

SIGAR

**Special Inspector General for
Afghanistan Reconstruction**

OFFICE OF SPECIAL PROJECTS

North East Power System (NEPS): USACE Did
Not Properly Vet Potential Contractors Before
Awarding NEPS Contracts



July 2019

SIGAR 19-47-SP



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

July 17, 2019

The Honorable Mark Esper
Acting Secretary of Defense

Lieutenant General Todd T. Semonite
Commanding General and Chief of Engineers
U.S. Army Corps of Engineers

During an investigation of the southern expansion of the North East Power System (NEPS), SIGAR discovered that the U.S. Army Corps of Engineers (USACE) did not properly vet bidding contractors as required by the Federal Acquisition Regulation (FAR) and Department of Defense (DOD) policy. The NEPS southern expansion was broken into four phases and included three separate contracts totaling \$289.1M. This report discusses the results of SIGAR's review of USACE's vetting of potential NEPS contractors in accordance with the FAR and DOD policy.

The FAR requires contracting officers to confirm past performance that prospective contractors claim in their bid proposals. In addition, the FAR requires contracting officers to utilize multiple databases to vet potential contractors prior to the awarding of any contract. These databases, the Federal Awardee Performance and Integrity Information System (FAPIIS) and the System for Award Management (SAM), provide information on previous performance problems and suspension and debarment information. CENTCOM also requires contracting officers to review information in the Joint Contingency Contracting System (JCCS).

Our analysis found that USACE awarded the NEPS Phase I contract to a contractor that falsely claimed prior experience he didn't have. USACE also awarded the Phase II and III contract to an individual who was proposed for debarment and was the brother of the Phase I contractor who was also proposed for debarment. USACE's failure to properly vet these contractors put the NEPS contracts at risk of waste and may have contributed to the significant delays and safety and reliability problems SIGAR identified in subsequent audits and inspections of NEPS projects.

Since the last NEPS contract was awarded in July, 2015, DOD, CENTCOM and USACE have taken steps to improve their procedures for the vetting of contractors. In September 2015 DOD added the requirement for contracting officers to check SAM "at least monthly" for all active contracts. USACE included this requirement in their most recent Transatlantic Division Operations Order. In September 2018 CENTCOM mandated the use of JCCS for all contracts with an estimated value above \$50,000. These additional directives are in addition to the required use of SAM and FAPIIS as mandated in the FAR. SIGAR commends these additional steps, and emphasizes the need for USACE contracting officers to follow procedures in the FAR as well as the additional vetting procedures that CENTCOM requires.

We provided a draft of this report to USACE on June 5, 2019. We received written comments from the USACE Transatlantic Division, including the Transatlantic Middle East District (TAM), on July 1, 2019. USACE's written comments are reproduced, in full, in Appendix III. USACE "generally agrees with the assertions made in the report, and acknowledges improvements made in [USACE] processes to vet both awardee corporations and individuals as discussed." However, TAM "disagrees with the legal conclusion...that the familial relationship alone, in the absence of any finding of control, is sufficient to find an affiliation under the Federal Acquisition regulation (FAR)."



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

USACE asserted that, in particular for NEPS IV, the contractors' familial connections on their own were not significant enough to represent an affiliated concern and therefore trigger a review by the Army Suspension and Debarment Official prior to contract award.

We generally agree with USACE that familial relationships alone, in the absence of other indicia, may not be a sufficient basis upon which to establish a contractor as non-responsible. However, this potential evidence of affiliation, when combined with the established misrepresentations, significant delays and safety and reliability problems with the NEPS I-III projects that were then known to USACE, should have triggered a more fulsome review prior to the NEPS IV contract award to safeguard taxpayer funding from further fraud and waste.

We conducted our work in Washington, D.C. from May 2018 through June 2019, under the authority of Public Law No. 110-181, as amended, and the Inspector General Act of 1978, as amended; and in accordance with the Council of Inspectors General on Integrity and Efficiency (CIGIE) *Quality Standards for Inspection and Evaluation*. Should you or your staff have any questions about this project, please contact Mr. Benjamin Piccolo, Director of Special Projects, at (703) 545-2192 or benjamin.i.piccolo.civ@mail.mil.

