSSP was operated under a cost-reimbursement contract with PAE Incorporated (PAE), an Arlington, Virginia based firm that provides a wide range of construction, operation, maintenance, training, and other services to the U.S. government and other countries around the world. In January 2013, INL transferred the JSSP's Regional Justice Sector Training component to the International Development Law Organization (IDLO), an international organization based in Rome, Italy. IDLO's stated mission is to promote the rule of law worldwide. Following this transfer, the Regional Justice Sector Training component was renamed the Justice Training Transition Program (JTTP), and INL now manages it separately from the remaining two components of the JSSP, which are still operated by PAE.

[1] We use the term "justice sector personnel" to represent Afghans working in the justice sector such as judges, lawyers, prosecutors, defense attorneys, criminal investigators.

[2] This figure represents State's JSSP expenditures from March 31, 2005 through May 31, 2013.

This report assesses (1) INL's management of the JSSP contract and the extent to which the JSSP's contribution to the development of the Afghan justice sector can be measured, (2) the extent to which INL's decision to transfer the JSSP's Regional Justice Sector Training component—now known as the JTTP—from PAE to IDLO affects INL's oversight of the program, and (3) State's efforts to coordinate justice sector programs across U.S. government agencies.

To accomplish these objectives, we reviewed State contracts for the agency's justice sector programs, the contracts' associated documentation, and the letter of agreement signed between State and IDLO for implementation of the JTTP. We reviewed State and USAID federal policies and procedures governing the implementation of contracts and letters of agreement. In addition, we analyzed U.S. government strategies and other documentation on the goals and objectives of the JSSP, JTTP, and broader rule of law and justice sector efforts. We interviewed State, USAID, PAE, and IDLO officials in Washington, D.C; Rome, Italy; and at several locations in Afghanistan to gain a better understanding of their work developing and implementing justice sector programs. We conducted our work from December 2012 through January 2014 in accordance with generally accepted government auditing standards. Appendix I contains a more detailed discussion of our scope and methodology.

BACKGROUND

U.S. government rule of law programs in Afghanistan focus on developing both the informal and formal justice sectors. The informal sector consists of traditional dispute resolution, *jirga*s, and *shura*s and generally involves local-level legal mediation through village elders and other community officials. The Afghan government identifies *jirga*s and *shura*s as an important political pillar of the civil legal system in Afghanistan and defines them as unprejudiced, impartial bodies that make decisions based on facts and logic. *Jirga*s and *shura*s have played a role in resolving internal disputes in Afghanistan both at the village level and at higher levels involving the country's leaders. The U.S. government funds reconstruction programs intended to develop and support Afghanistan's informal justice sector. USAID's Rule of Law Stabilization-Informal Program is one U.S. government program that is designed to strengthen the informal justice sector. This program holds legal workshops on *Sharia* law to help ensure that legal practitioners adhere to its requirements.

The formal justice sector—Afghan government legal institutions, such as the Afghan Supreme Court, and government ministries, including the Ministry of Justice—also forms the focus of a number of U.S. government programs. For example, in December 2009, we reported on U.S. government efforts to improve the security provided to Afghan judicial officials in the performance of their duties.[3] We found that, although the United States has been the single largest contributor to Afghanistan's justice sector, U.S. judicial security assistance lacked key elements of a strategic approach and has, at times, been uncoordinated.

INL's JSSP and JTTP programs are part of the U.S. government's efforts to develop the formal justice sector in Afghanistan. The JSSP is among the longest running rule-of-law programs in Afghanistan. The JSSP implementation contract was initially awarded to PAE in May 2005; INL then re-competed the contract and awarded it again to PAE in May 2010. INL officials act as contracting officer's representatives (COR), while State's Bureau of Administration administers the contract through a contracting officer. INL officials were generally responsible for designing program goals and objectives, determining the services PAE would be required to produce under the contract, and monitoring and evaluating PAE's performance under the contract.

As discussed above, INL transferred the JSSP's Regional Justice Sector Training component to IDLO in January 2013, after renaming it the JTTP, while continuing to contract with PAE for the remaining two JSSP components. INL transferred the JTTP to IDLO through a "letter of agreement," according to which IDLO would be paid $47,759,796 for program implementation. State guidelines define a letter of agreement as

[3] SIGAR 10-3S, *Actions Needed for a More Strategic Approach to U.S. Judicial Security Assistance*, December 18, 2009.

> "…an agreement between the U.S. government (USG) and a foreign government(s) under the terms of which a specific project is carried out. Such agreements reflect the commitments made by all parties to accomplish the project objectives. A [letter of agreement] is an umbrella agreement that establishes the framework of an agreement for a specific program purpose. Once the [letter of agreement] is established, multiple grants (and, in many cases, contracts) are awarded to various organizations to fulfill the program purpose within the framework of the agreement."[4]

State Department guidance also states that a letter of agreement legally obligates agency funds to finance an activity.[5] According to State officials, the contribution of U.S. taxpayer dollars to IDLO through a letter of agreement was permissible according to section 481 of the Foreign Assistance Act of 1961, as amended, which authorizes the President to provide assistance to "any country or international organization…for anticrime purposes."[6]

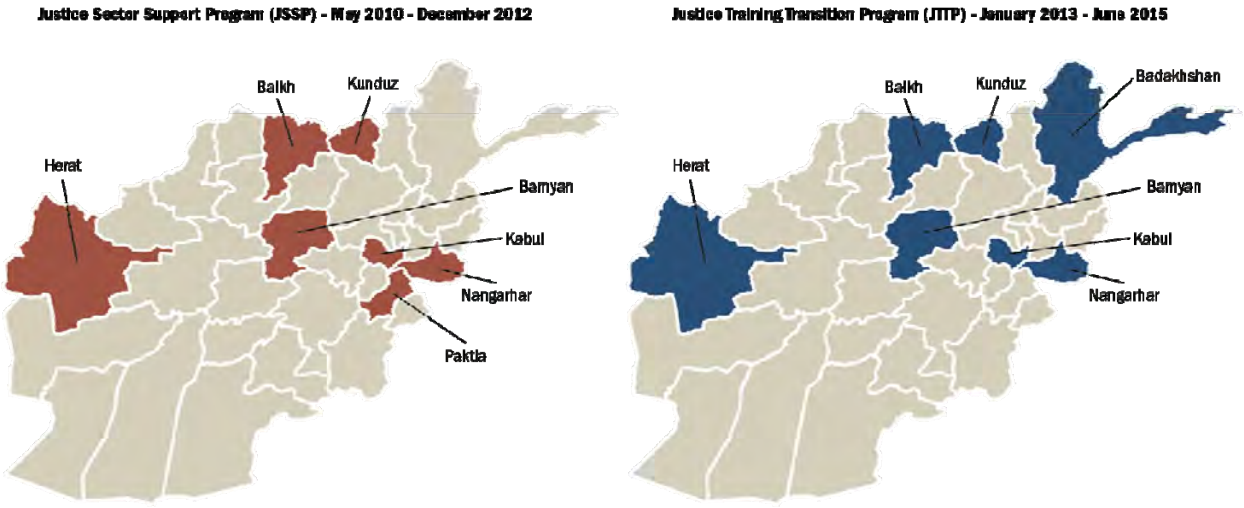
In January 2013, INL paid IDLO $20 million to begin implementation of the JTTP and agreed to provide $27.8 million more to fund the program until May 31, 2015, contingent upon the success of the program. According to IDLO's JTTP program proposal, IDLO plans to conduct a review around January 2015 to determine whether an extension of up to 6 additional months may be necessary to meet the program's objectives. IDLO also plans to provide regional training in Afghanistan that will continue the "positive aspects" of the training programs carried out under the predecessor JSSP. IDLO plans to focus on transitioning responsibility for training Afghan justice sector personnel to the Afghan justice ministries by the end of the program in 2015. In particular, IDLO's program proposal states, among other things, that the JTTP will raise the capacity of Afghan judges, lawyers, and prosecutors to a level where further international assistance is no longer essential. The proposal also states that IDLO will maintain regional offices in the majority of provinces where JSSP previously had offices, except for the eastern border province of Paktia. In addition, the JTTP will open a new regional office in the northeastern province of Badakhshan (see figure 1).

[4] Department of State, Bureau of Administration, Office of the Procurement Executive, Federal Assistance Division (A/OPE/FA), *Guidelines for Application and Administration for Federal Assistance Awards Issued by the Department of State*, (Version 1.2 03-2011), pp. 21-22.

[5] Department of State, Bureau of Administration, *Federal Assistance Policy Handbook*, (Version 1.2), March 2011, pp. 28-29.

[6] Foreign Assistance Act of 1961 § 481, 22 U.S.C. § 2291(a)(4).

Figure 1 - JSSP and JTTP Regional Training Locations in Afghanistan



Source: SIGAR analysis of State data.

Note: These maps show regional offices for the JSSP and JTTP. The JSSP also used mobile training teams that traveled to provinces outside the permanent training locations to conduct courses and seminars. The JTTP is also conducting similar mobile training activities. The JTTP Kabul-based mobile team provides training in remote or insecure provinces where JTTP does not have a permanent presence. The locations of the mobile training activities are not shown on the maps.

In addition to INL's JSSP and JTTP, other U.S. government agencies manage programs intended to improve Afghanistan's justice sector. For example:

- *USAID's Rule of Law Stabilization Program—Formal* is designed to provide legal education for new and existing Afghan judges, provide administrative capacity building for Afghanistan's Supreme Court, support Afghanistan's law and Sharia faculties, and help the Supreme Court and the Ministry of Justice conduct outreach to Afghans.
- *Department of Justice's Seven Step Training Seminar* aims to teach police, prosecutors, and judges the fundamentals of critical and analytical thinking using Afghan law and practice.

INL'S MANAGEMENT AND OVERSIGHT OF THE JSSP CONTRACT LIMITED ITS ABILITY TO ASSESS THE CONTRACTOR'S PERFORMANCE AND THE PROGRAM'S CONTRIBUTION TO JUSTICE SECTOR DEVELOPMENT

JSSP Contract Requirements Were Poorly Defined

The Federal Acquisition Regulation states that, "requirements for services are clearly defined and appropriate performance standards are developed so that the agency's requirements can be understood by potential offerors and that performance in accordance with contract terms and conditions will meet the agency's requirements."[7] However, in a number of areas, requirements in the JSSP statements of work for the contracts implementing the JSSP did not clearly define key contract terms and requirements. For example, one major purpose of the JSSP was to develop a case management system to track and record cases throughout Afghanistan's judicial system. PAE was required to propose "a robust plan for ensuring GIROA [the Afghan government] sustainability" of the case management system. However, the contract's statement of work did

[7] FAR 37.502.

not define what would qualify as a "robust" plan or what PAE is expected to deliver in terms of "sustainability." The requirement to deploy the case management system across Afghanistan also did not demonstrate an understanding of likely challenges to implementing such a system. Under the May 2011 statement of work, PAE was supposed to complete a nationwide case management system by May 2012 to help track cases throughout Afghanistan's justice system. However, geographic, logistical, and other challenges, such as traveling to remote locations and not having internet access in many parts of the country, prevented PAE from expanding the electronic, internet-based case management system beyond 7 of Afghanistan's 34 provinces. INL's May 2012 modification to the contract removed the requirement for a nationwide electronic case management system, requiring only that a "roll-out" be established in seven provinces.[8] In its comments on a draft version of this report, State noted that the case management system has been used to identify violations of defendants' due process rights, including cases experiencing delays and has thus provided Afghan justice officials with information needed to address areas of concern.

Another example of a poorly-defined contract requirement is the requirement for PAE to provide a plan to assist the Afghan Ministry of Women's Affairs on issues of "gender mainstreaming" among other justice institutions. The statement of work did not define "gender mainstreaming," specify which "gender mainstreaming" issues PAE should address, or identify the "other justice institutions" to which the assistance should be directed.

State contracting officials we spoke with told us that some JSSP contract requirements were poorly defined and that this lack of specificity resulted in the deliverables actually provided to INL by PAE being "useless." These officials said they could work with INL officials to revise specific deliverables, but that this had not yet happened and, ultimately, INL would be the final authority on what deliverables would be in the contract.

