

# SIGAR

## Special Inspector General for Afghanistan Reconstruction

SIGAR Audit 13-14

### Contracting with the Enemy: State and USAID Need Stronger Authority to Terminate Contracts When Enemy Affiliations Are Identified



JULY  
2013

# SIGAR

## Special Inspector General for Afghanistan Reconstruction

### WHAT SIGAR REVIEWED

In April 2013, SIGAR reported on the process the Department of Defense (DOD) established to comply with Section 841—Prohibition on Contracting with the Enemy in the United States Central Command Theater of Operations—of the Fiscal Year 2012 National Defense Authorization Act and ways to strengthen the legislation. The report noted that Section 841 does not provide the Department of State (State) or the U.S. Agency for International Development (USAID) the legal authority to restrict, terminate, or void contracts with persons or entities opposing the United States or coalition forces—also known as Section 841 designees. However, State and USAID use many of the same companies as DOD and have numerous contracts in Afghanistan. In addition, State and USAID will have an enduring presence in the country after the withdrawal of a significant number of U.S. military personnel in December 2014.

This report (1) describes the processes State and USAID have established to prevent contracting with persons or entities that actively support insurgencies or oppose U.S. or coalition forces in Afghanistan, and (2) discusses the potential impact of State and USAID not having Section 841 contracting authority.

### MATTER FOR CONGRESSIONAL CONSIDERATION

Congress may wish to consider expanding Section 841 authority to State and USAID to allow senior procurement executives to void, terminate for default, or restrict future awards to persons or entities identified as enemies of the United States. State and USAID commented that they would welcome this authority, but both agencies expressed concern with proposals that would indiscriminately expand DOD-specific contracting provisions to them.

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JULY 2013

## Contracting with the Enemy: State and USAID Need Stronger Authority to Terminate Contracts When Enemy Affiliations Are Identified

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SIGAR AUDIT 13-14

### WHAT SIGAR FOUND

To prevent U.S. funds from being provided to persons or entities supporting insurgents and others opposing the United States or coalition forces, both State and USAID have established processes for vetting non-U.S. contractors in Afghanistan. Since October 2012, State has vetted all non-U.S. contractors that are competitive for each contract as well as their key individuals. State's Office of Risk Analysis and Management compares the information provided by the contractor against various databases to determine whether derogatory information—which may include ties to enemy groups—on the company or its key individuals exists. Based on that information, the assistant secretary of the office funding the activity makes the final decision on whether a contractor is eligible to receive a State-funded contract. If a contractor is deemed eligible, the determination is valid for 1 year, unless there are changes in the company's key individuals.

Similarly, USAID vets prime contractors, along with subcontractors working directly for prime contractors, that are in the competitive range for receiving contracts valued over \$25,000. The Vetting Support Unit in USAID's mission in Afghanistan reviews an information package from the contractor for completeness and accuracy. If approved, it forwards the package to the agency's Office of Security in Washington, D.C. If the Office of Security does not find derogatory information, it submits a recommendation of eligibility for the contractor to USAID/Afghanistan. The Senior Deputy Mission Director makes the final determination on whether to declare a contractor ineligible for a contract. Like State, USAID grants vetting approval for 1 year, unless the contractor's key individuals change.

State and USAID have received information on Section 841 designees from DOD since November 2012. Although the agencies take this information into consideration during their vetting processes, neither relies exclusively on this information when making contracting decisions.

Because State and USAID were not included in Section 841, they have no separate authority to terminate contracts with Section 841 designees for default, which would prevent the agencies from paying up to the full cost of the contract. Although neither State nor USAID has active prime contracts with current Section 841 designees, the agencies would have to terminate any contracts with future Section 841 designees for convenience. In doing so, the agencies would likely have to pay up to the full cost of the contracts in order to complete the termination as well as costs associated with obtaining a replacement contract.



**SIGAR**

Office of the Special Inspector General  
for Afghanistan Reconstruction

July 24, 2013

The Honorable John F. Kerry  
Secretary of State

The Honorable James Cunningham  
U.S. Ambassador to Afghanistan

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

Mr. William Hammink  
USAID Mission Director for Afghanistan

This report discusses the results of SIGAR's audit of the procedures that the Department of State and the U.S. Agency for International Development (USAID) have established to prevent persons or entities identified as actively supporting insurgencies or opposing the United States or coalition forces in Afghanistan from receiving U.S.-funded contracts.