Sincerely,

John F. Sopko
Special Inspector General
for Afghanistan Reconstruction

The North East Power System (NEPS) is intended to provide a cost-effective, reliable system to distribute electric power to areas in northeast Afghanistan. The NEPS network is the largest power-transmission network in Afghanistan. It imports power from Uzbekistan and Tajikistan, along Afghanistan's northern border, and extends south from Balkh and Kunduz provinces to Kabul, Ghazni, and Gardez provinces. Since 2012, USACE has supported the southern expansion of NEPS by awarding and managing four distinct phases of construction (Phases I-IV) to three different contractors and joint ventures, at a total cost to the U.S. government of \$289.1M.

SIGAR reviews have reported that this expansion of NEPS has been plagued by delays, reliability and safety problems.¹ For example, NEPS Phase I was more than four years behind schedule and NEPS Phase III included structurally unsound power transmission towers, a lack of safety or protective electrical equipment, and unreliable connections between towers and substations, among other problems.

Based on the issues uncovered in previous reports, SIGAR initiated this special project to (1) determine the extent to which USACE complied with the vetting requirements in the FAR prior to awarding the contracts for NEPS Phases I to IV, and, (2) determine what steps, if any, USACE took to evaluate the familial ties between its contractors prior to awarding contracts for NEPS Phases I to IV.

To accomplish these objectives SIGAR reviewed relevant documents, including contracts and the FAR, and obtained other documents and emails from DOD, including USACE from May 2018 through June 2019. Appendix I has details of our objectives, scope, and methodology.

REQUIREMENTS FOR VETTING CONTRACTORS

Federal Acquisition Regulation

Prior to awarding construction contracts, USACE contracting officers are required to vet potential contractors and ensure compliance with the Federal Acquisition Regulation (FAR). FAR Section 9.104-6 requires contracting officers to review the past performance of prospective contractors to ensure that they have a history of integrity and business ethics, as well as a satisfactory performance record. This review includes a requirement that the contracting officer review information available in the Federal Awardee Performance and Integrity Information System (FAPIS) and the System for Award Management (SAM), two publicly available online contractor databases maintained by the General Services Administration. The FAR specifically mandates review of contractor eligibility prior to award of contracts to ensure that entities excluded from contracting through the suspension and debarment process are prevented from receiving awards. These reviews also include determinations of the past performance and integrity of affiliated individuals and entities when they may adversely affect the prospective contractor's performance or integrity.²

Central Command also requires contracting officers to review the Joint Contingency Contracting System (JCCS). Each database serves a slightly different purpose, detailed below.

Federal Awardee Performance and Integrity Information System (FAPIS)

The Federal Awardee Performance and Integrity Information System (FAPIS) is a database that contains information to support award decisions as required by the Federal Acquisition Regulation (FAR 9.104-6). It

¹ See SIGAR 18-37 Inspection Report: Afghanistan's North East Power System Phase III: USACE's Mismanagement Resulted in a System that is Not Permanently Connected to a Power Source, Has Not Been Fully Tested, and May Not Be Safe to Operate; also, SIGAR 18-10 Audit Report: Afghanistan Infrastructure Fund: Agencies Have Not Assessed Whether Six Projects That Began in Fiscal Year 2011, Worth about \$400 Million, Achieved Counterinsurgency Objectives and Can Be Sustained.

² See FAR 9.104-1 - General Standards; and FAR 9.104-6 - Federal Awardee Performance and Integrity Information System.

collects information on, among other things, a contractor's past performance, non-responsibility determinations, subcontractor payment issues, and administrative agreements.

System for Award Management (SAM)

The System for Award Management consolidates contractor data from multiple sources into one database (FAR 9.405). It allows government contracting officers' access to contractor past performance reporting, including suspension and debarment activities. Since September, 2015, contracting officers in DOD have been required to "...check SAM, at a minimum, on a monthly basis to ensure none of the existing contracts being performed in the covered combatant commands are associated with prohibited or restricted persons or entities."³

Joint Contingency Contracting System (JCCS)

JCCS has been in place since 2006 and is primarily concerned with threat mitigation in order to prevent "fund[ing] the enemy."⁴ Since July 27, 2012, the Department of Defense has required all contracting officers to utilize JCCS for all contracts that fall under the Theater Business Clearance (TBC) classification, which includes NEPS.

CONTRACT AWARD AND DEBARMENT TIMELINE

In September 2012, the U.S. Army Corps of Engineers awarded State Corps Limited (SCL) a \$60.6 million contract to construct the North East Power System (NEPS) Phase I. NEPS Phase I was intended to complete multiple sections of power lines and link them to designated power stations. State Corps Limited was owned at the time by Mr. Abdul Majeed Fana and employed his brother Mr. Abdul Hameed as program manager.