INL Did Not Perform All Required Oversight Duties

INL conducted some monitoring of PAE's activities. For example, the JSSP contract required PAE to produce weekly and monthly narrative program reports, which included summaries of work performed as well as information from PAE's discussions with Afghan program participants. INL officials told us they used these reports to make improvements to the program. They also told us they monitored the program's activities through discussions between Washington, D.C. and Kabul-based INL staff and through weekly telephone calls and email conversations with PAE officials.

Nevertheless, not all of INL's oversight activities were conducted as required. For example, the JSSP contract states that INL CORs are to perform regular inspections and surveillance of PAE's activities and to document their findings in monthly reports. However, INL could not provide us with monthly reports or any other documentation demonstrating that the CORs overseeing the JSSP had conducted required oversight activities from May 2010 to December 2011. In addition, the JSSP contract requires PAE to provide monthly quality assurance reports that could be used to assist INL CORs in conducting their oversight activities. However, INL could not provide PAE's quality assurance reports for May 2011 or for the 17 months between August 2011 and December 2012, representing nearly half of the contract's period of performance. Although the quality assurance reports were required by the contract, INL officials told us they did not find these reports valuable, noting they were not substantive and, instead, were only one or two-page summaries of PAE activities. In its comments on a draft version of this report, State acknowledged the absence of complete quality assurance files, but noted that, since January 2013, it has made significant improvements, including record keeping, standard checklists for all areas of performance, and communications improvements with the contractor's quality control staff.

INL also had difficulty keeping track of program costs. The Federal Acquisition Regulation requires agencies to carefully oversee cost-reimbursement contracts—contracts "that provide for payment of allowable costs, to the extent prescribed in the contract."[9] However, State contracting officials told us that the department's system

[8] The seven provinces were Kabul, Heart, Balkh, Nangarhar, Kandahar, Khost, and Paktia.

[9] Federal Acquisition Regulation Subpart 16.3.

for tracking and reviewing PAE's invoices and receipts to determine allowable costs was ineffective. For example, the officials said it is not easy to determine whether the invoices and payments listed in the system are accurate. This results in a risk that State could pay PAE for costs that have already been reimbursed or that are unallowable under the contract. State is taking actions to resolve these problems by modifying the department's electronic system to better track contract invoices and receipts. Specifically, State is modifying its "MetaStorm" electronic system to improve management controls of invoice approvals, minimize risk of improper payments, and improve invoice processing timelines.

INL also neglected to ensure that PAE provided required contract deliverables in a timely manner. For example, the May 2010 renewal of the JSSP implementation contract required PAE to develop an internal quality control plan. The contract noted that the quality control plan would delineate PAE's approach to ensuring the quality of services performed at all program locations, describe the process for identifying and resolving problems, and describe the responsibilities of the different levels of PAE's management within its quality control system. In addition to improving PAE's ability to provide quality services to the government, such a plan could have also improved INL's ability to oversee PAE. Nevertheless, PAE did not develop a draft of this plan until September 2012—over 2 years after the contract was signed—and State did not approve the plan until February 2013—nearly 3 years after the contract was signed.

JSSP's Contribution to the Development of the Afghan Justice Sector Is Unclear

Initially, INL relied primarily on anecdotal information from periodic program reports, as well as discussions with PAE and Afghan participants, to measure the JSSP's achievements. For example, INL looked at PAE's program reports to identify specific examples of the JSSP's major accomplishments, such as how a particular technique learned in the program contributed to a case or investigation's success.

INL did not develop a performance management plan detailing specific performance metrics for JSSP until October 2012—about 2.5 years after it signed the May 2010 contract with PAE. Objectively measuring how well a program is meeting its stated goals and objectives is a key component of performance management.[10] A balanced set of performance indicators can be used in measuring or assessing progress towards performance goals and providing a basis for comparing actual program results with established performance goals. Such measures can include, among other things, efficiency, output, and outcome indicators.

The October 2012 performance management plan contained performance metrics—both quantitative and qualitative--to assess PAE's performance, including:

- Number of JSSP training courses conducted;
- Number of Afghans attending courses;
- Total hours that JSSP staff spent advising trainees;
- Afghan trainees' test scores before and after attending a training course;
- Number of cases logged into the case management system.
- Improvements in Afghan government ministries' budget and procurement processes; and
- Improvements in communications across Afghan justice sector ministries.

Although this performance management plan contained specific metrics it lacked baselines against which to assess progress and targets to which PAE could be held accountable.[11] Notably, INL's JSSP performance

[10] Organization for Economic Cooperation and Development, Development Assistance Committee Working Party on Aid Evaluation, *Results Based Management in the Development of Co-Operation Agencies: A review of Experience*. (Executive Summary, p.3)

[11] A baseline is the value of a performance indicator before the implementation of projects or activities, while a target is the specific, planned level of result to be achieved within an explicit timeframe. (See U.S. Agency for International Development, *Performance Monitoring and Evaluation TIPS: Baseline and Targets,* (Second Edition, Number 8, 2010), p.1.)

management plan acknowledges that the absence of a baseline means there is no comparison to provide a measure of change in performance from the previous year and against which to assess program impacts.

Moreover, some of the metrics INL relies upon to determine program success, such as the number of courses conducted and the total hours JSSP staff spent advising trainees, focus on short-term performance outputs, as opposed to long-term performance outcomes that could help determine the JSSP's overall effect on development of Afghanistan's justice sector. Although State's performance management guidance states that evaluating a program's overall effect on its beneficiaries may be challenging because achieving outcomes is a resource-intensive effort that takes time to appear, it also states that measuring a program's overall impact can only be done through such an approach.[12]

INL's inconsistent oversight of the JSSP and the limited steps taken to objectively assess the programs impact on Afghan justice sector development means that after over 8 years and an investment of at least $205.5 million, INL does not know the extent to which the JSSP has contributed to the sustainability of the Afghan justice sector.

INL'S TRANSFER OF THE REGIONAL JUSTICE SECTOR TRAINING COMPONENT TO IDLO RAISES OVERSIGHT CONCERNS

As discussed above, State transferred one of the three JSSP components from PAE to IDLO in January 2013. That component—the Regional Justice Sector Training component—was renamed the JTTP and is now managed by INL as a separate program from JSSP. The Case Management System and Institutional/Administrative Capacity Building components of the JSSP continue to be implemented by PAE.

INL officials told us there were several reasons why they chose to obtain justice sector training services from IDLO, including:

- INL's familiarity with and confidence in IDLO's implementation of another program in Afghanistan. Specifically, INL paid IDLO over $12 million between 2010 and 2012 to implement another justice sector development program to, among other things, improve legal services for the Afghan people.[13] The program has since been extended and is intended to expand and improve legal aid services to Afghans through the Legal Aid Organization of Afghanistan. According to INL officials we spoke with, IDLO was the only international development organization with an exclusive mission to improve the rule of law in the developing world and, therefore, was the "best and only feasible partner."
- INL's expectation that Afghans will be more likely to cooperate with IDLO-led programs because Afghanistan is a member of IDLO. INL officials told us that Afghan government acceptance is critical to moving forward with transferring justice sector development efforts to Afghan management.
- INL's assertion that the mechanism for transferring responsibility to IDLO—a letter of agreement as opposed to a procurement contract—involved fewer administrative requirements than a procurement contract. For example, using a letter of agreement allowed INL to avoid having to provide for full and open competition prior to selecting IDLO as the JTTP implementer. Similarly, using a letter of agreement allowed INL to avoid having to determine whether costs incurred by IDLO under the JTTP are allowable under the agreement.
- INL's assertion that it was becoming increasingly difficult for PAE to operate in Afghanistan because the contractor could no longer use private security contractors for its protection. PAE—like other private contractors working in Afghanistan—is now required to use Afghan Public Protection Force

[12] Department of State, Bureau of International Narcotics and Law Enforcement Affairs Afghanistan-Pakistan, *Outreach and Programs Support Unit, Justice Sector Support Program, Performance Management Plan*, (October 2012.) Department of State, Bureau of Democracy, Human Rights, and Labor, *Monitoring and Evaluation Plan Primer for DRL Grantees."*

[13] "Supporting the National Justice Sector Strategy for Afghanistan: Improving Security, Legal Rights and Legal Services for the Afghan People."

personnel for security. The Afghan Public Protection Force is a state-owned enterprise under the jurisdiction of the Afghan Ministry of Interior. INL officials told us IDLO, an international organization with United Nations Observer Status, has a waiver that allows it to use private security contractors for security. State asserts that this exemption limits IDLO's security costs and gives it more freedom of movement throughout Afghanistan.

INL officials told us some of the factors listed above would result in the JTTP being less expensive than its predecessor, the Regional Justice Sector Training component of JSSP. However, INL did not conduct a cost/benefit or other analysis to support these assertions. INL officials told us that such an analysis would be of limited use because the JSSP was implemented in a different environment with different security constraints than the JTTP.

Moreover, INL did not conduct a formal "lessons learned" assessment of the JSSP's Regional Justice Sector Training component that could be used to inform the development of the JTTP. The Federal Acquisition Regulation underscores the need for acquisition planners to incorporate lessons learned from previous contracts when developing new programs or contracts.[14] Although a letter of agreement is not a procurement contract subject to the Federal Acquisition Regulation, such lessons learned may have nonetheless been useful in designing the JTTP. Instead of conducting a formal lessons learned assessment, INL officials told us they shared some examples of JSSP's successes and mistakes with IDLO for the organization's use in designing the program. For example, INL officials shared with IDLO their observations that the JSSP's restrictions on allowing beneficiaries to repeat training courses that they had already completed was an obstacle to students seeking to refresh their knowledge of a particular subject matter. INL then worked with IDLO to develop specialized follow-on seminars to allow students to refresh their knowledge. Moreover, in its comments on a draft version of this report, State noted that PAE and IDLO are working together and sharing information during ongoing implementation of the JTTP to, for example, avoid duplication of training.

INL officials told us they are requiring PAE to conduct a systematic, detailed evaluation of the JSSP's Regional Justice Sector Training component. INL originally required PAE to develop this type of evaluation in 2012. However, in May 2013, PAE officials told us they hoped to complete the evaluation in the summer. The evaluation has been further delayed and is now expected to be completed by the end of 2013. Because IDLO will have been implementing the JTTP for nearly a year by that time, it is imperative that INL share the results of the evaluation with IDLO in a timely manner.

At the time that IDLO was selected to implement the JTTP, it faced operational and financial challenges that continue to raise concerns about INL's decision to transfer responsibility for the Regional Justice Sector Training component to IDLO. According to a State official working closely with the program, IDLO has faced a high rate of leadership turnover, with four different Directors General serving in the 4-year period between 2009 and 2013. IDLO has also faced budget shortfalls. For example, IDLO's Audit and Finance Committee reported in November 2012 that, because of projected budget shortfalls in 2013, IDLO management needed to develop a contingency budget. IDLO acknowledged at the time that "[t]he lack of flexibility in the budget, coupled with IDLO's low level of reserves means that the contingency budget *would raise critical questions about the future sustainability of the organization*".[15] When we raised these issues, INL officials told us that they have taken steps to mitigate some of these concerns, including recommending that the JTTP be managed by a new directorate within IDLO. According to these officials, this has helped ensure that the program will continue even if broader budgetary and organizational problems within IDLO persist. In addition, IDLO officials told us the JTTP directorate includes its own program, budget, administration, legal, human resources, and procurement staff that would be separate from similar positions within IDLO's broader organization.

[14] See, for example, FAR § 7.103(n), (t).

[15] IDLO Contingency Budget, p. 2 (emphasis added).

INL Has Limited Authority to Oversee How IDLO is Spending JTTP Funds

In July 2013, we issued an alert letter to the Secretary of State noting our concerns with the decision to transfer responsibility for the JSSP's Regional Justice Sector Training component from PAE to IDLO.[16] In particular, we noted that INL's bilateral letter of agreement with IDLO seems to omit oversight provisions that would give INL access rights similar to those enjoyed by INL under its procurement contract with PAE for implementation of the JSSP. Unlike INL's contract with PAE, which was subject to the protections of the FAR, the letter of agreement with IDLO includes no clear provisions securing INL's right to audit the program or access records showing how U.S. taxpayer funds are being spent. In addition, although INL relies on CORs to monitor justice sector training work, State officials reported that, because the letter of agreement is not a procurement contract, INL has not arranged for CORs or their equivalent to monitor the regional training work now being performed by IDLO. In its comments to a draft version of this report, State noted that INL now has one "COR/Grant Officer Representative" position at the U.S. Embassy in Kabul.

