

SIGAR

**Special Inspector General for
Afghanistan Reconstruction**

SIGAR-14-7 Inspection Report

Justice Center in Parwan Courthouse: Poor Oversight Contributed to Failed Project



OCTOBER
2013

SIGAR

Special Inspector General for Afghanistan Reconstruction

WHAT SIGAR REVIEWED

Under a December 2010 agreement between the State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL) and the Department of Defense's Combined Joint Interagency Task Force-435 (CJATF-435), INL agreed to provide up to \$10 million to construct the Justice Center in Parwan (JCIP) complex in Parwan province. On June 13, 2011, the Bagram Regional Contracting Center (BRCC) awarded CLC Construction Company (CLC) a \$2.38 million firm fixed-price contract to build the JCIP courthouse, the centerpiece of the 11 buildings in the complex. The contractor was given 155 days to complete the project after the notice to proceed was issued on July 16, 2011. On November 11, 2011, the contract was modified to increase the height of the courthouse ceilings, which increased the contract value to \$2.67 million.

This inspection assesses (1) whether construction of the courthouse was completed in accordance with contract requirements and applicable construction standards and (2) the U.S. government's management of the JCIP courthouse construction contract.

WHAT SIGAR RECOMMENDS

SIGAR recommends that the Commander, U.S. Central Command and the U.S. Secretary of State identify the reasons poor oversight occurred and establish processes to ensure this problem does not reoccur.

SIGAR received comments from INL and CENTCOM's Joint Theater Support Contracting Command (C-JTSCC), which are reproduced in appendices III and IV, respectively. INL and C-JTSCC concurred with the recommendation to strengthen oversight and noted the steps they are taking to implement this recommendation.

OCTOBER 2013

Justice Center in Parwan Courthouse: Poor Oversight Contributed to Failed Project

SIGAR-14-7 INSPECTION REPORT

WHAT SIGAR FOUND

Construction of the Justice Center in Parwan (JCIP) courthouse has not been completed and the workmanship of the construction that has been done to date is poor. For example, in its May 2013 inspection, SIGAR observed numerous cracks in the concrete, incomplete pours of concrete and rebar bound with wire instead of being welded that could lead to structural failure. In January 2012, the State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL) and the Department of Defense's Combined Joint Interagency Task Force-435 (CJATF-435), which both funded the project, conducted inspections and found construction flaws, including the use of inferior building materials. Based on the results of these inspections, in mid-January 2012, the Department of Defense's Bagram Regional Contracting Center (BRCC) issued CLC Construction Company (CLC) a Stop-Work Order. Subsequently, in March 2012, the U.S. Army Corps of Engineers conducted an inspection and recommended terminating and re-bidding the courthouse contract.

CJATF-435's oversight of the construction project was not conducted as required. The project fell behind schedule quickly and SIGAR found no evidence that the project's contracting officer representative (COR) conducted monthly reviews or submitted reports to the BRCC contracting officer as required. In fact, the COR, who had military experience as a construction engineering supervisor, told SIGAR that he felt unqualified to determine whether the contractor was performing according to the contract.

In June 2013, BRCC notified CLC that the JCIP courthouse contract was being terminated for convenience, which gives the U.S. government the right to terminate a contract without cause. At the time, CLC had been paid \$396,000. Because the contract was terminated for convenience rather than default, CLC could have requested the amount remaining on the contract, or about \$2.2 million. A draft of this report recommended reviewing the decision to terminate for convenience and taking action to address the contractor's failure to complete the project according to the terms of the contract. On October 3, 2013, CENTCOM's Joint Theater Support Contracting Command rescinded the contract's termination for convenience and issued a termination for default. SIGAR considers this action as meeting the intent of its recommendation and, accordingly, deleted this recommendation from the final report.



Tilted columns, sagging reinforcing rods, and faulty rebar at the JCIP courthouse construction site in Parwan province, Afghanistan.

Source: SIGAR, May 15, 2013.



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

October 25, 2013

The Honorable John F. Kerry
U.S. Secretary of State

The Honorable James B. Cunningham
U.S. Ambassador to Afghanistan

General Lloyd J. Austin III
Commander, U.S. Central Command

Brigadier General James E. Simpson
Commander, U.S. Central Command Joint Theater Support Contracting Command

This report discusses SIGAR's inspection of the courthouse at the Justice Center in Parwan (JCIP), Parwan province, Afghanistan. The report includes a recommendation to the Commander, U.S. Central Command (CENTCOM), and the Secretary of State to identify the reasons poor oversight occurred and establish processes to ensure that similar problems do not happen in the future. The draft report also recommended that they review the decision to terminate the JCIP courthouse contract for convenience and take action to address the contractor's failure to complete the courthouse according to the terms of the contract. Following the release of our draft report for comment, CENTCOM's Joint Theater Support Contracting Command (C-JTSCC) rescinded the contract's termination for convenience and issued a termination for default. Because this action was taken, we deleted the recommendation from our final report.

In commenting on a draft of this report, C-JTSCC did not concur with our initial recommendation to review the decision to terminate the JCIP courthouse contract for convenience. C-JTSCC explained that it did not concur with the recommendation because its decision to rescind the termination for convenience and then terminate the contract for default was unrelated to any fact contained in SIGAR's draft report. Instead, C-JTSCC stated that the decision to terminate for default was based on information obtained during a SIGAR criminal investigation into the contractor. C-JTSCC concurred with our recommendation to strengthen contract oversight and noted the steps it is taking to do so.

The Department of State's Bureau of International Narcotics and Law Enforcement Affairs (INL) generally agreed with both recommendations contained in the draft report. INL reported that it is implementing lessons learned from the JCIP and instituting new, more comprehensive requirements for those serving in oversight roles on construction and service contracts.