In March, 2013 Turkish contractor Makina Elektrik Insaat Sanayi ve Ticaret A.S. (META) filed a complaint with USACE, SIGAR, and the Department of Justice alleging that SCL fraudulently claimed relevant experience in winning a bid for a different project⁵. As a result, USACE reviewed SCL's bid proposals for eight SCL contracts, including the NEPS Phase I project. USACE then found multiple instances of SCL misrepresentation regarding its qualifications, two of which specifically claimed false experience with large-scale electrical power transmission projects. These misrepresentations included claims that SCL had participated in work on power transmission lines in Iraq that it had no part of and the provision of references for past performance who, when contacted, had never worked with State Corps Limited before.

Based on the allegations of misrepresentation of past performance made by SCL, on August 28, 2013, the Department of the Army proposed the company as well as Mr. Fana, Mr. Hameed, and multiple other parties affiliated with SCL, for debarment. The effect of placing Mr. Fana, Mr. Hameed, and other parties in this status was an exclusion from the award of any new government contracts pending the outcome of a decision by the Army Suspension and Debarment Official (SDO) regarding the allegations made against them.

On September 27, 2013, USACE awarded a \$116 million firm-fixed-price contract to Zwakman Nabizai Construction Company (ZNCC), an Afghan company owned by Mr. Hameed (also vice president) and Mr. Mohammad Asif (also president) both brothers of Mr. Fana, for construction of NEPS II and III. This award occurred while Mr. Hameed was proposed for debarment and was ineligible for a contract award.

³ Department of Defense, Class Deviation Memo 2015-00016, *Prohibition on Providing Funds to the Enemy and Authorization of Additional Access to Records* (Washington, DC: September 15, 2015).

⁴ Department of Defense, Memo 2015-00016.

⁵ SIGAR launched an investigation of META's claims in parallel with USACE's review of SCL's bid proposals; in August 2013 SIGAR sent a memorandum to the Army Suspension and Debarment Official recommending debarment of SCL, its affiliates, and its senior officers.

In December 2013 USACE terminated the NEPS I contract to SCL for default.⁶

On 22 January 2014, Mr. Fana was debarred by the U.S. Army from further contracting with the government for a three year period ending on January 23, 2017 based on the misrepresentations made in SCL's bid for NEPS I. At the same time, SCL entered into a three year Administrative Compliance Agreement with the Department of the Army. As part of the implementation of the Administrative Agreement, the proposed debarment of Mr. Hameed was terminated.

In July 2015, USACE awarded Mega Tech and Unique Road and Structure (URS) - a joint venture - a \$112.5 million contract to complete NEPS Phase IV.⁷ The President of Mega Tech, Mr. Abdul Hamid Naemi, was Mr. Hameed's and Mr. Fana's nephew. Again, this familial relationship information was available to the contacting officer through JCCS and FAPIIS had an analysis been conducted. (See Appendix II for a depiction of the familial relationships between all three companies).

USACE AWARDED NEPS CONTRACTS TO CONTRACTORS WHO MISREPRESENTED THEIR PAST PERFORMANCE AND WHO WERE PROPOSED FOR DEBARMENT

USACE did not verify SCL's past performance before awarding them the NEPS Phase I contract and then awarded NEPS Phases II and III to a company whose owner was proposed for debarment at the time. USACE discovered multiple instances of misrepresentation by State Corp Limited and its principal officers after a third party filed a complaint. As detailed in USACE's 21 March 2013 Report and Referral for Suspension of State Corps Limited "...had State Corps not included misrepresentations in its proposals...it would have been disqualified from these competitions as technically unacceptable."

For NEPS Phases II and III USACE should have disqualified ZNCC from competing for any government contracts since the ZNCC vice president was proposed for debarment at the time USACE awarded the NEPS II and III contracts. This information had been entered into SAM at the time.⁸ Also, the proposal for debarment was known beforehand and circulated through emails to the relevant contracting entities within USACE prior to the awarding of NEPS Phases II and III.

Given the multiple misrepresentations of previous work in their bid for NEPS Phase I as detailed in the USACE referral for suspension of State Corps Limited (the referral referenced Program Manager Abdul Hameed), additional scrutiny should have been given to subsequent NEPS contracts. The ZNCC contract proposal listed "Abdul Hameed" as the contracting officer as well as the vice president of ZNCC, the company that won the NEPS Phases II and III contracts. USACE awarded ZNCC the NEPS Phases II-III 30 days after his proposed suspension, so there was adequate time to confirm that State Corps Limited program manager Abdul Hameed was also ZNCC contracting officer and vice president Abdul Hameed.