INL could have included monitoring and evaluation provisions in the letter of agreement that would have given it access to any IDLO financial records pertaining to the JTTP. However, INL chose not to include such provisions. For example, the letter of agreement did not incorporate provisions similar to those that are normally required by State to be included in letters of agreement between the United States and other nations. State's policy specifies that letters of agreement should include provisions:

- Giving the U.S. government the "right…to inspect and audit any records and accounts with respect to funds, property and contract services furnished by that party under [the] agreement to determine that such funds, services, or property are being utilized in accordance with the terms of [the] agreement."
- Requiring the recipient of funds to provide information necessary to evaluate the effectiveness of the project operations under the terms of this agreement. [17]

In our discussions with them following the issuance of our alert letter, State officials acknowledged that oversight provisions like the ones mentioned above have been included in letters of agreement between State and the Afghan Government, among other entities, but not in letters of agreement involving international organizations. INL officials told us State's policy on letters of agreement is not binding on, but could be applied to, international organizations. State officials added that the approved JTTP program proposal prepared by IDLO includes plans for conducting oversight. For example, IDLO submits bi-weekly, monthly, and quarterly program reports to INL. Our review of IDLO's document found that these plans primarily describe how IDLO will monitor and evaluate the program, but do not detail State's monitoring and evaluation activities.

INL officials did not provide us with a clear explanation as to why they did not negotiate for the right to demand basic financial and programmatic information from IDLO, including information that IDLO deems confidential. Instead, INL officials told us they do not have the authority to demand basic information from IDLO, such as organizational charts, because it is an international organization. This explanation appears to contradict State instructions regarding the award of funds to public international organizations, such as IDLO, which specifically discuss the importance of auditing and records access by the U.S. government. The instructions state that when State is the sole contributor to a program, as is the case with the JTTP, the recipient should agree "to make available to [State] or the Comptroller General of the United States all records and documents that support expenditures made under this program."[18]

State's written response to our July 2013 alert letter appears to concede that INL could have negotiated a letter of agreement with IDLO that preserved INL's right to access all records related to how JTTP funds are

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[16] SIGAR Alert 13-6, *Serious Deficiencies Related to the Afghanistan Justice Training Transition Program Administered by the Department of State*, July 22, 2013.

[17] Department of State, *Action Memorandum: Request for Blanket Authority to Negotiate, Conclude and Amend International Agreements for Counter-Narcotics and Anti-Crime Cooperation*, Circular 175, June 21, 1999.

[18] Department of State, *Instructions for PIO [Public International Organizations] Specifics*, August 2013.

spent.[19] In particular, State noted that the "intellectual property" portion of the JTTP program proposal drafted by IDLO grants INL access to non-confidential records concerning the JTTP specifically. In other words, INL negotiated for the right to access some of IDLO's intellectual property records pertaining to the JTTP. This right of access does not, however, go so far as to allow INL to search for and access all financial records pertaining to the JTTP, and State has not explained why it did not seek such a right of access. Moreover, State's response indicates that it limited its apparently modest right to access IDLO's intellectual property related to the JTTP. As noted above, IDLO is apparently only obligated to produce non-confidential records. This limitation on INL's right of access permits IDLO to be the sole determiner of what information will be released concerning the JTTP because IDLO gets to determine what information is "non-confidential" and whether it deals "specifically" with the JTTP. Therefore, State appears to have voluntarily given IDLO a veto over which JTTP documents may be disclosed to U.S. government officials. Such a provision is concerning, given State's acknowledgement that IDLO recently underwent "broad organizational reform."[20] INL's inability to compel IDLO to produce any records showing how U.S. funds are spent in connection with the JTTP, a direct result of its decision to omit strong oversight provisions in its letter of agreement with IDLO, may render INL unable to accurately account for the use of approximately $47.8 million awarded to IDLO to implement that program.

STATE IS TAKING ACTION TO COORDINATE JUSTICE SECTOR PROGRAMS ACROSS U.S. GOVERNMENT AGENCIES

As discussed above, other U.S. government agencies in addition to State are implementing programs to improve Afghanistan's justice sector. Appendix II describes key U.S. government justice sector programs in Afghanistan. State, through the U.S. Embassy in Kabul, has been leading efforts to coordinate these programs since 2005. Table 2 details these coordination efforts.

[19] Department of State letter to SIGAR, *Re: SIGAR Inspection of INL Justice Training Transition Program*, September 11, 2013.

[20] Department of State letter to SIGAR, September 11, 2013.

Table 1 - U.S. Embassy-Kabul Justice Sector Coordination Efforts

DESCRIPTION OF SELECT STATE-LED RULE OF LAW COORDINATION CHANNELS IN AFGHANISTAN

Coordination Channel	Mission	Stakeholders	Status
Coordination Directorate (CD)	· To provide strategic oversight of U.S. government civilian assistance to Afghanistan and law enforcement operations · To ensure that priority cross-cutting issues are addressed in a manner consistent with U.S. government policy and in the context of a fully effective interagency approach · To bring together civilian activities to foster greater cohesion in achievement of U.S. policy goals, and harmonization of key programs both within the U.S. government and with other international donors	· Afghan Threat Finance Cell · Federal Bureau of Investigation-Legal Attaché · Interagency Rule of Law Unit* · International Narcotics and Law Enforcement Affairs Bureau (State)* · U.S. Agency for International Development* · U.S. Center for Disease Control · U.S. Department of Agriculture · U.S. Department of Commerce · U.S. Department of Homeland Security · U.S. Department of Justice* · U.S. Department of Transportation · U.S. Department of the Treasury · U.S. Drug Enforcement Agency · U.S. Embassy Kabul-Economic Section · U.S. Marshals Service	Established in July 2013
Coordinating Director for Rule of Law and Law Enforcement (CDROLLE)	The CDROLLE office's main goal is to coordinate rule of law and justice sector work among U.S. government agencies. CDROLLE also focuses on coordinating law enforcement issues, detention practices, and police reform training	· Afghan Threat Finance Cell · Federal Bureau of Investigation-Legal Attaché · Interagency Rule of Law Unit* · International Narcotics and Law Enforcement Affairs Bureau (State)* · U.S. Agency for International Development* · U.S. Department of Homeland Security · U.S. Department of Justice* · U.S. Drug Enforcement Agency · U.S. Marshals Service	Established in July 2010; merged with the Coordinating Director of Development and Economic Assistance in July 2013 to form the new Coordination Directorate
Interagency Rule of Law Unit (IROL)	To coordinate and develop rule of law and law enforcement policies and initiatives for U.S. Embassy Kabul	· U.S. Agency for International Development* · U.S. Department of Homeland Security · U.S. Department of Justice* · U.S. Department of State* · U.S. Military	Established in 2011; as of July 2013, a unit of the new Coordination Directorate
Rule of Law Coordinator	To be the lead voice and source of rule of law information, communication, and guidance of the U.S. government in Afghanistan	· U.S. Department of State*	Established in 2005 with first official appointed in early 2006; in July 2010, transformed into the Coordinating Director of Rule of Law and Law Enforcement (CDROLLE)

*Agencies mentioned in this report.

Source: SIGAR analysis of State data.

In particular, the Embassy created the Office of the Coordinating Director of Rule of Law and Law Enforcement (CDROLLE) in July 2010 to better coordinate justice sector programs administered by U.S. government agencies in Afghanistan. CDROLLE's creation marked the first time that the U.S. Embassy in Kabul classified rule of law programs as a specific portfolio to be handled by an ambassador-rank official. CDROLLE replaced the Rule of Law Coordinator position, which was organizationally lower within the Embassy. According to CDROLLE officials, the office's creation was driven by the need for better coordination between U.S. civilian and military rule of law stakeholders. CDROLLE's main goals were to coordinate rule of law, justice sector, and law enforcement issues such as special crimes and detention practices among U.S. government agencies.

State and USAID officials told us justice sector coordination primarily focuses on policy level issues but also includes coordination between agencies on their specific justice sector programs. For example, in 2012, INL's JSSP and USAID's Rule of Law Stabilization Program – Formal training programs joined together with other donors to offer a comprehensive criminal law and procedure training in Kunduz, Afghanistan, called the National Initiative for Justice Advancement Training. This program sought to provide basic legal education on

criminal laws and procedures for judges, prosecutors, defense attorneys, and police. In addition, as a result of greater coordination, INL and USAID officials realized that both are providing support for female Afghan judges through the Afghan Women's Judges Association. After discovering this duplication, INL has decided to end its work in this area and has asked USAID to assume full responsibility for working with the association, upon completion of its current grant.[21]

Embassy officials decided in July 2013 to dissolve CDROLLE and merge parts of its functions with the Embassy's Coordinating Director for Development and Economic Assistance to form a new, larger U.S. Embassy Coordination Directorate. Embassy officials stated this decision would, among other things, improve coordination of all U.S. government civilian assistance. Embassy officials told us the new Coordination Directorate is still determining how rule of law coordination will be conducted and its director has chosen to wait until the office is more fully staffed before finalizing specific efforts. In addition, they stated the Office of the Special Representative for Afghanistan and Pakistan will have the authority to determine which interagency coordination efforts will continue.

Moreover, Embassy officials told us that they are currently updating the 2009 U.S. Government Rule of Law Strategy for Afghanistan. This strategy, among other things, looks to focus U.S. rule of law assistance in Afghanistan on "programs that will offer Afghans meaningful access to fair, efficient, and transparent justice," to help increase the Afghan government's legitimacy, and improve its perceptions among Afghans by promoting a culture that values rule of law. The strategy also highlights the importance of using "rule of law coordinators" to improve U.S. rule of law efforts. Embassy officials hope the revised strategy will help them to identify overall goals for the Afghan justice sector and to develop policies and programs to achieve those goals. However, as of August 2013, Embassy officials told us a draft of the strategy was undergoing interagency review in Kabul and there was no specific timeline for its completion.

CONCLUSION

Strengthening Afghan rule of law and improving Afghan citizens' access to justice is a key step in the reconstruction. After many years of war, we recognize that improvements to the country's justice sector may take years, or even decades, to realize. INL, other U.S. government agencies, and international organizations are taking significant steps to achieve these improvements; in particular, the training of judges, prosecuting and defense attorneys, and other justice sector officials in, among other things, the importance of their responsibilities. However, weaknesses in the design and oversight of INL's justice sector programs may threaten any gains that are achieved. When designing the JSSP, INL poorly defined some contractual requirements PAE was to follow and set unrealistic goals that subsequently required contract modification. INL also had difficulties monitoring PAE's progress, tracking program costs, and ensuring required contract deliverables were provided. A lack of baseline performance data and clear targets with which to evaluate PAE's performance has also complicated efforts to gauge the contribution of the JSSP to INL's overall justice sector goals.

INL's difficulties monitoring the performance of the JSSP and JTTP have, if anything, been exacerbated by its decision to transition from a procurement contract with PAE to a letter of agreement with IDLO, a public international organization. INL did not conduct a lessons learned analysis of PAE's experiences under the JSSP, which could have informed the design of IDLO's program. Moreover, although we do not dispute that the oversight requirements of a procurement contract differ from those of a letter of agreement, we maintain that when U.S. government agencies should defend their rights to access all records related to how U.S. taxpayer funds are being spent. INL failed to include basic oversight provisions to protect the U.S. government's right to access all records pertaining to the JTTP and to independently audit IDLO's work on that program. The current agreement seems to give IDLO sole authority to determine which documents will released to the U.S.

[21] In March 2011, INL provided a 3-year grant to the International Association of Women Judges. The grant provides computers skills courses and English language training in Kabul and supports the Afghan Women's Judges Association.

government, by virtue of the fact that INL's access to records is limited to those non-confidential documents pertaining specifically to the JTTP. Given INL's difficulty in tracking funds spent on the JSSP, this is an imprudent arrangement that places at risk the $47.8 million in U.S. taxpayer dollars scheduled to be given to IDLO under the JTTP.