INL and C-JTSCC also provided technical comments, which we incorporated as appropriate. Their comments are reproduced in appendices III and IV, respectively.

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

John F. Sopko
Special Inspector General
for Afghanistan Reconstruction

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ABBREVIATIONS & ACRONYMS

BRCC	Bagram Regional Contracting Center
CENTCOM	U.S. Central Command
CJIATF-435	Combined Joint Interagency Task Force-435
CLC	CLC Construction Company
COR	Contracting officer's representative
DOD	Department of Defense
FAR	Federal Acquisition Regulation
INL	Bureau of International Narcotics and Law Enforcement Affairs
JCIP	Justice Center in Parwan
State	State Department

The U.S. and Afghan governments signed a Letter of Agreement in 2006 that committed to improve governance by enhancing the administration of justice and rule of law. A key element in implementing this strategy was the development of a criminal justice facility known as the Justice Center in Parwan (JCIP). JCIP was designed to provide a secure facility for transferring Afghan combatants from U.S. military custody into the Afghan criminal justice system. The U.S. government was to assist with building, equipping, and operating the JCIP, as well as mentoring and training Afghan government personnel assigned to the facility. JCIP was planned as a complex of 11 buildings—a courthouse, offices, laboratory facilities, meeting hall, and housing—located adjacent to the existing Parwan Detention Facility, which is next to the Bagram Airfield north of Kabul. The courthouse was expected to be the centerpiece for Afghan national security trials. (See photo 1.)

For this inspection, we assessed (1) whether construction of the courthouse was completed in accordance with contract requirements and applicable construction standards and (2) the U.S. government's management of the JCIP courthouse construction contract.

We conducted our inspection work in Kabul, Afghanistan, and at the JCIP site in Parwan province from May through September 2013, in accordance with the *Quality Standards for Inspection and Evaluation*, published by the Council of the Inspectors General on Integrity and Efficiency. The engineering assessment was conducted by a professional engineer in accordance with the National Society of Professional Engineers' *Code of Ethics for Engineers*. Appendix I provides a more detailed discussion of our scope and methodology.

Photo 1 - JCIP Courthouse Stands Incomplete



Source: SIGAR, August 20, 2013.

BACKGROUND

Under a December 19, 2010, interagency agreement between INL and Combined Joint Interagency Task Force-435 (CJIATF-435), ¹ INL agreed to provide up to \$10 million for construction of the JCIP complex.² For its part, CJIATF-435 committed to support the construction and furnishing of 11 buildings, including a courthouse to hold Afghan national security trials. Our inspection focused on the contract to construct the courthouse.

On June 13, 2011, DOD's Bagram Regional Contracting Center (BRCC) ³ awarded a \$2.38 million firm fixed-price contract (W91B4N-11-C-8066) to CLC Construction Company (CLC) to build a courthouse at the JCIP

¹ CJIATF-435 is a subordinate command of U.S. Forces-Afghanistan. Its efforts are focused on, among other things, providing secure and humane care, custody, and control over detainees, promoting rule of law, and the transition of detainee operations to Afghanistan.

² The agreement was amended in March 2011 to include an additional \$2 million.

³ In Afghanistan, DOD uses several organizations to manage Afghanistan reconstruction contracts, including U.S. Central Command's Joint Theater Support Contracting Command (C-JTSCC). In April 2010, C-JTSCC became responsible for executing centralized contracting oversight for all DOD contracts in Afghanistan. BRCC is a component of C-JTSCC.

complex.⁴ The design documents called for construction of a 2-story courthouse, including 4 courtrooms, 6 judge's chambers, 23 individual offices, and 4 holding cells. CLC was given 155 days to complete the project after the notice to proceed was issued on July 16, 2011. The contract also required CLC to perform engineering, review, verification, and concept design functions. On November 11, 2011, the contract was modified to increase the height of the courthouse ceilings and, as a result, the contract value was increased from \$2.38 million to \$2.67 million.

Several agencies shared responsibility for the courthouse construction:

- BRCC served as the contracting officer organization and had responsibility for entering into, administering, and terminating the contract.
- CJIAF-435 was responsible for project design, review, and approval of all construction, including providing progress reports. The task force provided the original contracting officer representative (COR) for JCIP. CORs are authorized by contracting officers "to conduct contract surveillance ... in order to verify that the contractor is fulfilling contract requirements and to document performance for the contract record. These CORs function as the eyes and ears of the Contracting Officer...."⁵ A BRCC contracting officer was working with a CJIAF-435 COR during construction of the courthouse.
- INL reserved the right to conduct project, financial, and administrative reviews pertaining to the use of its funds. In October 2012, INL took over as the organization providing the COR for the courthouse project.

Appendix II provides a timeline of significant events for the JCIP courthouse contract and construction.

⁴ The solicitation required the JCIP courthouse contract to be awarded based on the lowest-priced technically acceptable proposal as stipulated in the Federal Acquisition Regulation (FAR) 15.101.2. This process is used when the best value is expected to result in the selection of the proposal that either meets or exceeds acceptability standards set forth in the solicitation, and that possesses the lowest price.

⁵ Department of Defense, "COR Handbook," Director, Defense Procurement and Acquisition Policy, March 22, 2012; pg. 1. www.acq.osd.mil/dpap/policy/policyvault/usa001390-12-dpap.pdf.

COURTHOUSE CONSTRUCTION IS INCOMPLETE AND FLAWED

Our site inspection on May 15, 2013, found that construction of the 2-story JCIP courthouse was incomplete and that the overall quality of CLC's workmanship was poor and could result in structural failures. Our inspectors estimated construction was about 15 percent complete and was limited to several exterior walls, concrete footings,⁶ concrete supporting columns, and rebar placement.