The report highlights the fact that only DOD has authority under Section 841 to void, terminate, or restrict awards of contracts to persons or entities identified as enemies of the United States. To ensure that all contracts in a contingency operation are subject to provisions similar to Section 841, SIGAR includes in this report a matter for congressional consideration for providing similar authority to all government agencies.

In their written comments on a draft of this report, State and USAID stated that they would welcome this authority, but both agencies expressed concern with proposals that would indiscriminately expand DOD-specific contracting provisions to them. State and USAID's comments are reproduced in appendices II and III.

SIGAR conducted this performance audit 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.

A large, stylized handwritten signature in black ink, appearing to read "John F. Sopko".

John F. Sopko  
Special Inspector General  
for Afghanistan Reconstruction

# TABLE OF CONTENTS

Background.....	2
State and USAID Vetting of Non-U.S. Contractors in Afghanistan Includes Checks for Ties to Enemy Groups.....	3
Lack of Section 841 Authorities Prevents State and USAID from Terminating for Default Contracts with the Enemy, Which Could Result in Having to Pay the Full Costs of Those Contracts.....	5
Conclusion.....	5
Matter for Congressional Consideration .....	6
Agency Comments .....	6
Appendix I - Scope and Methodology .....	7
Appendix II - Comments from Department of State.....	8
Appendix III - Comments from U.S. Agency for International Development .....	10
Appendix IV - Acknowledgments .....	12

## ABBREVIATIONS & ACRONYMS

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CENTCOM	U.S. Central Command
DOD	Department of Defense
NDAA	National Defense Authorization Act
RAM	Office of Risk Analysis and Management (Department of State)
State	Department of State
TSC	Terrorist Screening Center
USAID	U.S. Agency for International Development

Since 2002, U.S. military and civilian agencies have relied on contractors to provide a broad range of supplies, services, and critical logistics and reconstruction functions in Afghanistan. Several prior audit and research reports discuss the numerous and unique challenges of contracting in Afghanistan, particularly with non-U.S. contractors.<sup>1</sup> These challenges include the limited availability of staff to oversee contracts, the small pool of qualified local contractors, and an insecure and corrupt environment that increases the risk of U.S. funds being used to finance terrorist or insurgent groups. In an effort to reduce this risk, Congress established Section 841—Prohibition on Contracting with the Enemy in the United States Central Command Theater of Operations—of the National Defense Authorization Act for Fiscal Year 2012 (NDAA).<sup>2</sup> Section 841 permits the Department of Defense (DOD), pursuant to a request from the U.S. Central Command (CENTCOM)<sup>3</sup> Commander, to authorize the Head of a Contracting Activity<sup>4</sup> to restrict the award of, terminate, or void a DOD contract, grant, or cooperative agreement that it determines would provide funding directly or indirectly to a person or entity identified as actively supporting an insurgency or otherwise actively opposing U.S. or coalition forces in the CENTCOM theater of operations, including Afghanistan.<sup>5</sup>

In April 2013, we reported on the process DOD established to comply with Section 841, the limitations of this process, and how that legislation could be strengthened.<sup>6</sup> In that report, we noted that Section 841 does not provide the Department of State (State) or the U.S. Agency for International Development (USAID) the legal authority to restrict, terminate, or void contracts with Section 841 designees. However, State and USAID contract with many of the same companies as DOD, and both agencies have numerous contracts in Afghanistan. In fiscal year 2012, State awarded 29 contracts valued at \$961 million and USAID awarded 276 contracts valued at \$2.07 billion. In addition, State and USAID will have an enduring presence in the country after the withdrawal of a significant number of U.S. military personnel and resources is complete in December 2014. In light of these concerns and congressional interest, we initiated a review to examine efforts by State and USAID to prevent contracting with the enemy.

This report (1) describes the processes State and USAID have established to prevent contracting with persons or entities that actively support insurgencies or oppose U.S. or coalition forces in Afghanistan, and (2) discusses the potential impact of State and USAID not having Section 841 contracting authorities.