The U.S. government has a variety of programs across various agencies to improve the justice sector and strengthen rule of law in Afghanistan. The U.S. Embassy in Kabul has had some success coordinating these programs, as evidenced by joint INL and USAID training and the elimination of a duplicative program. Nevertheless, the Embassy's main rule of law coordinating entity—CDROLLE—no longer exists and the Embassy has just undergone a major organizational change with the new Coordination Directorate and some coordination activities are on hold pending additional personnel and policy guidance. Such guidance could be found in an update to the comprehensive U.S. Government Rule of Law Strategy. However, Embassy officials are unsure when those updates will be completed. In our view, it is important that this strategy be completed quickly, particularly as efforts to transfer programs to the Afghan government accelerate before the drawdown of U.S. military forces by the end of 2014.

RECOMMENDATIONS

To strengthen U.S. government efforts to develop Afghanistan's justice sector, we recommend that the Secretary of State:

1. **Include in future JSSP and/or successor program contracts, specific, detailed explanations of the requirements to which the contractor will be held accountable, as well as baseline data and target indicators to be used for program and contract evaluation.**
2. **Expedite completion of PAE's evaluation of the JSSP's Regional Justice Sector Training component and ensure it is shared with IDLO immediately upon its completion so that oversight can be provided in a timely, effective manner, and that the lessons learned identified in this evaluation are used in the design and implementation of the JTTP.**
3. **Renegotiate INL's letter of agreement with IDLO to include provisions that would secure the right of the U.S. government to audit and inspect all IDLO records related to how U.S. taxpayer funds are being spent on the JTTP, and obtain any information necessary to evaluate the performance and effectiveness of IDLO's implementation of the JTTP.**
4. **In cooperation with other U.S. agencies managing rule of law programs in Afghanistan, finalize the updates to the 2009 U.S. Government Rule of Law Strategy within 3 months, so that timely decisions can be made to guide the development and coordination of current and future justice sector programs in Afghanistan.**

AGENCY COMMENTS

We received written comments on a draft of this report from the Department of State. State's comments, along with our response, are reproduced in appendix III. In addition, State included a September 11, 2013, correspondence responding to SIGAR's July 22, 2013, alert letter to the Secretary of State regarding our concerns with the decision to transfer responsibility for the JSSP's Regional Justice Sector Training component from PAE to IDLO. Our July 2013 alert letter is reproduced in appendix IV, and appendix V contains State's September 2013 correspondence and our response to this letter.

State commented that it shared our goals of implementing programs free from waste, fraud, and abuse and acknowledged the absence of complete quality assurance files prior to January 2013. Since that time, however, State noted that it has made significant oversight improvements, including, among other things,

improved record-keeping, standard checklists, and schedules for recurring site visits. Although we commend State for making these improvements and have modified our report accordingly, our argument that INL did not perform all required oversight duties remains valid.

Furthermore, State commented that we "downplayed" the value of INL's deployment of its new "MetaStorm" business process management system. On the contrary, our draft report noted that State is taking actions to resolve its financial management problems by modifying the department's electronic system to better track contract invoices and receipts. Nevertheless, we have modified the report to include additional information on MetaStorm's capabilities.

State also requested that we adjust the draft report's references to the Case Management System to better reflect that it has been useful in providing Afghan justice officials with information needed to address areas of concern. While we have modified our report to reflect these comments, it nonetheless remains the case that PAE was required to deploy the case management system across Afghanistan and, to date, it is only present in 7 or Afghanistan's 34 provinces. We, therefore, maintain that the original JSSP contract requirements were poorly defined and overly ambitious.

In addition, while State agreed that an evaluation of the JSSP program needs to be completed, it requested that "SIGAR revise its assessment that the JTTP was not developed with JSSP lessons learned in mind." We disagree. As our draft report noted, no cost/benefit or other analysis was conducted to support INL's assertions that the JTTP program was to be less expensive than its predecessor, the Regional Justice Sector Training component of JSSP. Moreover, INL did not conduct a formal "lessons learned" assessment of the JSSP's Regional Justice Sector Training component that could have been used to inform the development of the JTTP. While we have modified our report to reflect State's comments that PAE and IDLO worked together and are sharing information, the fact remains that a formal evaluation of the PAE's performance in the JSSP's Regional Justice Sector Training component is only now being conducted—1 year after the transition of PAE's responsibilities to IDLO. Such an untimely performance evaluation, in our view, reduces its usefulness in designing JTTP.

State also took exception to our characterization of the monitoring and oversight provisions of the JTTP. Specifically, State commented that "it would be inaccurate to assert that INL has limited authority for of IDLO's implementation of JTTP, as INL has secured authority for oversight of IDLO exceeding those required under U.S. law." Nevertheless, as our draft report noted, State did not incorporate provisions in its letter of agreement with IDLO that are specified in State policy, including, among other things, giving the U.S. government the right to inspect and audit any records and accounts with respect to U.S. funds and requiring the recipient of those funds to provide information necessary to evaluate the effectiveness of the project operations. State instructions regarding the award of funds to public international organizations, such as IDLO, specifically discuss the importance of records access and auditing by the U.S. government. However, State's letter of agreement with IDLO grants INL access only to "non-confidential" records concerning JTTP—with IDLO determining what constitutes "confidential" and "non-confidential" records. In addition, while State commented that semi-annual reviews of IDLO will be conducted in excess of the "routine standard" of an annual audit, there appear to be no provisions in the agreement to provide for the independent audit of the JTTP by the U.S. government. In our view, these limitations on access to JTTP records severely constrain the U.S. government's ability to oversee IDLO's implementation of the JTTP.

With regard to our recommendations, State agreed with our first recommendation that future JSSP and/or successor program contracts include specific, detailed explanations of the requirements to which the contractor will be held accountable as well as baseline data and target indicators to be used for evaluating program success. Specifically, State commented that the JSSP statement of work already fulfill our recommendation. However, State is misinterpreting the recommendation. As our draft report noted, the existing JSSP contract had poorly defined requirements and poorly implemented oversight procedures. Our recommendation is designed so that *future* contracts avoid these same deficiencies.

State also agreed with our second recommendation to direct PAE to expedite completion of its evaluation of the JSSP's Regional Justice Sector Training component and to ensure it is shared with IDLO. State commented that, although PAE has not yet finalized its evaluation, it plans to share the report with IDLO when completed in the same way INL has shared numerous project documents with IDLO through the creation and continuation of the JTTP program.

State partially agreed with our third recommendation to renegotiate the letter of agreement with IDLO to include provisions that would secure the right of the U.S. government to audit and inspect IDLO records related to funds furnished to IDLO under the JTTP and to obtain any information necessary to evaluate the performance and effectiveness of IDLO's implementation of the JTTP and safeguard U.S. funds dedicated to the program. As discussed above, State commented that IDLO agreed to its request for semi-annual reviews of the program beginning in 2014, exceeding the "routine standard" of an annual audit of the organization. However, as we have noted, State still appears to have voluntarily given IDLO a veto over which JTTP documents may be disclosed to U.S. government officials. Moreover, State has allowed IDLO sole authority to determine which auditor conducts these semi-annual reviews and appears to have included no provision for independent reviews by INL and other State officials, State's Office of Inspector General, SIGAR, or the Comptroller General of the United States, which, by law, have the right to audit U.S. government expenditures.

Finally, State agreed with our fourth recommendation to finalize the updates to the 2009 U.S. Government Rule of Law Strategy and commented that it plans to complete these updates within 3 months as we recommended.

State also provided technical comments that we incorporated into the report, as appropriate.

APPENDIX I - SCOPE AND METHODOLOGY

In December 2012, we initiated an audit of justice sector training efforts conducted by the U.S. Department of State (State) and how those efforts are coordinated with other U.S. agencies such as the U.S. Agency for International Development (USAID). The audit scope expanded after initiation based on congressional interest. In March 2013, we notified State that our audit expanded to include not only a review of the Justice Sector Support Program's (JSSP) regional justice training program but also a review of the two other main programmatic components of the JSSP: the development and implementation of the case management system and efforts to build the administrative capacity of officials with the Afghan government's justice sector ministries and offices.

In this audit, we assessed (1) State's Bureau of International Narcotics and Law Enforcement Affairs' (INL) management of the JSSP contract and the extent to which the JSSP's contribution to the development of the Afghan justice sector can be measured, (2) the extent to which INL's decision to transfer the JSSP's Regional Justice Sector Training component—now known as the JTTP—to the International Development Law Organization (IDLO) advances INL's training objectives, and (3) State's efforts to coordinate justice sector programs across U.S. government agencies. We reviewed documents from 2005 to 2013. We did not use computer-processed data. We determined the data was reliable for purposes of addressing the objectives. To assess INL's contract management and the extent to which it can measure the JSSP's contribution to the development of Afghan justice sector capacity, we reviewed its contractor's—PAE Incorporated (PAE)—performance in meeting contract requirements. We analyzed contract documentation such as statements of work, quality assurance reports, and periodic performance reports to ascertain State's progress in implementing and overseeing the program. To determine requirements for and results of implementation, oversight, and performance management, we analyzed the Federal Acquisition Regulation, Department of State Acquisition Regulation, Government Accountability Office reports, and State program evaluation guidance as well as other laws, policies, and guidance relating to contract implementation, oversight, and performance management. Additionally, we interviewed State program and contracting officials in INL, INL's Contract Administration and Support Division, and State's Bureau of Administration's Office of Acquisition Management. We also interviewed PAE officials responsible for implementing the JSSP to obtain their views on the program, its development and implementation, and any challenges.

To assess the extent to which INL's decision to transfer the regional justice training component to IDLO advances its regional justice sector training efforts, we reviewed documents explaining the transfer such as State memoranda and transition plans as well as IDLO's public statements. We reviewed State's September 11, 2013, response to SIGAR's July 22, 2013, 13-5 Alert Letter and related IDLO public statements. We reviewed internal controls by reviewing State and federal guidance for letters of agreement, the mechanism that State selected to fund its agreement with IDLO, such as State Circular 175, State's Foreign Assistance Manual, and the Foreign Assistance Act of 1961, as amended, to understand the policies, procedures, and requirements for entering into letters of agreement. The results of our assessment are included in the body of the report. To understand State and IDLO's Justice Training Transition Program (JTTP), we analyzed JTTP program documents such as the letter of agreement, the JTTP program proposal, the JTTP work plan, and the JTTP budget and budget justification. In addition, we analyzed IDLO's organizational documents, when possible, to understand the organization's mission, budget, and operational and management capacity. Further, we interviewed State officials from INL, the Bureau of International Organizations, the Office of the Legal Advisor, the U.S. Mission to the United Nation Agencies in Rome, and other offices to obtain State's views on IDLO and the JTTP. We also interviewed IDLO officials and their JTTP program implementers in Afghanistan to understand the IDLO mission and organization and to obtain their views on the JTTP.

To assess State's efforts to coordinate justice sector programs across U.S. government agencies, we analyzed State and other agencies' guidance for coordinating on justice sector and rule of law efforts such as the U.S Government's 2009 Rule of Law Strategy for Afghanistan. We also analyzed State, USAID, and Department of Justice documentation for their respective justice sector programs to identify the extent to which they

coordinated their various justice section training efforts. Additionally, we interviewed State officials from U.S. Embassy Kabul, the Coordinating Director of Rule of Law Enforcement (CDROLLE), the Interagency Rule of Law Committee, State INL, USAID, and DOJ as well as PAE and IDLO employees to obtain their views on the coordination of U.S. justice sector training efforts in Afghanistan.

We conducted our audit work in Washington, D.C.; Kabul, Mazar-i-Sharif, and Herat, Afghanistan; and Rome, Italy from December 2012 to January 2014, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was performed by SIGAR under the authority of Public Law No. 110-181, as amended; and the Inspector General Act of 1978, as amended.