Mr. Fana, Mr. Hameed, and Mr. Asif are brothers and are therefore considered to be affiliates under the FAR's definition of that term. As a result, in accordance with the provisions of FAR Section 9.405, and absent a determination that a compelling reason existed to do so by the Army Suspension and Debarment Official, USACE should not have awarded ZNCC the contract for NEPS Phases II and III. ZNCC was disqualified for the following reasons:

⁶ In June 2014 USACE awarded a \$39.5 million contract to Assist Consultants Incorporated (ACI), another Afghan Company, to complete NEPS I.

⁷ The base contract to Mega Tech-URS was worth \$110.3M; in subsequent modifications the cost increased to \$112.5M.

⁸ A ZNCC record was entered into SAM.gov the same date as the notice of proposed debarment of State Corps et al. (8/28/2013).

- Mr. Hameed, SCL's program manager, was currently excluded from contracting and exercised control over ZNCC due to his position as its Vice-President;
- Mr. Hameed and Mr. Fana, both excluded from contracting at the time of award are brothers of Mr. Asif, creating an affiliate relationship due to familial ties and indicating common ownership and control over both SCL and ZNCC.

In addition, information on the family connections between SCL and ZNCC were available on the JCCS website (both Mr. Abdul Hameed and Mr. Abdul Majeed Fana listed the same father in the database).⁹ SIGAR discovered the various companies' familial ties by using the JCCS website.¹⁰ Based on the presence of this information, the USACE contracting officer(s) should have discovered that ZNCC was ineligible for the NEPS Phases II and III contract.

Mr. Fana was still debarred when USACE awarded the contract for NEPS Phase IV to URS-Mega Tech JV in July 2015. Given the familial relationship between Mr. Fana and the Mega Tech President (Mr. Naeimi is Mr. Fana's nephew), USACE should not have awarded Mega Tech-URS the NEPS Phase IV contract absent a determination that a compelling reason existed to do so by the Army Suspension and Debarment Official.¹¹

Based on the guidelines set forth in the FAR and DOD memorandums, the consultation of the JCCS, SAM, and FAPIIS systems should have been part of the standard operating procedures for the contracting officer(s) assigned to the NEPS contracts. The analysis conducted by SIGAR shows that the contracting officer(s) should have discovered the familial ties between the contractors for NEPS Phases II-IV.¹²

NEPS HAS EXPERIENCED RELIABILITY AND SAFETY PROBLEMS AND DOES NOT OPERATE AS INTENDED

The failure to identify past performance misrepresentations by SCL and the proposed debarment of Mr. Hameed along with the familial ties among all three companies resulted in USACE awarding contracts to companies that didn't have the experience needed to execute this project effectively. Audits and inspections completed by SIGAR¹³ have identified a number of problems to include:

- NEPS Phase I was more than 4 years behind schedule and at risk of not being sustained by the Afghan government.
- For NEPS Phase III, the contractor built a temporary connection to a power source rather than a permanent one. This could create a safety hazard for residents living near transmission lines and jeopardize the system's ability to deliver electricity to a large geographic area.

⁹Under FAR 9.406 a debarment decision may be extended to include any affiliates or contractor. FAR 9.403 notes that an affiliation between a contractor and another business entity includes "identity of interests among family members" among other indicia.

¹⁰ The SIGAR Investigations Directorate had a copy of the JCCS database from 2013 that identified the familial relationships between the three companies. This information would have been available to anyone who accessed JCCS at the time USACE contracting officers approved the NEPS Phases II-III contracts.

¹¹ For a thorough discussion of the approval process for the issuance of a "compelling reason" determination by the Army Suspension and Debarment Official, see FAR 9.405; and Department of the Army Supplement to the Federal Acquisition Regulations (AFARS), Sec. 5109.405, Contractor Qualifications (Department of the Army, 2015).

¹² Investigative Report: Steps to uncover familial relationship between State Corps, Zwakman Nabizai Construction Company (ZNCC) and Mega Tech. SIGAR. 9/19/18.

¹³ See SIGAR 18-37 Inspection Report: Afghanistan's North East Power System Phase III: USACE's Mismanagement Resulted in a System that is Not Permanently Connected to a Power Source, Has Not Been Fully Tested, and May Not Be Safe to Operate; also, SIGAR 18-10 Audit Report: Afghanistan Infrastructure Fund: Agencies Have Not Assessed Whether Six Projects That Began in Fiscal Year 2011, Worth about \$400 Million, Achieved Counterinsurgency Objectives and Can Be Sustained.

