



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

October 17, 2012

The Honorable Hillary Rodham Clinton
Secretary of State

The Honorable James B. Cunningham
United States Ambassador to Afghanistan

General James N. Mattis
United States Marine Corps
Commander, United States Central Command (CENTCOM)

General John R. Allen
United States Marine Corps
Commander, International Security Assistance Force/U.S. Forces – Afghanistan

The Honorable Rajiv Shah
Administrator
United States Agency for International Development

The Honorable Patrick F. Kennedy
Under Secretary of State for Management

Ms. Angelique Crumbly
Acting Assistant to the Administrator
United States Agency for International Development
Bureau for Management

Dr. S. Ken Yamashita
Mission Director to Afghanistan
United States Agency for International Development

Subject: Immediate Action needed to Prevent Individuals and Entities Actively Supporting the Insurgency in Afghanistan from Obtaining Contracts, Grants, or Cooperative Agreements

On 24 July 2012, General James N. Mattis, USMC, Commander, United States Central Command (CENTCOM), pursuant to the authority granted in Section 841 of the Fiscal Year 2012 National Defense Authorization Act (P.L. 112-81, 125 Stat. 1510), identified the following individuals and entities as "actively supporting an insurgency" in Afghanistan:

Arvin Kam Group LLC
Arvin Kam Construction Company
Vakil Saadat
Haji Mohammad Almas Khan
Haji Khalil Fruzi

On September 17, 2012, General Mattis again exercised the authority under Section 841 to identify a second group of individuals and entities as “actively supporting an insurgency” in Afghanistan:

The Nur Rahman Group of Companies
Nur Rahman (a.k.a. “Noor Rahman” and “Noor Rahman Safa”)
Mohammad Rhaman
The Hiwad Brothers Company (a.k.a. “Noor Rahman Construction Company” and “Koh-e Safi Mining Company”)
The Zurmat Group of Companies
Yousef Zaland
Mohammad Ayub
The Zurmat Group of Businesses
Zurmat Foundation
Haji Amir Muhammad
Nurullah Jan
Abdul Wakil Wasim
Triangle Technologies
Haji Dost Mohammad Zurmat Construction Company
Zurmat General Trading Company

The purpose of this identification was to place Department of Defense (DoD) Heads of Contracting Activities (HCAs) on notice that they should take action to restrict the award of, terminate for default, or void in whole or part as contrary to public policy, any contract, grant or cooperative agreement with these 20 individuals and entities. Copies of the memoranda signed by General Mattis making these identifications have been attached for your review.

This report focuses on an issue that the Special Inspector General for Afghanistan Reconstruction (SIGAR) believes warrants immediate attention regarding the award of contracts, grants and cooperative agreements by the Department of State (DoS) in Afghanistan. Specifically, Section 841 only affects DoD contracts in Afghanistan and, therefore, notice of the identification of entities and individuals as active supporters of the insurgency in Afghanistan by General Mattis under this authority is only provided to DoD offices.

While SIGAR has taken steps to initiate government-wide debarment of these individuals and entities, we are aware that DoS and the U.S. Agency for International Development (USAID) use many of the same contractors as DoD or have the potential to use them in the future, possibly resulting in the award of contracts, grants, or cooperative agreements to them prior to their designation as excluded parties through the debarment process.

LEGISLATIVE HISTORY

On December 31, 2011, the Fiscal Year 2012 National Defense Authorization Act (P.L. 112-81, 125 Stat. 1510) (hereinafter, 2012 NDAA) was signed into law by President Barack H. Obama. Included in the 2012 NDAA was a provision located at Section 841, entitled “Prohibition on Contracting with the Enemy in the United States Central Command Theater of Operations.” This section was promulgated for the purpose of identifying and preventing the award of contracts to individuals and entities that are engaged in actively supporting an insurgency or otherwise actively opposing United States or Coalition Forces in a contingency operation, most notably in Afghanistan. Specifically, Section 841 requires that

the CENTCOM Commander use available intelligence materials to review the status of persons and entities that receive payments from the United States through contracts, grants, or cooperative agreements with estimated values in excess of \$100,000.

Once an individual or entity has been identified by CENTCOM, the HCAs within DoD are authorized to restrict the award of, terminate for default, or void in whole or part as contrary to public policy, any contract, grant or, cooperative agreement with the persons or entities that are the subject of the CENTCOM finding. In addition, contractors and recipients of grants or cooperative agreements are required to “exercise due diligence” to ensure that none of the funds that they receive from the United States are provided directly or indirectly to the persons or entities identified by CENTCOM as supporting an insurgency or actively opposing United States or Coalition Forces. Contractors that fail to exercise such due diligence may also have contracts, grants, or cooperative agreements terminated for default or voided by the HCAs. U.S. Forces – Afghanistan, Task Force 2010 (TF 2010) has been designated as the office responsible for developing recommendations made to CENTCOM pursuant to Section 841 and for maintaining the materials compiled to support determinations made under this authority.