APPENDIX II - DESCRIPTION OF KEY U.S. GOVERNMENT JUSTICE SECTOR PROGRAMS IN AFGHANISTAN

Agency	Program	Goals	Program Duration
State	Justice Sector Support Program (JSSP)	To train and build the capacity of Afghan justice sector officials such as judges, prosecutors, defense attorneys, and criminal investigators in Kabul and provincial centers; develop a Case Management System to help track criminal cases throughout Afghanistan's justice system; and further develop the capacity of Afghan justice sector institutions, including the Supreme Court and Ministry of Justice	May 2005 – December 2013
	Justice Training Transition Program (JTTP)	To train Afghan judges, lawyers, and prosecutors in Kabul and provincial centers to a level of capacity where further international assistance with training is no longer essential	December 2012 – May 2015
USAID	Rule of Law Stabilization Program – Formal (RLS-F)	To conduct legal education for new and existing Afghan judges, provide administrative capacity building for Afghanistan's Supreme Court, support Afghanistan's law faculties and Sharia or religious universities; and help the Supreme Court and the Ministry of Justice conduct outreach to Afghans	May 2010 – January 2014
DOJ	Seven Step Training Seminar	To teach police, prosecutors, and judges the fundamentals of critical and analytical thinking using Afghan law and practice so that the lessons taught will be more accessible, useful and useable	March 2011 – Present

Source: SIGAR analysis of State, USAID, and DOJ program data.

Note: This table illustrates the programs being discussed in this report, and is only a partial representation of all the justice sector development programs conducted by State, USAID, and DOJ.

There are similarities between the JSSP, JTTP, Rule of Law Stabilization Program—Formal, and the Seven Step Training Seminar. For example, INL's JTTP trains judges and prosecutors working within the Ministry of Justice, while USAID's Rule of Law Stabilization Program—Formal trains judges working in the Supreme Court, and DOJ's Seven-Step Training Seminar trains judges and prosecutors working in the Counter Narcotics Justice Center. Similarly, INL's JSSP trains personnel in Afghanistan's Attorney General's Office on preparing ministry budgets and writing budget justifications, while USAID's Rule of Law Stabilization Program—Formal trains personnel in the Afghan Supreme Court to develop and manage budgets. Furthermore, the JSSP and Rule of Law Stabilization Program—Formal both support the development of records management systems. Namely, the JSSP supports the development of the Case Management System (designed to monitor the status of criminal cases in Afghanistan, across all criminal justice institutions, from case initiation to completion and used in the Afghan Ministry of Justice, the Attorney General's Office, the Ministry of Interior, the Supreme Court, and related justice organizations throughout Afghanistan). The Rule of Law Stabilization Program—Formal, on the other hand, supports the development of the Afghan Court Administration System designed to better control and organize case files, improve transparency and accessibility of case information, simplify and standardize court filing procedures and registration books, and improve the court reporting system and used in the Supreme Court and courts nationwide.

INL and USAID officials told us that although these programs conduct similar training and capacity building efforts, they do not overlap because they focus on different Afghan justice sector ministries. Additionally,

officials point out that while the JSSP's Case Management System and Rule of Law Stabilization Program—Formal's Afghan Court Administration System both seek to improve administrative capacity efforts through similar approaches and collect similar data (such as court dates, case dispositions, and biographical information of the defendant), the Afghan Court Administration System focuses on case filing systems internal to Afghan courts while the Case Management System is applicable to all Afghan government justice sector ministries.

United States Department of State

Washington, D.C. 20520

January 15, 2014

Ms. Elizabeth A. Field
Assistant Inspector General for Afghanistan Reconstruction
1550 Crystal Drive, Suite 900
Arlington, VA 22202

Dear Ms. Field:

The Bureau of International Narcotics and Law Enforcement Affairs (INL) welcomes the opportunity to comment on this draft Special Inspector General for Afghanistan Reconstruction (SIGAR) report entitled, "Support for Afghanistan's Justice Sector: State Department Programs Need Better Management and Stronger Oversight" (dated January 2014). INL respects SIGAR's role in safeguarding U.S. taxpayer investment, and we share your goals of implementing programs free from waste, fraud, and abuse.

This letter, which includes detailed responses to the recommendations in the SIGAR draft report, provides clarifications on the bureau's current operating practices. In Appendix I, we provide the Department of State's September 11, 2013 correspondence responding to SIGAR's alert letter about the JTTP program. Appendix II contains technical corrections to the SIGAR draft report. We ask that SIGAR reflect this information in its final report.

See SIGAR comment 1.

INL acknowledges the absence of complete Quality Assurance Surveillance Plan (QASP) files; however, since January 2013, INL made significant QASP oversight improvements, including those for record-keeping. Standard QASP checklists were implemented for all areas of functional performance on the task order. We established schedules for recurring site visits. Communication improved with the contractor's quality control staff; and the files are being stored in an electronic file-share location. We note that the draft report downplayed the value of INL's deployment (in November 2012) of the MetaStorm business process management system that was discussed by INL during the course of the audit. With MetaStorm, INL improved fiduciary management controls for invoice approvals and minimized the risk of any improper payments. We also improved invoice processing timelines, which enabled greater efficiency in handling invoice rejections and minimized the risk of processing duplicate payments.

See SIGAR comment 2.

See SIGAR comment 3.

INL requests that SIGAR adjust the references to the Case Management System (CMS). CMS is an example of a program with buy-in and implementation commitment from Afghan justice institutions. CMS is managed through the CMS Monitoring Board and increases transparency and accountability among all of the justice institutions involved in the criminal case process. CMS has been utilized to identify violations of defendants' due process rights, including cases experiencing procedural delays thus providing Afghan justice officials with the information needed to address areas of concern.

See SIGAR comment 4.

While INL agrees that an evaluation of the JSSP program needs to be completed, INL requests that SIGAR revise its assessment that JTTP was not developed with JSSP lessons learned in mind. PAE and IDLO worked together to develop formal transition plans, continue to develop joint work plans, and attend regularly scheduled meetings to share information and to ensure coordination. JSSP has provided JTTP with saturation studies to avoid duplication of training and to assist in identifying training needs. INL's efforts in collaboration with PAE and IDLO ensured the smooth transition of a vital program to a more feasible structure in light of logistical, security, and political considerations, without any interruption or gaps in the provision of training.

See SIGAR comment 5.

INL also takes exception to how the report characterizes the monitoring and oversight provisions that exist within the JTTP program. It would be inaccurate to assert that INL has limited authority for oversight of IDLO's implementation of JTTP, as INL has secured oversight abilities with IDLO exceeding those required under U.S. law. These oversight measures in many cases exceed those required of private entities. INL shares SIGAR's strong focus on monitoring and oversight and for that reason, worked with IDLO to negotiate an amendment to the letter of agreement (LOA) which, when signed, will require increased auditing and information sharing following the SIGAR alert letter.

See SIGAR comment 6.

INL requests that the above corrections and additions be incorporated into SIGAR's final report. Additionally, INL offers the following responses to the recommendations contained in SIGAR's December 2013 draft report.

Responses to Recommendations

Recommendation 1: SIGAR recommends that future JSSP and/or successor program contracts include specific, detailed explanations of the requirements to which the contractor will be held accountable as well as baseline data and target indicators to be used for evaluating program success.

INL Response (January 2014): INL agrees with this recommendation, noting that the JSSP statement of work (SOW), together with the work plan and supporting documents, already fulfill SIGAR's recommendation.

See SIGAR comment 7.

INL provided SIGAR with the JSSP SOW which outlined programmatic goals and required that PAE develop a draft work plan to be submitted to INL with their cost and technical proposals. The SOW outlined the program structure, personnel, program support, and other requirements to provide the basic parameters necessary for PAE to develop the work plan.

The deliverables provided to INL by PAE include performance, input, output, outcome, and impact metrics. Upon submission, INL evaluated the quality, accuracy, and timeliness of each work plan deliverable submission; all work plan submitted deliverables were approved by INL before being accepted as final. The deliverables approved by INL, and provided to SIGAR for review, are detailed and comprise 67 pages.

Recommendation 2: SIGAR recommends that PAE expedite completion of its evaluation of the JSSP's Regional Justice Sector Training component and ensure it is shared with IDLO immediately upon its completion so that oversight can be provided in a timely, effective manner and that the lessons learned identified in this evaluation are used in the design and implementation of the JTTP.

INL Response (January 2014): INL agrees with this recommendation, and plans to share the report and results with IDLO when completed, in the same way that INL has shared numerous project documents with IDLO through the creation and continuation of the JTTP program.

While PAE has not finalized its Qualitative Study which SIGAR references as the evaluation of the JSSP Regional Justice Sector Training component, the research findings have been shared with INL throughout the research and drafting phases. PAE completed its Regional Saturation Report in July 2012 and shared it with INL and IDLO; INL and IDLO used this report jointly, with other JSSP reports, to design the JTTP program. INL has discussed pertinent findings with other implementers, including IDLO. The cumulative sum of justice sector lessons learned was highly influential in designing JTTP, and the preliminary results of the qualitative study have helped to inform programmatic decisions since mid-2013.

Recommendation 3: SIGAR recommends that INL renegotiate the letter of agreement with IDLO to include provisions that would secure the right of the U.S. government to audit and inspect IDLO records related to funds furnished to IDLO under the JTTP, *and* to obtain any information necessary to evaluate the performance and effectiveness of IDLO's implementation of the JTTP and safeguard U.S. funds dedicated to the program.

INL Response (January 2014): INL partially agrees with this recommendation, noting that as outlined in INL's response to SIGAR's alert letter, located at http://www.state.gov/p/sca/rls/214289.htm, mechanisms consistent with U.S. Law and the practices of member states applicable to international organizations to which they are a party are already in place for audit and inspection of funds furnished to IDLO under the JTTP. The U.S. exercises its rights and responsibilities as a Member State to request audits and seek reporting on the performance of the international organization and its activities through these existing mechanisms funded by member state contributions. In response to SIGAR's draft alert letter, we are in the process of concluding a negotiated amendment to reflect that in addition to already required bi-weekly, quarterly, mid project and end of project reporting, IDLO will furnish INL with information necessary to evaluate the effectiveness of JTTP operations and impact.

See SIGAR comment 6.

Given the large amount of funding allocated to JTTP, IDLO additionally agreed to INL's request to exceed the routine standard of an annual audit of the organization at large and has agreed to identify an independent auditor to conduct semi-annual reviews of the program beginning in 2014. The semi-annual reviews will include recommendations regarding JTTP's financial and administrative processes. Our experience with IDLO gives us strong confidence that all information necessary to evaluate the performance and effectiveness of IDLO's implementation of JTTP and safeguard U.S. funds dedicated to the program will be provided.

Recommendation 4: SIGAR recommends that in cooperation with other U.S. agencies managing rule of law programs in Afghanistan, finalize the updates to the 2009 U.S. Government Rule of Law Strategy within 3 months, so that timely decisions can be made to guide the development and coordination of current and future justice sector program in Afghanistan.

SRAP Response (January 2014): Relevant U.S. Government agencies are currently updating the 2009 U.S. Government Rule of Law Strategy for Afghanistan. The strategy will provide updated policy guidance for our rule of law efforts in Afghanistan and ensure that they are in line with our transition goals.

Programmatic reviews currently underway by various agencies will help inform this process. We expect to complete the updated strategy within the three month timeframe recommended by SIGAR.

We appreciate SIGAR's thorough examination of programming in Afghanistan's justice sector. INL looks forward to continuing to work with SIGAR and other relevant authorities on these issues.