- For NEPS Phase III, structurally unsound transmission towers, including exposed rebar and crumbling foundations, and towers built on loose soil without retaining walls, increasing the risk of erosion and collapse of the towers.
- Afghans living and farming land directly under NEPS III transmission towers and lines, when the contract required that the contractor clear the tower and line route of vegetation, houses, and other structures within about 41 feet of the center of the transmission lines.

CONCLUSION

The NEPS contracting officer(s) did not properly vet potential contractors before awarding the NEPS contracts, putting \$289.1M in reconstruction funding at risk of waste and may have contributed to problems identified during the SIGAR audits and inspections.

USACE awarded State Corps Limited the NEPS Phase I contract without confirming the validity of SCL's claims of previous work in their bid for the NEPS I contract, as required by the FAR. USACE awarded the NEPS Phase II-III contract to ZNCC which was owned by Abdul Hameed who was proposed for debarment and was the brother of another debarred SCL contractor with affiliated interests. Either of these facts would have served to determine the contractors as non-responsible (ineligible) to win the Phase II-III contracts unless there was a compelling reason to award the contract despite the finding.

Since the NEPS contracts were awarded (Phase IV in 2015), CENTCOM and USACE have taken steps to improve contract oversight. SIGAR commends DOD, CENTCOM and USACE for strengthening their contract oversight. However, given the incidents of contract fraud and corruption in Afghanistan uncovered by SIGAR and other agencies, SIGAR emphasizes the need for USACE to verify contractor claims of past relevant performance as well as enforce proper use of the available vendor vetting databases in order to avoid putting future U.S. reconstruction investments at risk due to poor performance or incomplete work.

AGENCY COMMENTS AND OUR RESPONSE

We provided a draft of this report to USACE on June 5, 2019. We received written comments from the USACE Transatlantic Division, including the Transatlantic Middle East District (TAM), on July 1, 2019. USACE's written comments are reproduced, in full, in Appendix III. USACE "generally agrees with the assertions made in the report, and acknowledges improvements made in [USACE] processes to vet both awardee corporations and individuals as discussed." However, TAM "disagrees with the legal conclusion...that the familial relationship alone, in the absence of any finding of control, is sufficient to find an affiliation under the Federal Acquisition Regulation (FAR)."

While acknowledging that the finding of control is "likely supportable" as applied to the contract awards for NEPS II and III, TAM asserted that for the NEPS IV contract award to MegaTech-URS, "the mere fact that Mr. Naeimi is the grandson of Mohammed Nabi (and therefore the nephew of Messrs. Fana, Hameed, and Asif) cannot, on its own, be sufficient to establish control." TAM cited a U.S. Department of Housing and Urban Development case (Matter of Dunn, December 5, 1997) supporting that conclusion.

The case law cited referred to an instance where a government agency sought to impose Limited Denial of Participation on two entities based on their alleged affiliation with another family member. However, unlike in the case example provided, USACE was not seeking to limit, bar, suspend, or otherwise punish URS-MegaTech. USACE was trying to find a responsible contractor that met the lowest price technically acceptable offer for the NEPS IV contract.

As noted in the review, the various familial relationships could have been discovered through FAPIIS, SAM, and JCCS as required by the FAR and DOD policy, including that Mr. Naeimi was the nephew of Mr. Fana. We

generally agree with USACE that familial relationships alone, in the absence of other indicia, may not be a sufficient basis upon which to establish a contractor as non-responsible. However, this potential evidence of affiliation, when combined with the established misrepresentations, significant delays and safety and reliability problems with the NEPS I-III projects that were then known to USACE, should have triggered a more fulsome review prior to the NEPS IV contract award to safeguard taxpayer funding from further waste.

APPENDIX I - SCOPE AND METHODOLOGY

This report examined USACE's vetting of potential NEPS contractors in accordance with the FAR. The objectives of this review were to (1) determine the extent to which USACE adhered to its responsibilities under the FAR prior to awarding the contracts for NEPS Phases I to IV, and, (2) where appropriate, determine what steps, if any, were taken by USACE to evaluate the ownership of its contractors prior to awarding contracts for NEPS Phases I to IV. Specifically, we sought to determine:

- Whether USACE checked the contractors past performance references prior to awarding the NEPS Phase I contract.
- What information was provided to the contracting officer regarding State's Corps proposed debarment and compliance agreement prior to awarding contracts for NEPS Phases II to IV.
- What steps, if any, were taken by USACE to evaluate the ownership of selected contracting companies prior to awarding contracts for NEPS Phases I to IV.
- Whether a review of exclusions was conducted by the NEPS contracting officer or any other USACE entity in accordance with FAR 9.104-1, 9.104-3(c), 9.405(a) and 9.405(d)(4).
- The extent to which USACE obtained any disclosures or other relevant information regarding the ownership and relationships of the contracting companies selected for NEPS Phases I-IV.