We observed numerous cracks in the concrete, exposed rebar in the concrete, and honeycombing⁷ in the concrete columns. We also noted incomplete pours of concrete resulting in cold joints,⁸ which could lead to future structural failure (see photo 2), and rebar that was bound together with wire instead of welded (see photo 3).

Additional inspections conducted by CJATF-435, INL, and the U.S. Army Corps of Engineers revealed other problems. Specifically, on January 8, 2012, a CJATF-435 engineer noted exposed rebar, improper scaffolding for workers, and the lack of a quality control program. On January 18, 2012, INL engineers indicated that the building had serious structural deficiencies, numerous safety violations, and that CLC was using inferior building materials. The next day, BRCC issued a Stop-Work Order to CLC.

In late March 2012, the U.S. Army Corps of Engineers conducted an inspection and identified deficiencies, such as (1) the contract's technical design lacked specifics, (2) poor construction practices were implemented, (3) the concrete strength in some of the blast walls may not be sufficient, and (4) the design drawings were

Photo 2 - Incomplete Concrete Pour of Wall Could Result in Structural Failure



Source: SIGAR, May 15, 2013.

Photo 3 - Rebar Is Tied Together Instead of Welded



Source: SIGAR, May 15, 2013.

⁶ A footing, or foundation, is the lowest and supporting layer of a structure. Typically footings are embedded about 3 feet into the soil to support the structure.

⁷ Honeycombing refers to voids left in concrete due to failure of the mortar to effectively fill the spaces among coarse-aggregate particles, and may be caused by inadequate vibration during pouring of the concrete. Depending on the location, honeycombing can significantly weaken the structure.

⁸ A cold joint is a plane of weakness in concrete caused by an interruption or delay in the concrete pouring. It occurs when the first batch of concrete has begun to set before the next batch is added, so that the two batches do not intermix.

illegible. Based on its inspection, the U.S. Army Corps of Engineers recommended terminating and re-bidding the courthouse contract.

REQUIRED OVERSIGHT OF COURTHOUSE CONSTRUCTION WAS NOT CONDUCTED

CJIATF-435 documents demonstrate inadequate oversight and significant project delays from the time construction started in July 2011. The project was 15 days behind schedule by August 10, 2011—less than 1 month after the start of construction. By September 4, 2011—2 months after construction began—the courthouse was 46 days behind schedule and only 4 percent of the structure had been completed. At an early October 2011 meeting of INL, BRCC, and CJIATF-435 officials, participants expressed concern that the BRCC contracting officer and the CJIATF-435 COR were not performing satisfactorily and that monitoring and reporting were insufficient to keep them informed of the construction's progress and any measures taken to improve CLC's performance.

In late October 2011—about 3 months after construction began—an INL official expressed concern about the depth of the CJIATF-435 COR's experience in working with contractors in Afghanistan. Specifically, this official stated that he was “a bit uncomfortable with the documentation of inspections and reviews that may or may not have been conducted” and that he lacked the confidence to move forward with the project. The CJIATF-435 COR told us that he felt unqualified to determine whether CLC was performing according to the contract's technical specifications. However, according to CJIATF-435 officials, the CJIATF-435 COR's military experience as a construction engineering supervisor qualified him to fulfill his responsibilities.

Although the CJIATF-435 COR was based at Bagram Airfield and the courthouse construction site was near the airfield, we found no evidence that the COR conducted quality assurance reviews and submitted corresponding reports. Federal Acquisition Regulation (FAR) 1.602-2 allows the contracting officer to assign certain contracting oversight functions to a COR. In the case of the JCIP courthouse, these functions included (1) verifying that the contractor executed the contract's technical requirements, (2) performing inspections with regard to those requirements, and (3) monitoring the contractor's performance. However, we did not find any documentation to support that the COR performed required monthly inspections or submitted the required monthly progress reports as required by the COR's appointment letter. Furthermore, a BRCC official told us that he never saw any inspection reports from the CJIATF-435 COR. Despite the slow progress and lack of reporting by the COR, we did not find evidence that the two BRCC contracting officers who served during the courthouse's construction attempted to take any actions to resolve these deficiencies.

The first CJIATF-435 COR remained in that position until January 2012, 6 months after the start of the construction. At that time, inspections by CJIATF-435, INL, and the U.S. Army Corps of Engineers documented serious construction problems, and a Stop-Work Order was issued to CLC in January 2012. While other CORs and contracting officers were subsequently assigned to the courthouse project, no construction took place for them to monitor after January 2012.

Although Originally Terminated for Convenience in June 2013, Courthouse Contract Was Terminated for Default in October 2013

The contract for construction of the JCIP courthouse was initially terminated for convenience⁹ by the U.S. government in June 2013, even though there may have been a sufficient basis for terminating the contract for

⁹ Termination for convenience gives the U.S. government the right to terminate a contract without cause. FAR 49.103 requires that settlement of fixed-price contracts terminated for convenience may be effected by negotiated agreement, determination by the termination contracting officer, or a combination of these methods. However, FAR 49.201 states that the “primary objective is to negotiate a settlement by agreement.” FAR 49.201 also requires that a “settlement should

default at that time.¹⁰ Under a termination for convenience, according to FAR 49.207, a settlement negotiated between the contracting agency and the contractor cannot exceed the contract price less payments otherwise made or to be made under the contract. Records show that CLC had been paid \$396,000 at the time the Stop-Work Order was issued in January 2012, which left about \$2.2 million remaining on the contract.