Sincerely,

James A. Walsh
Executive Director

SIGAR's Response to Comments from the Department of State Dated January 15, 2014

1. SIGAR's July 22, 2013, alert letter, State's September 11, 2013, correspondence commenting on the alert letter, and our response to State's correspondence are reproduced in appendices IV and V.
2. Although we commend State for making these improvements to project oversight and have modified our report accordingly, our argument that INL did not perform all required oversight duties prior to January 2013 remains valid.
3. We disagree that we "downplayed" the importance of MetaStorm. Our draft report noted that State is taking actions to resolve its financial management problems by modifying the department's electronic system to better track contract invoices and receipts. Nevertheless, we have modified the report to include additional information on MetaStorm's capabilities.
4. We have modified our report to reflect these comments. However, it remains the case that PAE was required to deploy the case management system across Afghanistan and, to date, it is only present in 7 or Afghanistan's 34 provinces. We, therefore, maintain that the original JSSP contract requirements were poorly defined and overly ambitious.
5. State requested that SIGAR revise its assessment that the JTTP was not developed "with JSSP lessons learned in mind." We believe State inaccurately characterized our assessment. As our draft report noted, IDLO and INL officials shared information and observations to help design the JTTP and we have modified the report to provide examples of communication between PAE and IDLO. Nevertheless, no cost/benefit or other analysis was conducted to support INL's assertions that the JTTP program was to be less expensive than its predecessor, the Regional Justice Sector Training component of JSSP. Moreover, INL did not conduct a formal "lessons learned" assessment of the JSSP's Regional Justice Sector Training component that could have been used to inform the development of the JTTP. While we have modified our report to reflect State's comments that PAE and IDLO worked together and are sharing information, the fact remains that a formal evaluation of the PAE's performance in the JSSP's Regional Justice Sector Training component is only now being conducted—1-year after the transition of PAE's responsibilities to IDLO. Such an untimely performance evaluation, in our view, reduces its usefulness in designing JTTP.
6. We strongly disagree with State's comment that it is inaccurate to assert that INL has limited oversight authority over IDLO's implementation of JTTP. As our draft report stated, State did not incorporate provisions in its letter of agreement with IDLO that are specified in State policy; including, among other things, giving the U.S. government the right to inspect and audit any records and accounts with respect to U.S. funds and requiring the recipient of those funds to provide information necessary to evaluate the effectiveness of the project operations. State instructions regarding the award of funds to public international organizations, such as IDLO, specifically discuss the importance of records access and auditing by the U.S. government. However, State's letter of agreement with IDLO grants INL access only to "non-confidential" records concerning JTTP—with IDLO determining what constitutes "confidential" and "non-confidential" records. In addition, while State commented that semi-annual reviews of IDLO will be conducted in excess of the "routine standard" of an annual audit, there appear to be no provisions in the agreement to provide for the independent audit of the JTTP by the U.S. government. In our view, these limitations on access to records severely constrain the U.S. government's ability to oversee IDLO's implementation of the JTTP.
7. State agreed with our first recommendation, commenting that the JSSP statement of work already fulfill the recommendation. In our view, however, State is misinterpreting the recommendation. As our draft report noted, the existing JSSP contract had poorly defined requirements and poorly implemented oversight procedures. Our recommendation is designed so that future contracts after the completion of the JSSP avoid these same deficiencies.

SIGAR | Office of the Special Inspector General for Afghanistan Reconstruction

John F. Sopko
Special Inspector General

July 22, 2013

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

Dear Secretary Kerry:

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

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

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

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

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

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

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

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

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

> A. Each party shall have the right . . . (2) to inspect and audit any records and accounts with respect to funds, property and contract services furnished by that party under this agreement to determine that such funds, services or property are being utilized in accordance with the terms of this agreement.
>
> * * * *
>
> C. Each party will furnish the other with information necessary to evaluate the effectiveness of the project operations under the terms of this agreement. At the termination of the project a completion report shall be issued as an integral part of this process. The completion report will include a summary of United States Government and [the other party's] project contributions, a record of activities performed, objectives achieved and related basic data.

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

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This provision was included in an agreement between the State Department and the Government of the Islamic Republic of Afghanistan[3] and SIGAR found examples of other State Department agreements containing this provision as recently as 2012.[4] Yet inexplicably, this provision was not included in the IDLO agreement. This omission raises red flags regarding the level of planning and analysis INL conducted prior to determining that IDLO would be a suitable implementing partner. It also calls into question why INL would award nearly $50 million to IDLO without requiring the same level of transparency it requires from a foreign government or a government contractor.

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

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

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

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

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

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

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

Sincerely,

John F. Sopko
Special Inspector General
for Afghanistan Reconstruction

Enclosure:

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

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United States Department of State
Washington, D.C. 20520
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DEC 2 7 2012

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ACTION MEMO FOR ACTING ASSISTANT SECRETARY PEREZ

FROM: INL/AP – Al Matano, Acting

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

Recommendation

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

Approve _____ Disapprove _____

Background

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

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

UNCLASSIFIED

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

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

Attachment:
Funding Letter to IDLO Director General Irene Khan

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

United States Department of State

Bureau for International Narcotics and Law Enforcement Affairs

Washington, D.C. 20520

DEC 27 2012

Dear Director General Khan:

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

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

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

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

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

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

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

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

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

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

Sincerely,

Carol Z. Perez
Acting Assistant Secretary

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

Countersigned:

Name: _____ Date: _____

Fiscal Data

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

United States Department of State
Washington, D.C. 20520
www.state.gov

September 11, 2013

Mr. John F. Sopko
Special Inspector General for Afghanistan Reconstruction (SIGAR)
2530 Crystal Drive
Arlington, Virginia 22202

Re: SIGAR Inspection of INL Justice Training Transition Program

Dear Mr. Sopko:

This is in response to your letter about the U.S. Department of State's partnership with the International Development Law Organization (IDLO) to implement the Justice Training Transition Program (JTTP) in Afghanistan.

The Department of State respects the role played by the Special Inspector General for Afghanistan Reconstruction (SIGAR) in safeguarding U.S. taxpayer investment, and we share your goals of implementing programs free from waste, fraud, and abuse. The Department of State will continue to work closely with your office to address questions or concerns with any of our assistance programs associated with reconstruction in Afghanistan. Particularly as we heed Congress' clear interest in seeing the U.S. government move away from the use of private contractors – and as we gradually reduce the military footprint that ensures security for U.S. government employees implementing assistance and development programs on the ground in Afghanistan – we are, of course, intent on finding responsible implementing partners among international organizations and non-profit, non-governmental organizations.

See SIGAR comment 1.

The Department has carefully reviewed your alert letter of July 22, 2013 and the programs that it discussed. We found that the results of JTTP thus far have been impressive, and the robust oversight and monitoring and evaluation requirements we put into place in our agreement with IDLO are fully functioning and have revealed no deficiencies in program performance or management.

See SIGAR comment 2.

As a public international organization with UN Observer Status, IDLO has its own internal auditing procedures agreed to by its member states, which includes the United States Government. In addition, as the current President of the Assembly of Parties of IDLO, the United States sits on the Standing Committee and has played a leading role in ensuring that IDLO continually improves those procedures. It is important to note that there has been no evidence—nor have allegations been made—of fraud, waste, or mismanagement of JTTP. As we would do with any project implemented by any organization, if waste, fraud, or abuse were to be uncovered, or an allegation thereof, the Department of State would promptly investigate and undertake corrective action or terminate the program. IDLO has already agreed to third-party financial auditing of JTTP. We welcome your views on the appropriate timing of such audits and potential auditors.

See SIGAR comment 3.

See SIGAR comment 4.

My staff and I stand ready to help ensure that you and your staff are able to conduct as accurate a review of JTTP as possible. In that spirit, I offer the following comments to address the various items raised in your letter:

JTTP Promotes the Sustainability of U.S. Investments in Afghanistan

The Department appreciates and concurs with the statement in your letter describing justice programs run by the Bureau of International Narcotics and Law Enforcement Affairs (INL) as "central to U.S. efforts to promote the rule of law in Afghanistan." The Department routinely engages international organizations like IDLO for program implementation in Afghanistan and around the world because they are cost effective, offer unique capabilities and expertise, and enjoy international credibility. As not-for-profit entities that answer not only to us but also to other donors and their own governing structures, they also are subject to multiple layers of oversight. JTTP is a ground-breaking initiative within broader INL justice sector work that is transitioning legal training in Afghanistan from a primarily donor-funded and led effort to a sustainable Afghan government-provided continuing legal education system. Mechanisms like continuing legal education programs help promote stronger rule of law, protect the security of citizens through robust criminal justice capabilities, combat corruption, and create a more welcoming environment for investors in Afghanistan—all contributing to a more stable, prosperous, and secure Afghanistan. JTTP is designed to cement positive changes that have already been made in the justice sector in Afghanistan. The Afghan government has indicated that it both wants and needs the JTTP program, and is strongly vested in IDLO as an organization. As you are likely aware, the Afghan government is also a member state of IDLO.

See SIGAR comment 5.

Why the International Development Law Organization?

The Department of State has been engaged in criminal justice sector training and development projects throughout Afghanistan since 2003. The primary vehicle for training had been the Justice Sector Support Program (JSSP), which began in 2005 and was implemented by for-profit, commercial contractor Pacific Architects and Engineers (PAE). Due to the changing operational and security environment in Afghanistan, INL believed that during and after the security transition, the regional training efforts of JSSP could no longer be adequately implemented by an institutional contract with a private U.S. company. There were two primary reasons. First, during and after military transition, private contractors would no longer be able to utilize regional training centers previously secured by international forces, as these platforms were transferring to Afghan government control. Second, U.S. companies like PAE would not be exempt from President Karzai's decrees banning private security contractors and creating the Afghan Public Protection Force (APPF), creating an uncertain future for this critical training initiative.

See SIGAR comment 6.

INL examined several options for continuing nationwide justice sector training in Afghanistan. INL ultimately selected IDLO as the best partner, and also the only feasible partner. With eleven years of experience in Afghanistan, IDLO had strong local partnerships and is a respected and known organization to the Government of Afghanistan. IDLO is the only international organization with an exclusive mandate to improve the rule of law in the developing world. As an international organization it enjoys a diplomatic waiver from using APPF for security protection. This factor weighed heavily in IDLO's favor, as INL recognized the potential to significantly reduce security costs while also increasing freedom of movement in Afghanistan during and after transition. In addition, INL had worked with IDLO on a separate project in Afghanistan since 2010 and was familiar with IDLO's strong and effective relationships with Afghan government officials, and—as an international organization—IDLO does not generate profit on programs it implements, and accordingly would return unspent funds to the U.S. Government or propose creative ways to use them to advance program objectives.

See SIGAR comment 7.

INL was aware that IDLO was in a period of broad organizational reform and transition when it entered into negotiations regarding JTTP, and thus worked with the organization to stand up a unit within IDLO dedicated solely to the JTTP project. As a result, the implementation unit for JTTP contains special management controls including the establishment of dedicated financial, procurement, human resources, monitoring and evaluation, legal, and program

See SIGAR comment 8.

officers to run the program. The Department of State believes that the demonstrated program performance during the first six months of JTTP, including full performance, full reporting, and responsible preparation for future sustainability plans, reinforces the selection of IDLO.

The Nature of the JTTP Agreement

The funding mechanism for this project is a Letter of Agreement with a public international organization. The term used in your letter, "sole source," is not legally applicable in this circumstance, as the INL agreement with IDLO is not a Federal Acquisition Regulation (FAR) contract—in fact, it is not a contract at all. It is a Letter of Agreement between the U.S. government and a public international organization to which it belongs. According to State Department Circular 175, the Secretary of State has delegated authority to INL to enter into Letters of Agreement with both foreign governments and also public international organizations, although the terms of those two types of agreements differ in some respects given the different status of sovereign countries versus international organizations with multiple member state parties.

See SIGAR comment 9.

See SIGAR comment 10.

Consistent with this authority, INL obligated funds to IDLO for JTTP through a Letter of Agreement that references two binding attachments: a Program Proposal and a budget. When attached to the Letter of Agreement, the 50-page Program Proposal became the official guiding document for project implementation; this document was provided to SIGAR and contains five pages exclusively addressing monitoring and evaluation and program oversight. The 805 line-item budget along with a 34-page budget justification narrative were developed jointly by IDLO and INL. These documents lay out in detail the financial plan of the program, with the budget narrative explaining and justifying each budget line-item and accounting for every dollar of the $47,759,796 project. SIGAR did not specifically ask IDLO or the Department for the JTTP project budget or budget justification. The Department will provide these documents upon SIGAR's request.

See SIGAR comment 11.

See SIGAR comment 12.