To accomplish our objectives, we reviewed Section 841 and relevant sections of the Federal Acquisition Regulation. We examined State and USAID contracting policies and procedures, including: (1) State's standard operating procedures for vetting contracts and grants, (2) USAID's Mission Order for Afghanistan 201.04, and (3) State and USAID's risk foundation document for contracting and grants. We also analyzed data on the

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<sup>1</sup> U.S. Government Accountability Office, *U.S. Efforts to Vet Non-U.S. Contractors Need Improvement*, GAO-11-355, June 8, 2011; Congressional Research Service, *Wartime Contracting in Afghanistan: Analysis and Issues for Congress*, November 14, 2011; Committee on Oversight and Government Reform, *Warlord, Inc.: Extortion and Corruption Along the U.S. Supply Chain in Afghanistan*, June 22, 2010; and U.S. Agency for International Development, *Accountable Assistance for Afghanistan Report*, August 18, 2011.

<sup>2</sup> Pub. L. No. 112-81.

<sup>3</sup> CENTCOM is one of nine combatant commands in the U.S. military. The command's area of responsibility consists of 20 countries in Middle East and Southwest Asia, including Afghanistan.

<sup>4</sup> According to Defense Federal Acquisition Regulation Supplement, Subpart 202.1, a DOD contracting activity is an entity designated by the director of a defense agency with contracting authority through its agency charter. For example, the U.S. Army Corps of Engineers is considered a Head of Contracting Activity. Large DOD agencies, such as the Department of the Army, may have multiple HCAs under their command.

<sup>5</sup> For the purposes of this report, we use the term "contract" to refer collectively to contracts, grants, and cooperative agreements, unless noted otherwise.

<sup>6</sup> See SIGAR Audit 13-6, *Contracting with the Enemy: DOD Has Limited Assurance That Contractors With Links To Enemy Groups Are Identified And Their Contracts Terminated*, April 11, 2013.

number and value of active State and USAID contracts in Afghanistan as of February 28, 2013. We interviewed relevant State officials from the Office of the Undersecretary of Management, Office of Risk Analysis and Management, and the U.S. Embassy in Kabul. We also interviewed USAID officials with Mission Afghanistan's Office of Acquisition and Assistance and Office of Financial Management as well as headquarters officials in the Office of Counterterrorism and Information Security. We conducted our work in Washington, D.C., and Kabul, Afghanistan, from October 2012 to July 2013, in accordance with generally accepted government auditing standards. A discussion of our scope and methodology is included in appendix I.

## BACKGROUND

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DOD counterinsurgency contracting guidance issued in September 2010, and similar guidance issued by State and USAID in November 2010, confirm the importance of contracting to the U.S. mission in Afghanistan. In particular, the guidance emphasizes the importance of using Afghan contractors and purchasing Afghan goods—a policy collectively known as the Afghan First Initiative—as a key element of the U.S. counterinsurgency strategy.<sup>7</sup> This contracting guidance cautions that insufficient oversight could lead to contracting funds being unintentionally funneled to support insurgent organizations.

In an effort to prevent U.S. funds in the CENTCOM theater of operations, including Afghanistan, from being diverted to terrorist or insurgent groups, Congress established Section 841 in the fiscal year 2012 NDAA.<sup>8</sup> In addition to prohibiting contracting with terrorist or insurgent groups, Section 841:

- Requires the CENTCOM Commander to establish a program to review and identify persons and entities with DOD contracts, grants, or cooperative agreements who are actively supporting an insurgency or otherwise opposing U.S. or coalition forces in a contingency operation in the CENTCOM theater of operations.
- Permits the Secretary of Defense to authorize the Head of a Contracting Activity, pursuant to a request from the CENTCOM Commander, to restrict, terminate, or void a contract determined to provide funding to active insurgent elements and opponents of U.S. or coalition forces.