However, the INL COR who was assigned responsibility for the courthouse project in October 2012 recommended that the contract be terminated for default.¹¹ This INL COR performed a quality assurance assessment in early November 2012—about 10 months after the Stop-Work Order had been issued. Based on this assessment, the COR stated that CLC had not complied with the contract's statement of work, identified problems with the design documents, and noted the poor quality of the contractor's workmanship. As a result, on November 29, 2012, the COR sent a 13-point memorandum to the BRCC contracting officer recommending that, due to the egregious nature of the concerns identified, the contract should be terminated for default. The memorandum stated, in part, that CLC

- submitted design drawings for mechanical, electrical, fire protection, seismic and other items that were either incomplete or did not conform to code;
- failed to provide INL with the required geotechnical report;¹²
- submitted an improper and unapproved rebar test; and
- exhibited poor quality of work, such as wall thickness less than the specifications required, poor construction joints, and less than the required minimum concrete to cover some of the rebar.

The memorandum also noted that CLC had failed to pay suppliers and workers and had submitted invoices for work not yet performed.

An e-mail from the BRCC contracting officer's legal counsel indicated that they "have plenty of justification to support either decision" to terminate for convenience or terminate for default. Nonetheless, the BRCC contracting officer told us that he felt there was inadequate documentation and oversight from the CORs to justify a termination for default and ultimately the decision was made to terminate for convenience. On June 15, 2013, CLC was formally notified of the termination for convenience. INL has decided not to proceed with the courthouse construction, in part because of the contractor's poor performance, and the U.S. government will have to pay to demolish the current structure. Because no courthouse has been built, Afghan national security trials are being held in improvised settings across the JCIP complex.

Our draft report, sent to INL and C-JTSCC for review on September 27, 2013, included a recommendation to review the decision to terminate the JCIP courthouse construction contract for convenience and take appropriate action to address the contractor's failure to complete the JCIP courthouse according to the terms of the contract. In commenting on our draft report, INL and C-JTSCC noted that C-JTSCC rescinded the termination for convenience and issued a termination for default on October 3, 2013. As a result, we have deleted this recommendation from our final report.

compensate the contractor fairly for the work done and the preparations made for the terminated portions of the contract, including a reasonable allowance for profit."

¹⁰ FAR 49.401 states that "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." FAR 49.402-2 states that under a termination for default, "the Government is not liable for a contractor's costs on undelivered work and is entitled to repayment of advance and progress payments." Termination for default also exposes construction contractors to potential liability for the consequences of its breach, including any costs incurred by the Government in completing the work. See also FAR 52.249-10.

¹¹ The CJIAF-435 COR ceased responsibility in January 2012. There was no COR for the courthouse project until October 2012, when INL took responsibility for the COR position.

¹² The geotechnical report helps to ensure that a contractor conducted an adequate review and testing of features such as the suitability of the soil for earthworks and foundations.

CONCLUSION

More than 2 years after construction began and \$396,000 was spent, the JCIP complex is without a dedicated courthouse facility, which was envisioned as the centerpiece of the judicial center. Trials are currently conducted in improvised settings, while the courthouse construction site is filled with cracked concrete and rusty rebar that will be demolished at additional cost to the U.S. government. DOD and State decided to stop work and terminate the contract after officials noticed problems with construction quality and the sufficiency of project oversight. We believe C-JTSCC's original decision to terminate the construction contract for convenience was ill-considered and did not take into account clearly established deficiencies in the quality of the work performed by the contractor. C-JTSCC's decision in October 2013—while a draft of this report was being reviewed by INL and C-JTSCC—to rescind the termination for convenience and issue a termination for default is a positive step. Nevertheless, the poor oversight this project experienced calls for additional review and corrective action to ensure such mistakes do not reoccur.

RECOMMENDATION

To ensure that additional U.S. taxpayer dollars are not wasted, we recommend that the Commander, U.S. Central Command, and the U.S. Secretary of State identify the reasons for poor oversight of the JCIP courthouse construction contract and establish processes to ensure such problems do not reoccur.

AGENCY COMMENTS

INL and C-JTSCC provided written comments on a draft of this inspection report, which we incorporated into the final report, as appropriate. Their comments, and our response to C-JTSCC's letter, are reproduced in appendices III and IV, respectively.

Our draft report originally contained two recommendations. Our first recommendation was for DOD and State to review the decision to terminate the JCIP courthouse contract for convenience and to take appropriate action to address the contractor's failure to complete the JCIP courthouse according to the terms of the contract. INL agreed with this recommendation, noting that it had recommended terminating the contract for default in November 2012. C-JTSCC did not agree with this recommendation. Nevertheless, on October 3, 2013, while a draft of this report was at INL and C-JTSCC for their review and comment, C-JTSCC rescinded the termination for convenience and issued a termination for default. In its comments, C-JTSCC stated that this decision was not related to any fact described in our draft report, but instead was based on information obtained during a separate SIGAR investigation of the contractor. Regardless of C-JTSCC's stated reasons behind its decision to rescind the termination for convenience and terminate the JCIP courthouse construction contract for default, C-JTSCC's decision satisfies our recommendation. We have therefore deleted it from the report.

Regarding our recommendation to identify reasons for the poor oversight and establish corrective processes, INL stated that it is continually working to strengthen the oversight and monitoring of its programs, as evidenced by its effort to consult with the U.S. Army Corps of Engineers to independently assess and document the contractor's performance. We are pleased that, to further its commitment to more clearly articulate oversight requirements and responsibilities, INL established a new policy for INL personnel serving in certain oversight roles involving construction contracts exceeding \$150,000 and services contracts exceeding \$1 million. Specifically, these personnel must now meet internal qualification requirements, in addition to Federal Acquisition Certification COR requirements, and must be approved by INL's Resource Management office. These actions may improve the quality of future contract oversight performed by INL.