1999 State Department Action Memorandum

In your alert letter, you referenced language from a 1999 State Department action memo regarding Circular 175, and also referenced a template containing *"a 'required' provision establishing INL's 'monitoring and evaluation' rights under agreements like the one signed with IDLO. This provision states in pertinent part:*

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

* * * *

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

Your letter inaccurately characterizes options from the 1999 memo as binding requirements. For example, the 1999 action memorandum states that the template language "**could** be used for agreements with international organizations" but it is not required. While this language has been used in bilateral agreements with foreign **countries**, INL has searched its records and found no instance where this language has been used in an agreement with an international organization, including a Letter of Agreement between INL and an international organization signed less than two months after the approval of the 1999 memo you cited.

See SIGAR comment 13.

See SIGAR comment 14.

This precedent suggests that the language proved fundamentally inappropriate for an agreement with an international organization for two reasons: First, the language requires mutual examination of any records relating to funds or services provided by that party. The State Department would not agree to an international organization examining its books or records, should an international organization independently make a monetary or non-monetary contribution to a project; and second, the monitoring and evaluation language cited only requires a completion report. INL went above and beyond the language you cited because we determined that stronger monitoring standards were necessary. INL's current standard requires quarterly reports in its agreements with all international organizations. Given the importance and cost of the JTTP project, INL set the bar even higher with this IDLO agreement, requiring bi-weekly, monthly, quarterly, mid-project, and end of project reporting. In addition, INL conducts other oversight activities as described below.

Access to IDLO Records

The standard for access to the organizational finances and reports of international organizations is enshrined in U.S. law. Under the International Organizations Immunities Act, 22 U.S.C. § 288, IDLO is a "public international organization" in which the United States participates. Under this status as a public international organization, IDLO has a distinct legal personality and capacity to perform acts required to carry out its core functions. § 288 provides that IDLO "enjoys the same immunity from suit and every form of judicial process as is enjoyed by foreign governments," and further mandates that IDLO's property and assets "shall be immune from search, unless such immunity be expressly waived . . .The archives of international organizations shall be inviolable." The IDLO Program Proposal further elucidates this distinction in the intellectual property section found on page 2 of the document. It states in relevant part that:

See SIGAR comment 15.

> *The title to intellectual property in relation to all documents and materials which IDLO develops under the terms of this program shall be vested in INL or its assignee. INL shall grant to IDLO a permanent, irrevocable, non-exclusive license to use, reproduce, adapt and otherwise exploit all such documents and materials developed by IDLO under this program. Notwithstanding the above, IDLO shall retain the intellectual property or other proprietary rights of any documents and materials that pre-existed IDLO's performance under the Letter of Agreement or that IDLO may develop or acquire independently of its performance under the Letter of Agreement.*

Under the agreement with IDLO, INL owns what it paid for and has a right to access it. IDLO is required to furnish to the Department any non-confidential records requested concerning the JTTP project specifically, and under the Letter of Agreement, INL owns and licenses to IDLO all intellectual property produced in furtherance of JTTP. IDLO is not required to release proprietary materials prepared prior to, or outside the scope of, the agreement with INL. These include proprietary training materials being used worldwide, but not on the JTTP program in Afghanistan. IDLO and INL may agree on additional safeguards to permit the conditional disclosure of confidential proprietary information used in the JTTP program in Afghanistan. It is our understanding that the only document IDLO refused to disclose in full (and instead provided excerpts of) was the Training of Trainers manual, which was not produced for JTTP training and is therefore outside SIGAR's mandate. When informed of IDLO's concerns for its proprietary information, SIGAR did not offer any terms or conditions to safeguard this

information. Training materials or curricula prepared for JTTP in Afghanistan would be furnished if requested; SIGAR has not requested these materials.

On the broader issue of auditing IDLO as an institution, member states do not employ their own mechanisms to audit international organizations. Doing so would duplicate the work of those organizations' own auditors, constitute an inefficient additional burden on organizations, undermine the organizations' duty of confidentiality that normally exists in voluntary funding agreements between member states and organizations, and result in additional financial burdens to U.S. taxpayers, since a proportionate share of U.S. contributions to international organizations support the organizations' international auditing staff. To ensure proper financial processes, international organizations conduct external audits of their financial records and make those audit results available to member states. IDLO has its own internal auditing procedures agreed to by its member states, including the U.S. Government. This includes an annual financial audit conducted by an independent firm to international auditing standards. SIGAR has not requested to review these materials.

See SIGAR comment 16.

See SIGAR comment 17.

Upon receipt of your draft alert letter, INL engaged IDLO to discuss your recommendations. As previously conveyed to SIGAR, IDLO agreed to amend the JTTP Letter of Agreement to explicitly reaffirm INL's right to inspect IDLO records or accounts related to the JTTP program that are not of a confidential nature, which both we and IDLO believe was already assured by the original language of the Letter of Agreement.

See SIGAR comment 18.

Oversight of the JTTP Program

Although JTTP was not implemented through a contract, it was and is vitally important to the State Department that appropriate oversight provisions were included in the funding document, and that appropriate oversight personnel were assigned to manage the project.

See SIGAR comment 19.

The authority to enter into a bilateral arrangement with IDLO does not stem from the general authority to enter into contracts, but from § 481(a)(4) of the Foreign Assistance Act of 1961, as amended, which provides: "Notwithstanding any other provision of law, the President is authorized to furnish assistance to any country or international organization, on such terms and conditions as he may determine, for ... anticrime purposes." This authority has been delegated by the President to the Secretary of State, and re-delegated to the Assistant Secretary of State for

International Narcotics and Law Enforcement Affairs with prior program approval by the Director of Foreign Assistance.

Your reference to "contracting officer" and "contracting officer representative" are not applicable to bilateral international agreements. Contracting officers and contracting officer representatives are specific legal terms applying to the administration of contracts entered into under authority to contract, and as such are governed by the Federal Acquisition Regulations (see FAR Parts 1.602, 1.603, and 1.604 and definitions 2.101).

See SIGAR comment 20

Nonetheless, the Department recognizes that program oversight is an essential and vital function to ensure appropriated funds are used for their intended purposes and that programs are effectively and efficiently managed regardless of the type of instrument used to establish obligations. Under the framework of a Letter of Agreement, the oversight functions that a contracting officer's representative would perform for contracts are provided by highly skilled and experienced program officers. INL assigned four program officers (a program officer and a Justice Team Lead in Kabul, and a program officer and a Justice Team Lead in Washington) to have primary oversight responsibility. Program officers have responsibility for frequent management meetings with IDLO, site visits, review of all required reporting, review of financial reporting, and verification of program implementation. Should changing environments or circumstances warrant program adjustments, program officers are permitted to negotiate modifications to the project which are then memorialized as amendments to the Letter of Agreement.

As part of its management of the JTTP program, INL conducts continuous communication via daily oversight of the IDLO program through email, phone calls, and site visits. In addition, every week, INL offices in Kabul and Washington conduct a joint phone call with IDLO headquarters in Rome and its field team in Kabul. To date, IDLO has completed all scheduled reporting required under the JTTP agreement, and has worked closely with INL to ensure that the reporting meets INL's requirements. IDLO is diligently applying a results-based management approach that tracks the outputs of the programs as well as the outcomes and impact demonstrated in the Afghan justice sector. INL takes seriously its mandate to improve the criminal justice system in Afghanistan and requires implementers like IDLO to demonstrate positive change as a result of INL-funded projects.

Conclusion

The Department of State values independent oversight, including from SIGAR, and is working closely with the oversight community to protect taxpayer resources and enhance and improve the return on our investment. The Department is pleased so far with the results of JTTP and with our partnership with IDLO. We are confident that we have adequate and appropriate oversight mechanisms built into our Letter of Agreement with this public international organization. Because of our collective efforts, we believe that the Government of Afghanistan now has the ability to deploy at least a minimally adequate and functioning system that will effectively support continuing reform past the 2014 military transition. JTTP will cement that ability with a permanent training function inside Afghan government justice institutions. In doing so, it will decidedly advance the national interests of both Afghanistan and the United States.

We stand ready to answer any questions or supply any documents that would help SIGAR complete a more accurate review of the JTTP program. As always, members of the Department remain ready to meet at SIGAR's convenience to clarify any persisting questions.

Sincerely,

James F. Dobbins
Special Representative for
Afghanistan and Pakistan

William R. Brownfield
Assistant Secretary for
International Narcotics and
Law Enforcement Affairs

1. SIGAR is unclear as to why this discussion is relevant to the issue of oversight of IDLO. Contractors are contractors, whether they are private for-profit organizations, private non-profit organizations, private non-government organizations, or "public international organizations". If they receive U.S. taxpayer money in exchange for performing a service or delivering a product, they are subject to oversight and audit by authorized agencies of the U.S. Government.[22]

2. The monitoring and evaluation requirements contained in the IDLO program proposal describe how IDLO will monitor and evaluate its own program performance and report that information to INL. SIGAR disagrees that this self-reported information is an adequate substitute for State and INL protecting the authority of the U.S. government to access all records related to how almost $50 million in taxpayer funds will be spent on the JTTP.

3. As noted above, self-monitoring does not obviate the need for INL to protect its right to access all records related to how taxpayer funds are spent on the JTTP. Without the right to directly audit the JTTP, State and INL will be dependent on IDLO to provide an accurate accounting of how U.S. taxpayer funds are spent. IDLO may not be fully capable of providing such an accurate accounting, given its history of budget shortfalls and other financial management difficulties.

4. Although third-party financial auditing may support program oversight, SIGAR maintains that allowing IDLO to choose its own auditors is a poor substitute for direct auditing by the U.S. government. As the agencies most immediately responsible for safeguarding how almost $50 million in taxpayer funds will be spent on the JTTP, it is unclear why State and INL would not secure the right to access all records related to that program.

5. SIGAR disagrees with the suggestion that IDLO's business model makes it inherently more accountable, less reliant on contractors, or more supportive of U.S. stabilization efforts in Afghanistan than a for-profit entity would be.

   According to IDLO's Annual Management Plan for 2012, "Institutional Activities are what distinguish IDLO from profit-driven service providers who only act as implementing agencies for programs."[23] The document lists "Communication/ Stakeholder relations," "Program Development," and "Governance" as the top three areas associated with IDLO's institutional activities.[24] State has not explained how such activities, which appear to be distinct from program implementation, help IDLO implement the JTTP better than a for-profit contractor could. Moreover, State does not provide support for its suggestion that IDLO's role as the JTTP implementer will reduce the U.S. government's use of for-profit contractors. According to the IDLO program proposal referenced in State's response letter, "[d]uring the course of the Program [JTTP], the vast majority of training will be conducted by National Legal Advisors, who will be contracted by the Program."[25] IDLO's program proposal and State's response letter also note that IDLO will rely on private security companies, rather than on the Afghan Public Protection Force (APPF), to provide security.[26] Finally, IDLO has even relied on contractors to help it

[22] *See*, *e.g.*, National Defense Authorization Act for FY 2008, § 1229(f)(1).

[23] IDLO, Annual Management Plan 2012, p. 19.

[24] *Id*. at Annex 2.

[25] IDLO, *Completing the Transition in Afghanistan*: Justice Training Transition Program (JTTP) ("IDLO Program Proposal") (December 21, 2012), p. 28.

[26] *Id*. at 43.

hire personnel for the JTTP, such as relying on an executive search company to facilitate the hiring of the "Chief of Party" and other leadership positions.[27]

6. State has not provided support for the claim that it considered awarding the JTTP to any specific party other than IDLO. Furthermore, INL has not presented SIGAR with any cost comparison or lessons learned analysis from the Justice Sector Support Program (JSSP) indicating that hiring IDLO would lead to lower JTTP security costs. Finally, given that PAE continues to deliver on the remaining portions of the JSSP contract, it is unclear why State suggests that current Afghan policy concerning the Afghan Public Protection Force presents an impediment to the use of contractors and other implementers that are not international organizations.

7. SIGAR disagrees with the suggestion that IDLO's business model makes it inherently more cost effective or accountable than a for-profit entity. IDLO's nonprofit status does not eliminate the need to determine whether the expenses it claims are appropriate. Moreover, given that IDLO charges a "mandatory" 12% overhead fee, which amounts to $5.1 million for the JTTP, it is unclear why State believes that such an arrangement will lead to cost savings.[28] SIGAR maintains that U.S. taxpayer funds would be better protected by INL securing the substantive right to access all records related to the JTTP, so that it at least has the option of directly verifying the appropriateness of program costs and that overhead expenses are limited to 12 percent.