In our April 2013 report, we found that DOD had established a two-phase process to implement Section 841. Using this process, DOD designated five companies and their associates as supporters of enemy groups.<sup>9</sup> Although no prime contracts had been terminated as a result of those designations, one prime contractor terminated eight active subcontracts awarded to a Section 841 designee.<sup>10</sup> Despite these actions, we concluded that DOD had limited assurance that contractors with links to enemy groups were identified and their contracts terminated because of weaknesses in its Section 841 process. As a result, we made seven

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<sup>7</sup> Under the Afghan First Initiative, U.S. military and civilian agencies operating in Afghanistan have taken steps to ensure that a greater number of contracts are awarded to Afghan companies. We previously reported on this initiative (see SIGAR Audit-12-6, *Afghan First Initiative Has Placed Work with Afghan Companies, but Is Affected by Inconsistent Contract Solicitation and Vetting, and Employment Data Is Limited*, January 31, 2012).

<sup>8</sup> The NDAA authorizes appropriations for military activities of the Department of Defense, for military construction, to prescribe military personnel strengths, and for other purposes.

<sup>9</sup> On January 18, 2013, CENTCOM issued the fourth notification letter on the Kam Airlines group of companies and their associates. On February 9, 2013, CENTCOM suspended the January 18, 2013, notification with the understanding that an independent investigation of the activities of Kam Air and their associates will be conducted by the Afghan government. For a complete listing of Section 841 designated companies and their affiliates, see the CENTCOM website at [www2.centcom.mil/sites/contracts](http://www2.centcom.mil/sites/contracts).

<sup>10</sup> The value of these subcontracts was approximately \$12 million; about \$5 million had been paid to the subcontractor when the contracts were terminated.

recommendations: five to address DOD's visibility over active contracts, one to prevent duplication of data collection, and one to provide guidance once actions are taken to restrict, terminate, or void a contract under Section 841. We also proposed two matters for congressional consideration that would strengthen the legislation. We continue to follow up on any actions that may be taken on our recommendations.

Due to an increased emphasis on contracting with host nation companies and the associated risk of contract funds being diverted to criminal or insurgent groups, Congress authorized State to establish a pilot program for vetting contractors in 2010. Originally including only five countries—Guatemala, Kenya, Lebanon, Philippines, and the Ukraine—State's pilot program began vetting non-U.S. companies and their officials in Afghanistan in October 2012. Effective May 9, 2011, USAID/Afghanistan Mission Order 201.04 outlines the Afghan First Initiative and describes procedures to ensure that the agency's programs in Afghanistan do not provide support to prohibited parties, either intentionally or inadvertently.

## STATE AND USAID VETTING OF NON-U.S. CONTRACTORS IN AFGHANISTAN INCLUDES CHECKS FOR TIES TO ENEMY GROUPS

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State's vetting program uses a risk-based approach for vetting contractors and their key individuals.<sup>11</sup> The Office of Risk Analysis and Management (RAM) manages the vetting program and sets the risk criteria for vetting non-U.S. contractors. In Afghanistan, RAM vets all non-U.S. contractors that are in the competitive range for a particular contract because the department considers them high risk.<sup>12</sup> Each contractor is required to submit information on the company, which includes the Afghanistan business license number and the citizenship and tribal affiliations of the company and its key individuals. In addition to reviewing the information provided by the contractor for completeness and accuracy, the vetting unit also checks the information against various databases to determine whether derogatory information—which may include ties to enemy groups—on the company or its key individuals, exists. If derogatory information does exist, RAM forwards the information to the assistant secretary of the bureau funding the activity, who is responsible for the final determination of contractor eligibility. If a contractor is deemed eligible to receive a contract, this designation is valid for 1 year. If there are changes in the company's key individuals, the company is re-vetted. As of May 30, 2013, State had vetted 219 non-U.S. individuals working in Afghanistan. All but two of these individuals have been cleared to contract with State.

USAID/Afghanistan Mission Order 201.04 requires the agency to annually vet non-U.S. contractors, along with first-tier subcontractors,<sup>13</sup> that the agency determines to be in the competitive range for contracts valued over \$25,000.<sup>14</sup> A non-U.S. contractor is required to submit an information package when it bids for a contract in Afghanistan. This package includes information on applicable business licenses, bank accounts, citizenship, and tribal affiliations of the company and its key individuals. USAID's Vetting Support Unit in Afghanistan is the first to review this package for completeness and accuracy. If the unit approves the package, USAID/Afghanistan forwards it to the agency's Office of Security in Washington, D.C., which uses the Terrorist Screening Center to assess the information against various databases.<sup>15</sup> If the Office of Security does not find

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<sup>11</sup> Key individuals include large shareholders, principal officers of the company's governing body, and relevant program managers.