C-JTSCC also concurred with our recommendation to identify reasons for poor oversight of this contract and noted that the rotation of personnel responsible for the contract reduced the government's ability to effectively monitor performance. C-JTSCC explained that lack of contracting officer continuity and lack of consistent COR oversight of the contract were major contributors to the failure of the JCIP courthouse construction contract. C-JTSCC also noted positive measures it has taken to mitigate future contract oversight problems, such as the requirement that all regional contracting center chiefs submit weekly status updates on all construction projects over \$150,000 to the Senior Contracting Official-Afghanistan. In conjunction with this measure, the responsible contracting officer must identify when a project is behind schedule and establish corrective action. Also, effective August 2013, C-JTSCC began requiring that monthly contracting officer representative reports be submitted on each project in excess of \$150,000 by the tenth day of every month. If a monthly report is delinquent or lacks qualitative information on the project, the contracting officer is required to follow up directly with the COR. In addition, C-JTSCC now employs construction control representatives, who serve as subject matter experts assisting the CORs and contracting officers to monitor contract performance. These steps may also improve C-JTSCC's oversight of construction projects in the future. As part of our normal audit procedures, we will follow up with INL and C-JTSCC to review the actions taken to implement our recommendation to improve contract oversight.

APPENDIX I – SCOPE AND METHODOLOGY

This report provides the results of SIGAR’s inspection of the Justice Center in Parwan (JCIP) courthouse in Parwan province, Afghanistan. For this inspection, we assessed (1) whether construction of the courthouse was completed in accordance with contract requirements and applicable construction standards and (2) the U.S. government’s management of the JCIP courthouse construction contract.

To assess whether construction was completed in accordance with contract requirements and construction standards and the U.S. government’s management of the JCIP courthouse contract, we

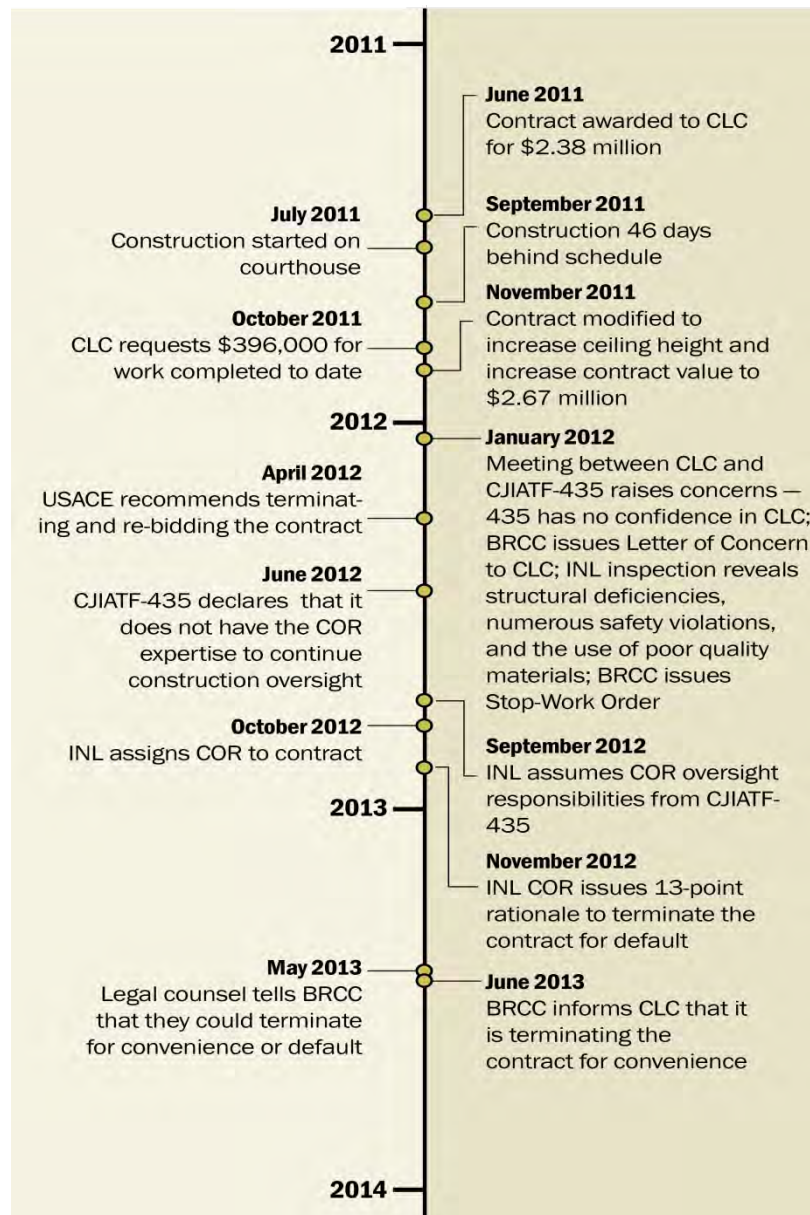
- interviewed U.S. officials regarding the solicitation and approval process of the contractor;
- interviewed U.S. and Afghan officials concerning the present state of Afghan judicial proceedings;
- reviewed contract documents, design submittals, and geotechnical reports to understand project requirements and contract specifications; and
- conducted a physical inspection and photographed the project site to observe the current status and quality of construction.