8. State's acknowledgement that IDLO was undergoing a "period of broad organizational reform" prior to receiving the IDLO award is a troubling understatement. In November 2012, one month before State awarded the JTTP agreement to it, IDLO was considering a Contingency Budget for 2013 and warning its members about the need for increased contributions to cover IDLO's core costs.[29]

   IDLO's contingency budget stated that "90% Of IDLO's operations are 'high risk', as noted by the AFC [Audit and Finance Committee]."[30] IDLO also concluded that "[t]he lack of flexibility in the budget, coupled with IDLO's low level of reserves means that the contingency budget *would raise critical questions about the future sustainability of the organization.*"[31]

9. SIGAR maintains that the use of the term "sole source" is applicable in this circumstance. Contrary to State's suggestion, the term "sole source" is used in instances other than FAR contracts to refer to the noncompetitive award of U.S. taxpayer funds.[32] Furthermore, State has not provided SIGAR with evidence that it considered awarding the JTTP to any specific party other than IDLO. On the contrary, evidence that IDLO solicited job applications for JTTP positions in November 2012, more than one month prior to Acting Assistant Secretary Perez's approval of the letter of agreement, suggests that IDLO was selected well in advance of the department's formal decision-making process.[33] Moreover, the October 2012 budget justification referenced in State's response letter states that "[s]tart-up

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[27] Job announcement for IDLO "Head of Training" in the Afghanistan Program Office ("IDLO Job Announcement"). The job announcement states that all applications are due by November 26, 2012.

[28] IDLO, *Completing the Transition in Afghanistan*: Justice Training Transition Program (JTTP), Budget Narrative/Notes ("IDLO Budget Narrative") (October 16, 2012), p. 35.

[29] IDLO Contingency Budget, p. 1.

[30] *Id.*

[31] *Id*. at 2 (emphasis added).

[32] *See e.g.*, Sole Source Cooperative Agreement Award to the National Association of County and City Health Officials, 78 Fed. Reg. 54651 (September 5, 2013).

[33] Job announcement for IDLO "Head of Training" in the Afghanistan Program Office ("IDLO Job Announcement"). The job announcement is undated, but states that all applications are due by November 26, 2012.

costs have been temporary [sic] allocated to the Support to the National Justice Sector Strategy Program—following an amendment—but will be transferred to this Program [JTTP] once the contract is signed."[34] This statement suggests the selection of IDLO was expected almost two months prior to the actual award, given that funds for another IDLO program were apparently being used to pay JTTP start-up costs. Therefore, SIGAR maintains that an agreement to pay almost $50 million in U.S. taxpayer funds to one organization, without full and open competition, for services performed previously under a competitively awarded procurement contract, constitutes a "sole source" award.

10. Given that a contract is generally defined as "an agreement with two or more parties creating obligations that are enforceable or otherwise recognizable at law,"[35] it is troubling for State to claim that the "INL agreement with IDLO is not a Federal Acquisition Regulation (FAR) contract—*in fact, it is not a contract at all*."[36] At face value, this statement suggests that State believes that a program costing almost $50 million, which intended to sustain an investment of over $200 million in prior rule of law programs in Afghanistan, is not being implemented under a legally enforceable agreement. SIGAR also notes that State and IDLO appear to disagree over whether the letter of agreement is a contract, donation, contribution or some sort of hybrid arrangement. State classifies the funding mechanism for the JTTP as a "letter of agreement"[37] or "bilateral arrangement."[38] However, the budget justification drafted by IDLO and cited to in State's response letter refers to the agreement as a "contract" as well as a "donor contract."[39]

11. State claims that the IDLO agreement references a binding program proposal and budget. However, the original letter of agreement between State and IDLO lists an undated program proposal and budget as enclosures. The original agreement does not state that those documents are incorporated by reference. However, even if these documents have been subsequently incorporated into the IDLO agreement, they do not provide INL with full access to records related to how funds are spent on the JTTP.

12. The fact that State failed to include copies of the JTTP project budget or budget justification when it gave SIGAR a copy of the IDLO agreement contradicts State's representation now at this late date that these documents were always part of the agreement. Instead, SIGAR separately requested and obtained the JTTP budget and budget justification. Apparently, State is still unaware that SIGAR had already obtained these documents. .

13. SIGAR disagrees with State's characterization of this issue. SIGAR stated in its alert letter that INL "could have conditioned the award on IDLO submitting to proper oversight."[40] As examples of stronger oversight provisions, SIGAR cited State guidance listing certain provisions "required" to be included in

[34] IDLO Budget Narrative, p. 1.

[35] *See* Black's Law Dictionary.

[36] State Response Letter, p. 4 (emphasis added).

[37] *Id*.

[38] *Id*. at 7.

[39] IDLO Budget Narrative at 1, 31.

[40] Letter from John F. Sopko, Special Inspector General for Afghanistan Reconstruction, to John F. Kerry, Secretary, U.S. Department of State (July 22, 2013).

other letters of agreement,[41] such as that between the State Department and the Afghan government.[42]

State's response letter acknowledges that the State Department "could" have included the abovementioned oversight provisions in its agreement with IDLO.[43] State's letter also appears to acknowledge that there is no legal impediment to conditioning the JTTP award on IDLO waiving its immunity from certain forms of oversight. State cites the International Organizations Immunities Act, 22 U.S.C. § 288a, for the proposition that public international organizations like IDLO "shall be immune from search, *unless such immunity be expressly waived*" (emphasis added).[44] Section 288a also states that "[i]nternational organizations, their property and their assets, wherever located, and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments, *except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract*" (emphasis added).[45] State has not articulated any specific reasons why it could not have conditioned the JTTP award on IDLO waiving its immunity for the limited purpose of giving State an enforceable right to access all records related to the JTTP.

14. State claims that the oversight provisions referenced in SIGAR's alert letter were "fundamentally inappropriate" because (1) the provisions allow each party to examine program records, (2) the provisions only require the completion of a report, and (3) the State Department has no record of using these provisions in letters of agreement with international organizations.[46] These arguments are disingenuous. First, INL could have made the IDLO award conditional on INL having an enforceable right to inspect records and accounts related to the JTTP, without granting IDLO a mutual right of access. Second, the provision cited by SIGAR requiring a report is distinct from the provision establishing the right to access program records and accounts; State's response letter erroneously conflates these distinct provisions. Third, even if prior agreements with international organizations did not include strong oversight provisions, such a past practice does not justify omitting them now. For example, State acknowledges in its response letter that it could amend the IDLO agreement to allow access to confidential IDLO records.[47]

15. State's response letter cites the IDLO program proposal's Executive Summary as an example of how INL negotiated for the right to access some records pertaining to the JTTP.[48] The Executive Summary states that "[t]he title to intellectual property in relation to all documents and materials which IDLO develops under the terms of this program shall be vested in INL or its assignee."[49] State asserts that this language means that "IDLO is required to furnish *any non-confidential records* requested concerning the JTTP project specifically, and under the Letter of Agreement, INL owns and licenses to

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

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

[43] State Response Letter, p. 5.

[44] *Id*. at 6. State's response letter erroneously cited to 22 U.S.C. § 288.

[45] 22 U.S.C. § 288a(b).

[46] State Response Letter, p. 5.

[47] *Id*.

[48] *Id*. at 6. Although the State Response Letter refers to this as "the intellectual property section," the text quoted by State comes from the "Executive Summary/Introduction" of the IDLO Program Proposal.

[49] IDLO Program Proposal, p. 1.

IDLO all intellectual property produced in furtherance of JTTP."[50] According to State, IDLO also "agreed to amend the JTTP Letter of Agreement to explicitly reaffirm INL's right to inspect IDLO records or accounts related to the JTTP program that *are not of a confidential nature*…"[51]

State's arguments about intellectual property are irrelevant to the issue of State Department access to IDLO's records related to the JTTP. State's apparent acquiesence to IDLO's insistence that it will provide access only to public records is particularly troublesome. In effect, State would let IDLO determine how much oversight will be conducted on a U.S. government program. Strikingly, State's letter acknowledges that INL and IDLO may "agree on additional safeguards to permit the conditional disclosure of confidential proprietary information used in the JTTP program in Afghanistan."[52] Given that INL rule of law programs in Afghanistan have already cost U.S. taxpayers over $200 million since 2005 and that the JTTP is intended to sustain that investment, it is unclear why State would hesitate to amend the IDLO agreement to secure its authority to access to all records related to how JTTP funds are being spent.

16. State's assertion that "member states do not employ their own mechanisms to audit international organizations" appears to contradict State's own instructions concerning the management of awards made to public international organizations (PIO), such as IDLO. In particular, the U.S. Department of State Instructions for PIO Specifics state that PIOs receiving U.S. taxpayer funds are to agree "to make available to DOS or the Comptroller General of the United States all records and documents that support expenditures made under [programs funded solely by State]." The fact that INL did not elect to include such a provision in the original IDLO agreement or to amend the agreement accordingly in response to SIGAR's alert letter is something that State has not yet fully explained. Moreover, in light of such instructions governing awards to PIOs, it is inaccurate for State to suggest that IDLO's business model somehow prohibits the U.S. government from directly overseeing how taxpayer funds are spent on the JTTP.

17. SIGAR disagrees that self-auditing by IDLO or its hiring of an outside auditor are adequate substitutes for direct oversight of the JTTP by the U.S. government. Given IDLO's "period of broad organizational reform" and the need to create new units within IDLO to protect the JTTP from the rest of the organization,[53] there is little reason to suggest that IDLO's self-audits would provide adequate insight into how taxpayer funds are being spent on the JTTP. Finally, SIGAR did not request IDLO's annual financial audits from State because they are publicly available on IDLO's website.

18. See comment 14. SIGAR disagrees that it is appropriate for IDLO to determine the extent to which the U.S. government will be able to oversee the use of almost $50 million in taxpayer funds. By allowing IDLO to limit U.S. government access rights to only program records that are "not of a confidential nature," State has, in effect, given IDLO a veto over what JTTP records are subject to oversight.

19. See comment 9. SIGAR notes that State and IDLO appear to disagree over whether the letter of agreement is a contract, donation, contribution or some sort of hybrid arrangement. State classifies the funding mechanism for the JTTP as a "letter of agreement"[54] or "bilateral arrangement."[55] However, the budget justification drafted by IDLO and cited to in State's response letter refers to the

[50] State Response Letter, p. 6 (emphasis added).

[51] *Id*. at 7 (emphasis added).

[52] *Id*. at 6.

[53] *Id*. at 3.

[54] *Id*. at 6.

[55] *Id*. at 7.

agreement as a "contract" as well as a "donor contract."[56] Whatever State calls the legal instrument involved in this transaction, SIGAR rejects State's notion that the U.S. government has no right to access and audit records pertaining to IDLO's use of nearly $50 million in U.S. taxpayer money.

20. As indicated in our alert letter, SIGAR's concerns regarding oversight of the JTTP were based initially on the fact that the program is being implemented through a funding mechanism that does not appear to be subject to the FAR. For example, IDLO's program proposal states that "IDLO shall apply its own procurement rules when acquiring goods, works, or services in connection with [the JTTP]."[57] These concerns led our auditors to repeatedly ask State to explain why INL changed the regional training component of the JSSP from a FAR-based contract with PAE to a letter of agreement with IDLO. The references to contracting officers and contracting officer representatives (CORs) in SIGAR's alert letter were examples of some of the protections that the IDLO agreement lacks. SIGAR welcomes INL's efforts to increase oversight of the JTTP through the use of program officers. However, SIGAR maintains that self-reporting by IDLO, emails and phone calls with IDLO's Rome office, and site visits, will be of limited utility unless State also secures the right to access all IDLO records regarding how JTTP funds are being spent.

[56] *Id*. at 1, 31.

[57] IDLO Program Proposal, p. 43.

APPENDIX VI - ACKNOWLEDGEMENTS

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SIGAR's Mission

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