On January 26, 2012, a class deviation to the DoD Federal Acquisition Regulation Supplement (DFARS) was issued for publication at DFARS 252.225-7993, with application to all contracts awarded on or before 31 December 2014, implementing these due diligence requirements in accordance with the provisions of Section 841. In order to facilitate this process, Section 841 specifically states that classified information used as the basis for the identification of a person or entity supporting an insurgency or actively opposing United States or Coalition Forces may not be disclosed to the identified party, or their representative, in the absence of a protective order issued by a Federal Court.

INDIVIDUALS IDENTIFIED AS ACTIVELY SUPPORTING AN INSURGENCY

Pursuant to the authority found in Section 841 of the 2012 NDAA and DFARS 252.225-7993, on July 24 2012, and again on 17 September 2012, General Mattis issued notifications to DoD HCAs stating that the 20 named entities and individuals were identified as “actively supporting an insurgency.” These notifications requested that the HCAs identify any existing contracts, grants, or cooperative agreements with these 20 entities and individuals and that they exercise the authority found in Section 841(a) to restrict, terminate, or void any existing contracts, grants, or cooperative agreements with these individuals and entities. The HCAs were also instructed to report their actions within 14 days to CENTCOM and TF 2010. The notification also requested that no new contracts be awarded to the named individuals and entities.

A review of publicly available information about the Arvin Kam Group and the business interests of Vakil Saadat, Haji Mohammad Almas Khan and Haji Khalil Fruzi shows that, in addition to Arvin Kam Construction Company, they currently operate other entities named Arvin Kam Group Security, Arvin Global Logistics Services Company, and the Arvin Kam Group Foundation. Information regarding the Nur Rahman Group of Companies shows that it has previously done business under the names RUCCL Rahman Umar Construction Company, Rahman Trading & Logistics Company LLC and NUCCL Construction Company. Finally, the Zurmat Group of Companies has also operated under the names Zurmat LLC and Zurmat Material Testing Laboratory. All of these companies should be considered to be affiliates of their respective parent companies for purposes of the award of contracts, grants, or cooperative agreements.

While SIGAR has taken steps to initiate Government-wide debarment of these individuals and entities from contracting with the Government, we are aware that DoS and USAID use many of the same contractors as DoD or have the potential to use them in the future, possibly resulting in the award of contracts, grants, or cooperative agreements to them in the period before their designation as excluded parties through the debarment process.

Due to the issuance of this identification and authorization, an immediate need exists to alert DoS and USAID contracting officers and, by extension, your agencies' prime contractors of the action taken by CENTCOM and the impact that it may have on their ability to contract or subcontract with the 20 contractors identified in General Mattis's memoranda and their affiliates.

RECOMMENDATIONS

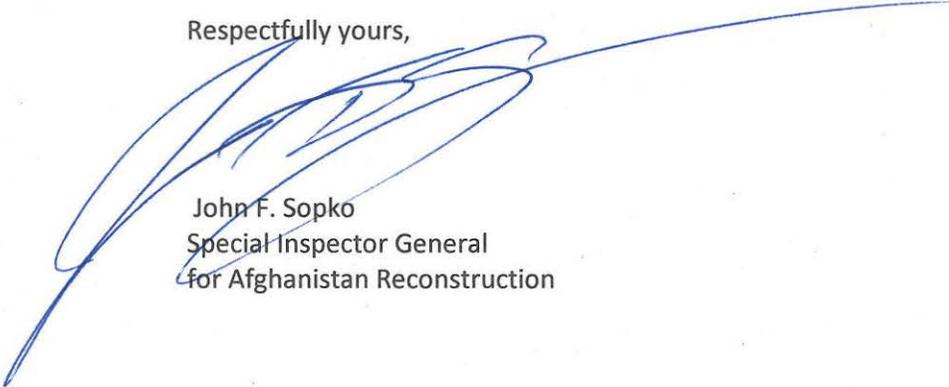
SIGAR is making three recommendations to ensure that information regarding DoD identification of individuals and entities under Section 841 is shared routinely and in a timely manner with all contracting officers operating in Afghanistan. These recommendations are that:

1. The U.S. Ambassador to Afghanistan and the USAID Mission Director/Kabul take immediate steps to disseminate General Mattis's memoranda dated July 24 and September 17, 2012 to their agencies' contracting officers as soon as possible so that they may make appropriate decisions regarding their present responsibility as Government contractors, prior to the award of contracts, grants, or cooperative agreements to these 20 entities and individuals, or awards of subcontracts to them by other contractors.
2. The Commander, U.S. Forces-Afghanistan and the Commander, USCENTCOM institute a process to routinely and expediently inform the U.S. Ambassador, Afghanistan and the USAID Mission Director, Kabul of any new identifications under Section 841; and
3. The U.S. Ambassador, Afghanistan and the USAID Mission Director, Kabul institute a process for informing their agencies' contracting officers immediately upon notification of any new Section 841 identifications.

Additional information regarding this issue may be obtained via SIGAR Senior Counsel Brian A. Persico, Arlington, Virginia, 703/545-6118 DSN 664 or SIGAR Special Agent in-Charge Michael Baird, U.S. Embassy Kabul, 0702-591-595 (local cell number).

Thank you for your service.

Respectfully yours,



John F. Sopko
Special Inspector General
for Afghanistan Reconstruction