<sup>12</sup> The competitive range comprises the most highly rated proposals.

<sup>13</sup> A first-tier subcontract is a subcontract awarded directly by the prime contractor in order to perform the requirements of the prime contract.

<sup>14</sup> USAID reduced the threshold from \$150,000 to \$25,000 on January 1, 2013.

<sup>15</sup> Established by Presidential Directive in 2003, the Terrorist Screening Center (TSC) is a multi-agency organization administered by the Federal Bureau of Investigation whose aim is to identify suspected or potential terrorists. It is

derogatory information, it submits a recommendation of eligibility for the contractor to USAID/Afghanistan. However, if the Office of Security does find sufficient derogatory information, the office recommends that the contractor be deemed ineligible. The office sends its recommendation, with the supporting information, back to USAID/Afghanistan. The Senior Deputy Mission Director makes the final determination on a contractor's eligibility for a contract. The Senior Deputy Mission Director may make an exception, allowing a contractor initially deemed ineligible to receive the contract, based on an analysis to determine the negative impact of not awarding a specific contract.<sup>16</sup> Like State, USAID grants vetting approval for 1 year, unless a change occurs with the contractor's key individuals. As of June 20, 2013, USAID had reviewed 1,639 vetting requests for organizations seeking contracts with the agency in Afghanistan.<sup>17</sup> The agency determined that 30 of these requests, which pertained to 20 different organizations, were ineligible.<sup>18</sup>

## State and USAID Consider, but Do Not Rely on, Section 841 Designations when Vetting Contractors

State and USAID regularly receive information from DOD on persons and entities designated under Section 841 as supporting insurgents or otherwise opposing U.S. or coalition forces. However, neither agency relies solely on this information during its vetting process. Further, a Section 841 designation by CENTCOM does not automatically disqualify a person or entity from receiving a contract with State or USAID. State and USAID have been included in CENTCOM's Section 841 distribution list since November 2012.<sup>19</sup> According to agency officials, after receiving a letter, State and USAID separately determine whether they have any active contracts with the identified designee. In addition, officials told us that both agencies take these designations into consideration when making contracting decisions.

In addition to receiving the Section 841 designation letters, State and USAID participate in regular meetings with DOD officials regarding ongoing investigations of potential designees because the agencies use many of the same contractors.<sup>20</sup>

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responsible for maintaining the Terrorist Screening Database, also known as the Terrorist Watchlist, for the U.S. government. USAID has employees detailed to the TSC that have access to their databases.

<sup>16</sup> The Senior Deputy Mission Director had not made any exceptions as of February 2013.

<sup>17</sup> According to a USAID official, organizations can submit multiple vetting requests. As part of its review of the 1,639 vetting requests, USAID vetted 3,124 individuals.

<sup>18</sup> The 30 ineligible requests represent 88 individuals. However, as an agency official explained, not all of those individuals necessarily have negative information against them. For example, if any of an organization's key individuals has any ties to terrorism, the entire organization would be potentially declared ineligible. USAID does not inform the organization of which individual had the negative information discovered to protect its sources and processes.

<sup>19</sup> In addition, SIGAR Investigations issued an alert letter on October 17, 2012, notifying State and USAID of the first two groups of individuals and entities identified as Section 841 designees.

<sup>20</sup> These include bi-weekly meetings of the Vendor Vetting Advisory Panel and the Fusion Cell. The Vendor Vetting Advisory Panel reviews potential contractors listed as high or extremely high on the force protection scale. The Fusion Cell meetings are held by CENTCOM to receive and share informal input on the vetting process. These meetings also discuss any political implications that could result from a Section 841 designation.