SIGAR conducted its fieldwork in Kabul, Afghanistan; the Combined Joint Interagency Task Force-435 headquarters at Camp Phoenix, Afghanistan; and the Bagram Regional Contracting Center at Bagram Air Field from May through September 2013. We conducted site visits at the JCIP courthouse in May, July, and August 2013, and performed our work in accordance with the *Quality Standards for Inspection and Evaluation*, published by the Council of the Inspectors General on Integrity and Efficiency. The engineering assessment was conducted by a professional engineer in accordance with the National Society of Professional Engineers’ *Code of Ethics for Engineers*. We did not rely on computer-processed data in conducting this inspection. However, we considered the impact of compliance with laws and fraud risk.

We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our inspection objectives. SIGAR conducted this inspection under the authority of Public Law No. 110-181, as amended; and the Inspector General Act of 1978, as amended.

APPENDIX II - TIMELINE OF SIGNIFICANT EVENTS IN JCIP COURTHOUSE CONTRACT AND CONSTRUCTION

Figure 1 – Timeline of Significant Events in the JCIP Courthouse Contract and Construction



Source – SIGAR-generated.

Legend: CLC: CLC Construction Company; CJIAF-435: Combined Joint Interagency Task Force-435; BRCC: Bagram Regional Contracting Center; INL: Bureau of International Narcotics and Law Enforcement Affairs; COR: contracting officer representative; USACE: U.S. Army Corps of Engineers

APPENDIX III - COMMENTS FROM THE DEPARTMENT OF STATE'S BUREAU OF INTERNATIONAL NARCOTICS AND LAW ENFORCEMENT



United States Department of State

Washington, D.C. 20520

October 10, 2013

Ms. Elizabeth A. Field
Special 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 SIGAR inspection report. INL generally agrees with SIGAR's recommendations, and where it is within our authority to do so, will continue to take steps to implement them.

The Justice Center in Parwan (JCIP) is a joint Department of State and Department of Defense (DoD) program to build the capacity of the Afghan criminal court that prosecutes former Coalition Forces detainees. Despite issues with construction of the courthouse building owing to the contractor's noncompliance, the overall JCIP program has nonetheless been a tremendous success. As of September 2013, the JCIP has heard over 5,000 cases since the court was founded in 2010, bolstering the Afghan justice system's ability to try national security crimes and facilitating the transfer of military detainees.

Responses to Recommendations

INL generally agrees with the two recommendations on page 6 of the draft inspection report. Specifically, INL's responses to the draft inspection recommendations are:

Recommendation 1: Review the decision to terminate the JCIP courthouse construction contract for convenience and take appropriate action to address the contractor's failure to complete the JCIP courthouse according to the terms of the contract.

INL Response (October 2013): As the report notes, INL recommended termination for default in November 2012 and continued thereafter to support that course of action. We were pleased that on October 3, 2013, the Regional

Contracting Center - East contracting officer (CO) rescinded the June 15, 2013 termination for convenience and issued a termination for default.

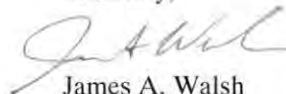
Recommendation 2: Identify the reasons poor oversight occurred and establish processes to ensure this problem is corrected.

INL Response (October 2013): INL is continually working to strengthen monitoring and oversight of our programs. INL did not originally have a contract oversight role, but in October 2012, INL assumed the contracting officer representative (COR) oversight responsibilities to have an official voice in improving enforcement of the contract. INL asked its own engineers and the U.S. Army Corps of Engineers to assess and document the contractor's performance. Based on these assessments, which mirror SIGAR's findings, the INL COR recommended that the DoD contracting officer terminate the contract for default and pursue other courses of action for holding the contractor accountable for noncompliance. Furthermore, in subsequent State-DoD projects at JCIP, INL worked to more clearly articulate oversight requirements and responsibilities.

Though INL was not originally responsible for contract oversight of the courthouse construction, lessons learned at the JCIP helped to inform the bureau's new, more comprehensive requirements for those serving in certain oversight roles on construction contracts exceeding \$150,000. As of September 2013, INL now requires these individuals to meet internal standardized qualification criteria in addition to Federal Acquisition Certification (FAC) COR requirements, as well as be approved by INL's Resource Management office. This will further ensure that individuals overseeing construction projects have the requisite education and experience to effectively carry out their responsibilities.

We appreciate SIGAR's thorough examination of the JCIP courthouse contract. INL looks forward to continuing to work together with SIGAR and other relevant authorities on these issues.

Sincerely,



James A. Walsh
Executive Director
INL

APPENDIX IV - COMMENTS FROM CENTCOM JOINT THEATER SUPPORT CONTRACTING COMMAND



REPLY TO:
ATTENTION OF

HEADQUARTERS
CENTCOM JOINT THEATER SUPPORT CONTRACTING COMMAND
NEW KABUL COMPOUND, AFGHANISTAN
APO AE 09356



CJTSCC/CG

14 October 2013

MEMORANDUM FOR SIGAR OFFICE OF SPECIAL PROJECTS

SUBJECT: Response to SIGAR-14-X Inspection Report – Draft Report – “Justice Center in Parwan (JCIP) Courthouse: Poor Oversight Contributed to Failed Project and Action May Be Needed to Avoid Unnecessary Costs to the U.S. Government”

1. CJTSCC has reviewed the subject report and provides the following comments:

a. **Recommendation 1:** *Review the decision to terminate the JCIP courthouse construction contract for convenience and take appropriate action to address the contractor's failure to complete the JCIP courthouse according to the terms of the contract.*

Response: NON-CONCUR. CJTSCC terminated the JCIP contract for default effective 3 Oct 13 using information obtained from criminal investigators that was unrelated to any fact contained within the audit report.