To accomplish these objectives, we interviewed personnel, reviewed relevant documents, including contracts and the FAR. We obtained documents and emails from DOD, including USACE. We conducted our work in Washington, D.C. from May 2018 through June 2019, in accordance with SIGAR's quality control standards. These standards require that we carry out work with integrity, objectivity, and independence, and provide information that is factually accurate and reliable.

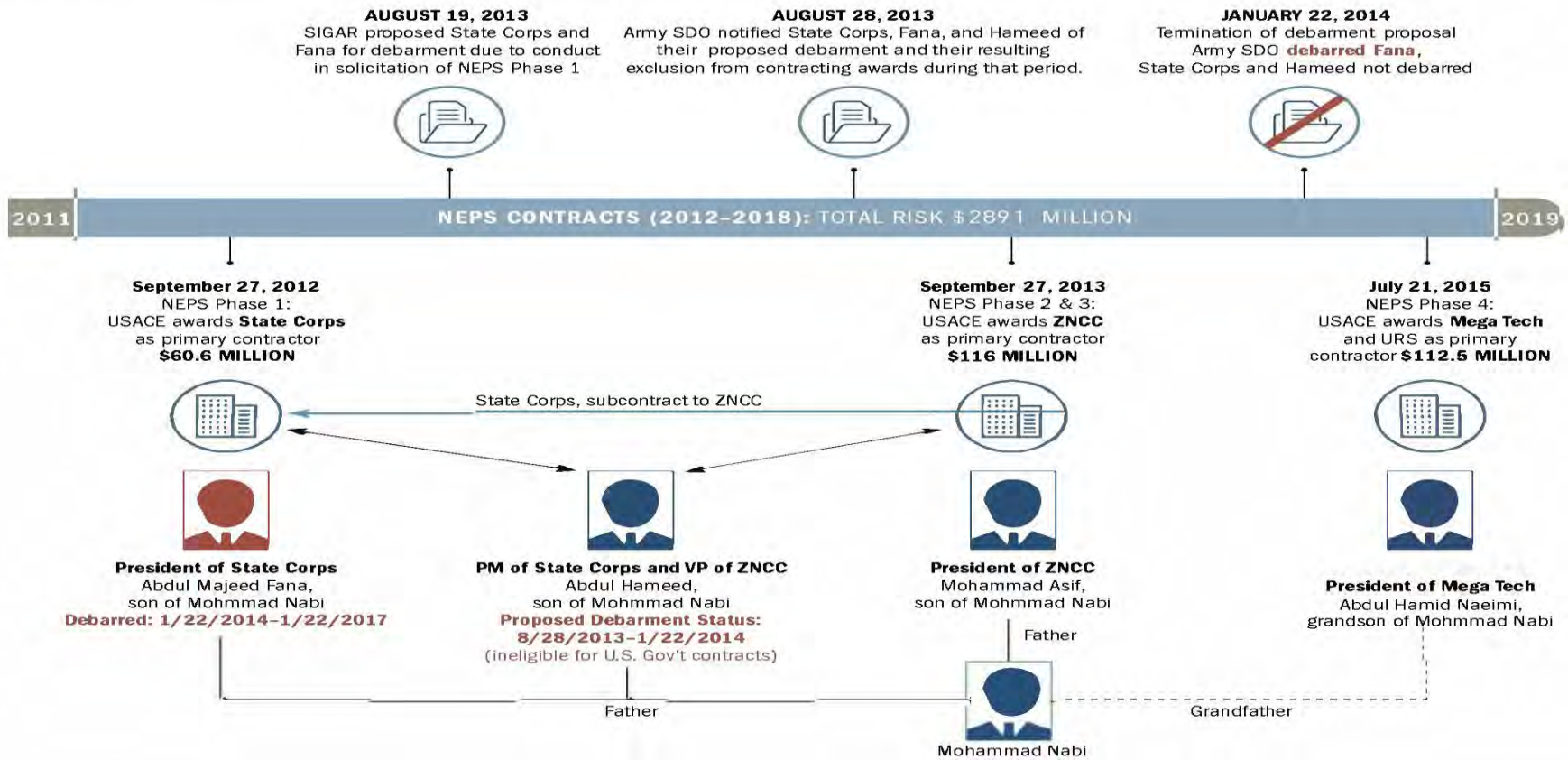
To determine the requirements for awarding the NEPS contracts we reviewed relevant sections of the FAR as well as DOD memorandums requiring the use of JCCS for all Afghanistan reconstruction projects. The Defense Logistics Agency answered questions on the required use of JCCS and other databases in contingency contracting.