## LACK OF SECTION 841 AUTHORITIES PREVENTS STATE AND USAID FROM TERMINATING FOR DEFAULT CONTRACTS WITH THE ENEMY, WHICH COULD RESULT IN HAVING TO PAY THE FULL COSTS OF THOSE CONTRACTS

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Unlike DOD, State and USAID were not included in Section 841 and have no separate authority to terminate for default contracts with Section 841 designees. Terminating for default would protect the agencies from having to pay up to the full cost of the contract.<sup>21</sup>

Based on our review of data provided by USAID on its contracts in Afghanistan as of December 31, 2012, we determined that the agency does not have active prime contracts or first-tier subcontracts with the current Section 841 designees identified by DOD.<sup>22</sup> State officials told us that their agency does not have active prime contracts with these designees, but we were unable to verify this.<sup>23</sup> Officials from both agencies told us that if a State or USAID contractor were designated as a supporter of enemy groups under Section 841, contracting officials would perform their own independent assessment and re-vet the contractor to determine whether the contract should be terminated. If they decided to terminate the contract, agency officials indicated that they would likely attempt to terminate for convenience, which could result in the agencies paying up to the full cost of the terminated contracts.<sup>24</sup> Moreover, if either State or USAID decide to terminate a contract with a Section 841 designee for convenience, officials stated that the agencies would likely incur additional costs to complete the termination and costs associated with obtaining another contract to complete the work begun by the terminated contractor.

## CONCLUSION

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Despite the U.S. government's objective of not supporting insurgent and terrorist activities, Section 841 applies only to DOD; it does not include State and USAID, the other two major contracting agencies in Afghanistan. State and USAID have established procedures for vetting non-U.S. contractors in Afghanistan and take DOD's Section 841 designations into consideration. However, their lack of express authority to terminate for default contracts with Section 841 designees means that they could be obligated to pay the full cost of contracts with parties determined to be supporting the enemies of the United States. The funds paid to those contractors could then be funneled to insurgent or terrorist groups. Moreover, because State and USAID do not have express authority under Section 841 to restrict the award of contracts, they could award new contracts to persons or entities that are providing support to groups that are intent on disrupting U.S. and international reconstruction efforts and harming military and civilian personnel in Afghanistan. This risk may be exacerbated

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<sup>21</sup> Termination for default is the U.S. government's contractual right to completely or partially terminate a contract because of the contractor's actual or anticipated failure to perform its contractual obligations. When a contracting agency makes the decision to terminate a contract for default, it is not liable to pay any additional costs under the contract beyond the reasonable value of the work accepted by the government.

<sup>22</sup> The data USAID provided primarily listed contracts valued over \$150,000; however, we identified contracts that were below this amount as well as entries with missing data fields.

<sup>23</sup> We received data from State on its contracts in Afghanistan; however, this data was incomplete at the time we completed this audit. As a result, we were unable to independently verify that the department did not have active prime contracts with current Section 841 designees.

<sup>24</sup> Termination for convenience gives the U.S. government the right to terminate a contract without cause at any time after award. The contracting agency negotiates with the contractor to reach a bilateral agreement settling the termination, which includes determining the outstanding costs the contracting agency will pay the contractor.

as State and USAID are expected to continue spending hundreds of millions of dollars on contracts in Afghanistan, even after the U.S. military's combat mission ends in 2014.

## MATTER FOR CONGRESSIONAL CONSIDERATION

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To ensure that all contracts in a contingency operation are subject to provisions similar to Section 841, Congress may wish to consider replacing Section 841, which applies only to DOD, with a government-wide authority that would allow senior procurement executives and commanders to void, terminate for default, or restrict future awards to persons or entities identified as enemies of the United States.

## AGENCY COMMENTS

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State and USAID provided written comments on a draft of this report, which are reproduced in appendices II and III, respectively.

In its response to our matter for congressional consideration, State commented that it does not believe that the department has been hindered by a lack of Section 841 authority, noting that its pre-award vetting process, which considers DOD Section 841 determinations, provides reasonable assurance against awards to offending contractors or grantees. State added that no terminations have been required because of enemy affiliation. State commented that, in the event a termination was necessary, terminations for convenience would not necessarily require payment of the full contract price unless performance were substantially complete and the government had received value. While State added that it would welcome additional authorities to terminate contracts or grants going to entities “determined to support terrorism,” it also noted that it has some concerns with proposals that would indiscriminately expand DOD contracting provisions to State.