1) The SIGAR auditors did not have access to relevant information because they initiated and completed the audit prior to the completion of a known ongoing criminal investigation. CJTSCC officials worked with criminal investigators from the International Contract Corruption Task Force (ICCTF) – to include SIGAR agents, before, during, and after the SIGAR audit.

SIGAR
comment 1

2) CJTSCC personnel did not terminate the contract for convenience for the sake of efficiency as is indicted in the audit. The contract was initially terminated for convenience because the contract file did not adequately document the contractor's poor performance. In the absence of such information, a termination for default would not have withstood judicial review.

SIGAR
comment 2

3) The audit excludes any reference to multiple facts that supported the contracting officer's initial decision to terminate the contract for convenience. The SIGAR auditors “noted” these facts but failed to address them in the audit report.

SIGAR
comment 3

a) The contracting officer properly excused months of construction delay on the basis that such delay resulted from a government request for testing. The ICCTF and the International Narcotics and Law Enforcement (INL) division of the State Department requested that the site be subject to independent geological testing. CJTSCC personnel explained to the SIGAR auditors that the contractor was not at fault for the associated delay on multiple occasions, to include the in-brief and out-brief on this report. The auditors “noted” the information and failed to incorporate any reference to these facts and incorrectly concluded that the delay resulted from contracting officials' disengagement from this project.

SIGAR
comment 3a

b) The contracting officer properly authorized the contractor additional performance time and increased the contract price as a result of a contract modification issued on 11 Nov 11, which required the contractor to increase the height of the ceilings of the courthouse.

SIGAR
comment 3b

c) The contracting officer lacked contract documentation supporting a termination for default because the contracting officer representative (COR) did not report the contractor's failure to accomplish the work or meet the documented work requirements schedule to the contracting officer.

SIGAR
comment 3c

C-JTSCC/CG

d) The INL COR's 13-point memorandum, dated 29 Nov 12, referenced in the audit report was insufficient to support a determination for default determination due to the fact that it contained assumptions that were not validated by independent testing.

SIGAR
comment 3d

e) INL stated it agreed with the Bagram Regional Contracting Office (BRCC) decision to terminate for convenience on 25 Mar 13.

SIGAR
comment 3e

f) The audit's reference to an email from C-JTSCC attorney on the issue as to whether a termination for default was legally supportable was taken out of context. The attorney stated "we either determine the earlier test results make the contract 'tainted by fraud' and therefore we can't settle anything so we T4D, or we determine the evidence is not substantive enough to make this determination and move to a T4C." The test results were not substantive enough to prove fraud at the time of the testing. The BRCC contracting officer made the determination to terminate for convenience at that time.

SIGAR
comment 3f

b. **Recommendation 2:** "Identify the reasons poor oversight occurred and establish processes to ensure this problem is corrected."

Response: CONCUR. The contract was originally a design-build project, meaning the contractor was required to submit building designs to the US Government for approval, after which the approved designs would become the blue prints to construct the facility. At the time of the contract execution, Task Force 435 agreed to provide a COR to oversee contract performance. One or more of the CORs assigned to this contract have told SIGAR auditors they did not possess construction knowledge adequate to monitor the contractor's performance and were unqualified to perform COR duties; yet, such concerns were never raised to their superiors or the contracting officer. Four contracting officers were assigned responsibility for the contract throughout its duration. The rotation of personnel responsible for this contract reduced the government's ability to effectively monitor performance. The lack of contracting officer continuity and lack of consistent COR oversight of the contract were major contributors to the acquisition failure.

1) C-JTSCC has instituted the following measures to mitigate future contract oversight issues.

a) The Senior Contracting Official now requires all RCC Chiefs to enter weekly status updates for all construction projects over \$150K on the SCO-A SharePoint. The contracting officers responsible for these contracts must identify when any construction project is behind schedule (due to Government-caused or contractor-caused delays) and establish a way forward with the Requiring Activity, as required. Additionally, as of August 2013, C-JTSCC requires a monthly COR report be submitted on each construction project over \$150K by the 10th of the month. When a Monthly COR Report is delinquent or lacks qualitative information regarding the project, the contracting officer assigned to the construction project is required to follow up directly with the COR. If the Monthly COR Report is still deficient, the contracting officers are responsible for raising the issues to their respective Flight Chief and/or RCC Chief to engage with the COR's supervisor and Requiring Activity, as appropriate.

b) C-JTSCC generated Policy Memorandum (SCO-A-12-AP07, 12 Mar 12), *Policy for Design-Build Requirements*. The policy mandates that a contracting officer appoint a certified engineer to provide assistance with monitoring any design-build contract. The policy also requires that a contracting officer obtain approval from the Senior Contracting Official-Afghanistan (SCO-A) prior to issuing a solicitation for any design-build contract.

c) The C-JTSCC Commanding General has worked with USFOR-A to improve COR performance. USFOR-A has made COR oversight a priority. COR reports are now tracked and reported to USFOR-A on a monthly basis through the monthly dashboard briefing to the USFOR-A Deputy Commanding General.

C-JTSCC/CG

d) C-JTSCC now employs Construction Control Representatives (CONREPS). CONREPS are construction subject matter experts who assist CORs and contracting officers monitor contract performance. The CONREPS assist requiring activities in developing sound construction statements of work. They also assist the CORs and contracting officers throughout a construction project by identifying any areas of concern.

2. The following information contained within the audit report requires correction or clarification.

a. The proposition that the initial termination for convenience would lead to a government obligation to pay the contractor \$2.2 million is not accurate. The report states, "At the time, CLC had been paid \$396,000. Because the contract was terminated for convenience rather than default, CLC could request the amount remaining on the contract, or about \$2.2 million." (Cover page, para. 3, line 3). A contracting officer is not obligated to pay the total contract value after terminating a contract for convenience. A contracting officer may only pay a contractor for substantiated costs incurred at the time of the termination notice with a reasonable profit.