To determine what steps were taken by USACE to evaluate the ownership of its contractors prior to awarding contracts for NEPS Phases I to IV, we obtained relevant documents on the NEPS contracts, including bid proposals from the companies involved, debarment documents, and other USACE-provided documents and emails. USACE also provided a timeline of events and answers to SIGAR questions.

APPENDIX II – FAMILIAL RELATIONSHIPS AND RELEVANT AFFILIATED CONCERNS

All three contractors awarded the NEPS Phases I – IV contracts had familial ties. The NEPS Phase I contractor State Corp Limited was owned by Abdul Fana and Abdul Hameed who were brothers. ZNCC was owned by Abdul Hameed and Mohammed Asif who were also brothers and then they subcontracted to SCL which was owned by another brother Abdul Fana. And finally, NEPS Phase IV was awarded to Mega Tech which was owned by Abdul Hamid Naeimi who was the nephew of the three brothers.

NORTHERN ELECTRICAL POWER SYSTEMS (NEPS) CONTRACTS



APPENDIX III - AGENCY COMMENTS FROM THE DEPARTMENT OF DEFENSE AND USACE



DEPARTMENT OF THE ARMY
UNITED STATES ARMY CORPS OF ENGINEERS
TRANSATLANTIC DIVISION
201 PRINCE FREDERICK DRIVE
WINCHESTER, VIRGINIA 22602-4373

01 JUL 2019

SUBJECT: Response to Special Inspector General for Afghanistan Reconstruction (SIGAR) Draft Report (Project Code SIGAR-SP-209), Northern Electrical Power System (NEPS): U.S. Army Corps of Engineers (USACE) Did Not Properly Vet Potential Contractors Before Awarding NEPS Contracts

Mr. John F. Sopko
Special Inspector General for Afghanistan Reconstruction
1550 Crystal Drive, Suite 900
Arlington, VA 22202

Dear Mr. Sopko:

The purpose of this letter is to provide the USACE response to the subject report.

The USACE generally agrees with the assertions made in the report, and acknowledges improvements made in our processes to vet both awardee corporations and individuals as discussed. However, the USACE disagrees with the legal conclusion in the report regarding familial relationship alone constituting an affiliation under the Federal Acquisition Regulation (FAR). The USACE provides additional discussion regarding this issue, especially as it regards the FAR requirement for "Control". Additional details are provided in the enclosure.

The USACE intends to continue following the FAR and relevant case law concerning affiliate relationships in conducting its responsibility determinations on current and future procurements.

My point of contact for this response is Ms. Erin K. Connolly, TAD Internal Review Auditor (Interim). She may be reached by e-mail at erin.k.connolly@usace.army.mil or by telephone at 540-665-5348.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Beck", is written over a light blue circular stamp.

CHRISTOPHER G. BECK
COL, EN
Commanding

Enclosure



DEPARTMENT OF THE ARMY
UNITED STATES ARMY CORPS OF ENGINEERS
TRANSATLANTIC MIDDLE EAST DISTRICT
201 PRINCE FREDERICK DRIVE
WINCHESTER, VIRGINIA 22602-4373

CETAM-IR

26 JUN 2019

MEMORANDUM FOR Commander, US Army Corps of Engineers (USACE) Transatlantic Division (TAD), 201 Prince Frederick Drive, Winchester, Virginia 22602-4373

SUBJECT: Response to Special Inspector General for Afghanistan Reconstruction (SIGAR) Draft Report (Project Code SIGAR-SP-209), Northern Electrical Power System (NEPS): USACE Did Not Properly Vet Potential Contractors before Awarding NEPS Contracts