USAID also commented that it does not believe that the agency's efforts to protect against the diversion of funds to terrorists have been hindered by a lack of Section 841 authority. USAID noted that although no new designations have been added under Section 841 in over 6 months, the agency has at the same time declared 26 awardees or sub-awardees to be ineligible as a result of its vetting process (for a total of 34 ineligible awards declared from February to July 2013). According to USAID, these 34 ineligible award determinations have helped ensure that almost \$33 million in development funds were not disbursed to individuals or organizations for whom questionable or unacceptable derogatory information was found. Like State, USAID stated that it would welcome additional authorities, such as authority to void contracts to ensure that no U.S. government funds go to “terrorists.” However, USAID also indicated that it would have concerns with proposals that would indiscriminately expand DOD contracting provisions to the agency, stating that “DOD and USAID have different purposes and modalities for contracting, which is why [they] have different authorities and not identical systems.”

We support State's and USAID's efforts to vet non-U.S. contractors prior to awarding contracts. However, we maintain that replacing Section 841 legislation with a government-wide authority would benefit both agencies by providing them with the authority to restrict, terminate for default, or void ongoing and future contracts with persons or entities identified as enemies of the United States—not solely those individuals and entities and individuals identified as “terrorists”—without absorbing any additional contract costs. Furthermore, although we agree that each agency has its own system for contracting, we do not think that, should Congress grant the authorities under Section 841 legislation to State and USAID, it would also by necessity require those agencies to replicate DOD's contracting procedures.

## APPENDIX I - SCOPE AND METHODOLOGY

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This report (1) describes the processes the Department of State (State) and U.S. Agency for International Development (USAID) have established to prevent contracting with persons or entities that actively support insurgencies or oppose U.S. or coalition forces in Afghanistan and (2) discusses the potential impact of State and USAID not having Section 841 authorities on their contracting activities. We do not discuss the mechanics of the vetting processes used by State and USAID in detail because we did not evaluate the effectiveness of the methods used by the agencies to conduct the vetting.

To describe the processes State and USAID established to prevent contracting with persons or entities that actively support insurgencies or oppose U.S. or coalition forces in Afghanistan, we reviewed the Department of State standard operating procedures for vetting of contracts and grants, USAID's Mission Order for Afghanistan 201.04, State and USAID's risk foundation document for contracting and grants.<sup>25</sup> We reviewed Section 841 of the National Defense Authorization Act for Fiscal Year 2012, Department of Defense's (DOD) Section 841 notification letters, and applicable sections of the Federal Acquisition Regulations. We also reviewed information in our April 2013 report on DOD's process for implementing Section 841.<sup>26</sup> We interviewed relevant State officials from the Office of the Undersecretary of Management and the Office of Risk Analysis and Management, and relevant USAID officials from the Office of Acquisition and Assistance and the Office of Financial Management at the Mission in Afghanistan and the Office of Counterterrorism and Information Security at USAID headquarters.

To determine the impact of State and USAID not having Section 841 authorities on their contracting activities, we reviewed DOD's Section 841 notification letters identifying current designees. We also reviewed data on ongoing USAID contracts in Afghanistan as of December 31, 2012, to determine whether the agency had active prime contracts or first-tier subcontracts with Section 841 designees. We were unable to independently verify that State did not have active prime contractors who were Section 841 designees because data from State was incomplete at the time we completed the audit. In addition, we interviewed relevant State officials from the Office of the Undersecretary of Management and the Office of Risk Analysis and Management. We also met with relevant USAID officials from the Offices of Acquisition and Assistance and Financial Management in Afghanistan and the Office of Counterterrorism and Information Security.

We did not use or rely on computer-processed data for the purposes of the audit objectives or assess internal controls.

We conducted work in Washington, D.C., and Kabul, Afghanistan, from October 2012 to July 2013, in accordance with generally accepted government auditing standards. These 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. The audit was conducted by the Office of Special Inspector General for Afghanistan Reconstruction under the authority of Public Law No. 110-181, as amended, and the Inspector General Act of 1978, as amended.

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<sup>25</sup> USAID's Mission Order 201.04 covers non-U.S. party vetting of contractors.

<sup>26</sup> SIGAR Audit 13-6.