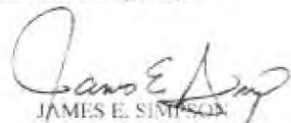
SIGAR
comment 4

b. C-JTSCC is unaware of the basis for the following statement contained on page 4 of the audit. "At an early October 2011 meeting of INL, BRCC and CJIAF-435 officials, participants expressed concern that the BRCC contracting officer and the CJIAF-435 COR were not performing satisfactorily and that monitoring and reporting were insufficient to keep them informed of the construction's progress and any measures taken to improve CLC's performance."

SIGAR
comment 5

c. C-JTSCC contends that the following statement contained on page 4 of the audit is not based on fact, but supposition. "The contract for construction of the JCIP courthouse was terminated for convenience by the U.S. government in June 2013, even though there may have been a sufficient basis for terminating the contract for default." The auditors may have insufficient experience with default terminations and the type of documentary record needed to defend such actions in court. The auditors' belief that "there may have been a sufficient basis" to pursue a default termination belies the record available to them and is speculative at best. **Again, the default termination issued on 3 Oct 13 was not based on any information previously available to the contracting officer.**

SIGAR
comment 6


JAMES E. SIMPSON
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Commander, C-JTSCC
Head of Contracting Activity

SIGAR's Response to U.S. Central Command Joint Theater Support Contracting Command Comments

1. U.S. Central Command Joint Theater Support Contracting Command's (C-JTSCC's) statement that SIGAR auditors did not have access to specific information related to an ongoing criminal investigation is accurate. This is consistent with our normal procedures. SIGAR auditors are not criminal investigators and do not have access to information regarding ongoing criminal investigations. Therefore, our recommendation did not refer to an investigation. Instead, our recommendation was to review the decision to terminate the Justice Center in Parwan (JCIP) courthouse construction contract for convenience and take appropriate action to address the contractor's failure to complete the JCIP courthouse according to the terms of the contract. Because C-JTSCC rescinded the contract's termination for convenience and issued a termination for default, while a draft of this report was at C-JTSCC for comment, we believe our recommendation has been acted upon and, as a result, we have deleted the recommendation from the final report.
2. Our review indicates that there was sufficient documentation to terminate the contract for default in the first instance. As described in the report, there were numerous inspections performed indicating poor contractor performance, culminating in a 13-point recommendation by the Bureau of International Narcotics and Law Enforcement Affairs (INL) contracting officer representative (COR) to terminate the contract for default.
3. We disagree with this statement. In both the draft and final reports, we state that the contracting officer told us that he felt there was inadequate documentation and oversight from the contracting officer representatives to justify a termination for default.
 - 3a. We do not disagree with C-JTSCC's statement that the contracting officer excused months of delay based on a government request for testing. The delays for testing were all executed after construction was halted in January 2012. However, the delays discussed in the report were during the period of active construction, occurring from July 2011 – January 2012.
 - 3b. This statement is accurate, but we fail to see its relevance as the authorization of additional time and increasing the project price to change the height of the project's ceilings was not discussed in the draft report as being an impediment to the project.
 - 3c. We believe this statement is accurate, insofar as the COR did not provide the contracting officer with the required quality assurance reviews during the period of active construction. However, as noted in the draft report, independent inspections performed by INL and the U.S. Army of Corps of Engineers revealed numerous construction deficiencies. These inspections were provided to the contracting officer.
 - 3d. The INL COR's 13-point memorandum, dated November 29, 2012, contained numerous observations of problems with the project, including the lack of soil testing. However, adequate testing was not the only deficiency noted and was not among the most severe. Other issues, such as incomplete design drawings, which demonstrated the contractor's lack of basic construction knowledge, poor construction of concrete joints, thickness of shear walls, and visible cracks in the walls were also noted in the memorandum.
 - 3e. We disagree with C-JTSCC. As our draft report noted, INL's COR recommended that the contract be terminated for default. Moreover, INL comments on our draft report stated "INL recommended termination for default in November 2012 and continued thereafter to support that course of action."
 - 3f. We disagree that the referenced email was taken out of context. As our draft report noted, the e-mail stated that there was "plenty of justification to support either decision" to terminate for convenience or terminate for default.
4. Although we agree with C-JTSCC's statement that the contracting officer is not "obligated" to pay the contractor the total contract value after terminating a contract for convenience, our draft report did not state that such an obligation existed. As noted in the draft report, Federal Acquisition Regulation (FAR) 49.207 limits the amount payable to the contractor for a settlement to an amount not exceeding the contract price, less payments otherwise made under the contract. Therefore, since the contractor had already been paid about \$396,000, the contractor *could* have requested the remaining \$2.2

million on the contract. The *actual* amount payable to the contractor under a termination for convenience would have been determined by settlement of the contract, which often takes the form of a negotiated agreement between the parties.

5. The statement was based on the minutes of a meeting that took place on October 8, 2011, between INL, the Bagram Regional Contracting Center and the Combined Joint Interagency Task Force-435. We obtained the meeting minutes from INL.
6. We disagree with C-JTSCC's comment. The recommendation from the INL COR to terminate the contract for default, several independent inspections showing substandard work by the contractor, and our discussions with numerous stakeholders involved with the project provide significant evidence that could be used to support a termination for default.

APPENDIX V – ACKNOWLEDGMENTS

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This inspection report was conducted
under project code SIGAR-I-010

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