1. The USACE Transatlantic Middle East District (TAM) partially concurs with the findings in the subject report ("the Report") and provides additional comments regarding actions taken in improving processes.
2. As SIGAR has noted in the Report, TAM vetted the awardee corporations for responsibility prior to the NEPS awards; TAM did not vet individuals for responsibility. TAM has since changed its responsibility determination processes and procedures and now, in addition to vetting the awardee corporations, looks at affiliates and individuals associated with the awardee corporations. In addition, TAM has conducted training on this issue for its employees.
3. While TAM agrees with the assertion that the NEPS II-IV awardee personnel are related, TAM disagrees with the following statement in the Report: "Mr. Fana, Mr. Hameed, and Mr. Asif are brothers and are therefore considered to be affiliates under the FAR's definition of that term." TAM does not object to the assertion that the men are brothers, but TAM disagrees with the legal conclusion in this statement that the familial relationship alone, in the absence of any finding of control, is sufficient to find an affiliation under the Federal Acquisition Regulation (FAR).
4. The definition of "affiliates" in FAR 9.403 states in its entirety:
 - a. "Affiliates." (1) Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly—
 - i. Either one controls or has the power to control the other; or
 - ii. A third party controls or has the power to control both.
 - b. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment.

CETAM-IR

SUBJECT: Response to Special Inspector General for Afghanistan Reconstruction (SIGAR) Draft Report (Project Code SIGAR-SP-209), Northern Electrical Power System (NEPS): USACE Did Not Properly Vet Potential Contractors before Awarding NEPS Contracts

5. To determine if an affiliation exists, one must first find that control exists – either actual control; the power to control; or entities where a third party has the power to control. The concept of control is mirrored, in substance, in the definition of "Affiliated concerns" used in the responsibility context (see FAR 9.104-3(c)).

6. As applied to NEPS II and III, the finding of control based on "identity of interest among family members" is likely supportable given Mr. Hameed's positions as PM of State Corps and VP of ZNCC (and the subcontract relationship between the two). However, as to the NEPS IV award to MegaTech-URS, the mere fact that Mr. Naeimi is the grandson of Mohammed Nabi (and therefore the nephew of Messrs. Fana, Hameed, and Asif) cannot, on its own, be sufficient to establish control. Saving and accepting the familial relationship, there is nothing in the Report evidencing any "identity of interest among family members" (and therefore no evidence of control) in connection with the NEPS IV award. Put differently, familial relationships by themselves--in the absence of the element of control required by the FAR--are insufficient bases upon which to determine a contractor is non-responsible.

a. Indeed, in Matter of Dunn, HUDBCA No. 97-C-116-D11, HUDBCA No. 97-C-117 D12 (Dec. 5, 1997), HUD presumed "identity of interests among family members" as the sole indicia of control.

b. The HUDBCA stated: "In a small family business which lacks a hierarchy of officers and employees, identity of interests among family members becomes an important consideration in looking at control and the power to control among those family members. However, familial relationship, per se, is not sufficient to establish that persons are affiliates of each other."

7. In total, TAM believes that SIGAR's interpretation of the term "affiliates," as applied to individuals, omits the requirement for control clearly stated in the FAR. TAM intends to continue following the FAR and relevant case law concerning affiliate relationships in conducting its responsibility determinations on current and future procurements.

8. Point of contact for this response is Ms. Erin Connolly, Transatlantic Middle East District Internal Review Auditor at 540-665-5348 or by e-mail at, erin.k.connolly@usace.army.mil.



RICHARD C. COLLINS, P.E.
LTC, EN
Commanding

This project was conducted
under project code SP-209.

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.

Obtaining Copies of SIGAR Reports and Testimonies

To obtain copies of SIGAR documents at no cost, go to SIGAR's Web site (www.sigar.mil). SIGAR posts all publicly released reports, testimonies, and correspondence on its Web site.

To Report Fraud, Waste, and Abuse in Afghanistan Reconstruction Programs

To help prevent fraud, waste, and abuse by reporting allegations of fraud, waste, abuse, mismanagement, and reprisal, contact SIGAR's hotline:

- Web: www.sigar.mil/fraud
- Email: sigar.pentagon.inv.mbx.hotline@mail.mil
- Phone Afghanistan: +93 (0) 700-10-7300
- Phone DSN Afghanistan: 318-237-3912 ext. 7303
- Phone International: +1-866-329-8893
- Phone DSN International: 312-664-0378
- U.S. fax: +1-703-601-4065

Public Affairs

Public Affairs Officer

- Phone: 703-545-5974
- Email: sigar.pentagon.ccr.mbx.public-affairs@mail.mil
- Mail: SIGAR Public Affairs
2530 Crystal Drive
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