## APPENDIX II - COMMENTS FROM DEPARTMENT OF STATE

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United States Department of State

Washington, D.C. 20520

July 18, 2013

Elizabeth A. Field  
Assistant Inspector General for Audits and Investigations  
Special Inspector General for Afghanistan Reconstruction (SIGAR)  
1550 Crystal Drive, Suite 900  
Arlington, VA 22202

Dear Ms. Field:

Thank you for the opportunity to provide the Department of State's comments on SIGAR draft Audit 13-14, "Contracting with the Enemy: State and USAID Need Stronger Authority to Terminate Contracts When Enemy Affiliations Are Identified."

The Department takes thorough and exhaustive measures to properly vet recipients of USG funds against all relevant and available information to ensure that our programs and contracts advance the foreign policy and security interests of the United States. As the audit notes, Section 841 findings by CENTCOM under current authorities are included in this review process. The Department has established vetting procedures in coordination with our relevant Congressional oversight committees to ensure that recipients of contracts, grants, and cooperative agreements executed by our agency are reviewed against relevant USG databases and available information. Department of State and USAID vetting procedures have been established in accordance with our relevant procurement and grant making authorities to ensure that they can withstand legal challenge, while appropriately protecting classified information.

We do not believe that the Department has been hindered by a lack of Section 841 authority. The pre-award vetting process, which considers DOD Section 841 determinations, provides reasonable assurance against awards to offending contractors or grantees. No terminations have been required because of enemy affiliation. Currently, in the event a termination was necessary, terminations for convenience would not necessarily require payment of the full

contract price unless performance were substantially complete and the government had received value.

We welcome further dialogue on how to improve existing measures, but do have some concerns with proposals that would indiscriminately expand Department of Defense contracting provisions to the Department of State. We would welcome additional authority to terminate contracts or grants going to entities determined to support terrorism.

Thank you again for the opportunity to comment, and we welcome any questions.

Sincerely,

A handwritten signature in black ink that reads "Dan Feldman" with a long horizontal flourish extending to the right.

Dan Feldman  
Deputy Special Representative for  
Afghanistan and Pakistan

## APPENDIX III - COMMENTS FROM U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

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Elizabeth A. Field  
Assistant Inspector General for Audits and Investigations  
Special Inspector General for Afghanistan Reconstruction (SIGAR)  
1550 Crystal Drive, Suite 900  
Arlington, VA 22202

Dear Ms. Field:

Thank you for the opportunity to provide comments from the U.S. Agency for International Development (USAID) on the draft of SIGAR Audit 13-14, "Contracting with the Enemy: State and USAID Need Stronger Authority to Terminate Contracts When Enemy Affiliations Are Identified."

USAID agrees that no U.S. funds should be diverted to our nation's enemies. To that end, USAID has established an exhaustive vetting program in Afghanistan that has a proven track record of effectiveness. As the draft audit notes, this program draws on a variety of sources of information from across the U.S. government (USG), including Section 841 designations by the Department of Defense (DoD). To date, USAID's vetting program in Afghanistan has made 34 ineligible award determinations which have helped ensure that almost \$33 million in development funds were not dispersed to individuals or organizations for whom questionable or unacceptable derogatory information was found.

USAID does not believe that our efforts to protect against diversion of funds to terrorists have been hindered by a lack of Section 841 authority. For example, while no new designations have been added under Section 841 in over 6 months, USAID has at the same time declared 26 awardees/sub-awardees to be ineligible through our vetting processes (for a total of 34 ineligible awards).

USAID would certainly welcome additional authorities, such as an independent grant of authority to the Agency to void contracts, to ensure that no USG funds go to terrorists. However, we would wish to ensure that any new authorities or responsibilities do not disrupt what currently works, and would have concerns with proposals that would indiscriminately expand DoD contracting provisions to the Agency. It is also important to note that USAID and DoD have

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different purposes and modalities for contracting, which is why we have different authorities and not identical systems.

We welcome further dialogue on this topic, and appreciate the opportunity to comment. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Donald L. Sampler".

Donald L. Sampler  
Acting Assistant to the Administrator  
Office of Afghanistan and Pakistan Affairs  
USAID

## APPENDIX IV - ACKNOWLEDGMENTS

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## SIGAR's Mission

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

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

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