

**MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN
THE U.S. DEPARTMENT OF STATE (DOS) AND
THE U.S. DEPARTMENT OF DEFENSE (DOD) AND
THE U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT (USAID)
RELATING TO CONTRACTING
IN IRAQ AND AFGHANISTAN**

I. Purpose:

The purpose of this MOU is to establish the understandings of the departments and agency named above (hereinafter referred to as “Agency”, “Agencies” or the “Parties”) with regard to matters relating to contracts in Iraq or Afghanistan, in order to implement Section 861 and related provisions of the National Defense Authorization Act of 2008, P.L. 110-181 (2008 NDAA) and Section 854 and related provisions of the National Defense Authorization Act of 2009, Pub.L. 110-417.

II. Definitions:

As used in this MOU, the following terms shall have the meanings indicated:

A. **CONTRACT IN IRAQ OR AFGHANISTAN.** The term “contract in Iraq or Afghanistan” means a contract with the Department of State, the Department of Defense, or the United States Agency for International Development, a subcontract at any tier issued under such a contract, a task order or delivery order at any tier issued under such a contract, a grant, or a cooperative agreement (including a contract, subcontract, task order, delivery order, grant, or cooperative agreement issued by another Government agency for the Department of State, the Department of Defense, or the United States Agency for International Development), if the contract, subcontract, task order, delivery order, grant, or cooperative agreement involves work performed in Iraq or Afghanistan for a period longer than 30 days.

B. **COVERED CONTRACT.** The term “covered contract” means (A) a contract of a Federal agency for the performance of services in an area of combat operations, as designated by the Secretary of Defense under subsection (c) of section 862; (B) a subcontract at any tier under such a contract; (C) a task order or delivery order issued under such a contract or subcontract; (D) a grant for the performance of services in an area of combat operations, as designated by the Secretary of Defense under subsection (c) of section 862; or (E) a cooperative agreement for the performance of services in such an area of combat operations.

C. **CONTRACTOR.** The term “contractor”, with respect to a covered contract, means (A) in the case of a covered contract that is a contract, subcontract, task order, or delivery order, the contractor or subcontractor carrying out the covered contract; (B) in the case of

a covered contract that is a grant, the grantee; and (C) in the case of a covered contract that is a cooperative agreement, the recipient.

D. **RELEVANT COMMITTEES OF CONGRESS.** The term “relevant committees of Congress” means each of the following committees: (A) the Committees on Armed Services of the Senate and the House of Representatives, (B) the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives, (C) the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, and (D) for purposes of contracts relating to the National Foreign Intelligence Program, the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

E. **PRIVATE SECURITY FUNCTIONS.** The term “private security functions” means activities engaged in by a contractor under a covered contract as follows: (A) Guarding of personnel, facilities, or property of a Federal agency, the contractor or subcontractor, or a third party; (B) any other activity for which personnel are required to carry weapons in the performance of their duties.

III. Responsibility for Personnel Security:

A. Pursuant to 10 United States Code (U.S.C.) § 164 and 22 U.S.C. § 4802, the Secretary of Defense and the Combatant Commander (CCDR) are responsible for the security of all DoD elements and personnel under the operational control of the CCDR.

B. Pursuant to 22 U.S.C. § 4802, the Secretary of State is responsible for developing and implementing policies and programs to provide for the security of all U.S. Government personnel on official duty in country other than those under the command of an area military commander.

IV. Major Categories of Contracts Being Awarded by the Parties in Iraq and Afghanistan:

For the purpose of establishing the common database(s) required by Section 861, the Parties agree that contract information will be organized by major category as follows: (1) construction, (2) architect-engineer, (3) supplies, and (4) services. With regard to the Services category, a further subcategory will be used to list contractors performing private security functions, including those performing such functions pursuant to a contract falling within one of the other categories.

V. Roles and Responsibilities of the Parties for Matters Relating to Contracting in Iraq and Afghanistan:

A. As required by Section 862 of the 2008 NDAA, the Secretary of Defense, in coordination with the Secretary of State, shall prescribe regulations on the selection, training, equipping, and conduct of personnel performing private security functions under a covered contract in an area of combat operations.

B. Subject to paragraph (A) above, each Agency has its own unique and independent contracting authority and is responsible for the award and administration of contracts in support of its respective mission. Accordingly, it is the responsibility of each Agency's contracting organizations and contracting officers to advertise, solicit, evaluate, negotiate, and award those contracts necessary for support of its mission. Each contracting officer will determine what logistical and other support is appropriate for each contract and will include a delineation of such support in each solicitation document and contract awarded. An Agency will not include provisions committing another Agency to provide support to a contractor without the other Agency's concurrence.

C. Subject to paragraph (A) above, it is the responsibility of each Agency to determine the security classifications and background vetting requirements applicable to each contract.

VI. Responsibility for Establishing Procedures for, and Coordination of, Movement of Contractor Personnel in Iraq and Afghanistan:

A. It is the responsibility of DoD to establish procedures for the coordination of the movement of its contractors in Iraq and Afghanistan.

B. It is the responsibility of DoS, in coordination with DoD and/or other entities as appropriate, to establish procedures as appropriate for coordinating the movement of United States Government non-DoD contractors in Iraq and Afghanistan.

VII. Identification of Common Database(s) That Will Serve as Repositories of Information on Contracts and Contractor Personnel in Iraq and Afghanistan, and Database Elements:

A. The Agencies agree that DoD's Synchronized Predeployment and Operational Tracker (SPOT) database will be the system of record to serve as the repository of information required by Section 861 of the 2008 NDAA on active and future contracts in Iraq and Afghanistan, and, as appropriate, contractor personnel data otherwise required by law to be maintained.

B. SPOT will include information on all such contracts over the Simplified Acquisition Threshold (currently \$100,000) or more than 30 days.

C. The data elements of “brief description”, “total value of the contract”, and “whether the contract was awarded competitively” will be pulled into SPOT from the current government system of contractual records Federal Procurement Data System-Next Generation (FPDS-NG).

D. The data elements of “total number of personnel employed on contracts in Iraq or Afghanistan”, “total number of personnel performing security functions under contracts in Iraq or Afghanistan”, and “total number of personnel working under contracts in Iraq or Afghanistan who have been killed or wounded” will be entered separately for each country by, or as directed by, each Agency.

E. The Parties agree, as soon as practicable, to expand the common database to include information on those entities performing private security functions under major grants, including contracts under grants, and cooperative agreements under which assistance is provided in Iraq and Afghanistan.

VIII. Responsibility for Maintaining and Updating Information in the Common Databases:

A. It is the responsibility of DoD, as the system owner, to obtain and maintain certification and accreditation (C&A) of the system, maintain configuration control and data integrity, host the system, develop and provide training and otherwise maintain the system.

B. It is the responsibility of each Agency to require its contractors to input information into SPOT accurately, to require participation in training, and to assign SPOT responsibilities within the agency.

C. The Parties will negotiate funding arrangements for Agency-unique requirements for which only that Agency derives a benefit and for specialized training requirements. DoD will provide for all basic systems operation costs and baseline training for all parties.

D. DoD, in coordination with DoS and USAID, will establish procedures that will permit access by the relevant committees of Congress and GAO to the SPOT data required by Section 861 of the 2008 NDAA.

IX. Responsibility for Collection and Referral to the Appropriate U.S. Government Agency of Any Information Relating to Offenses Under the Uniform Code of Military Justice (UCMJ) or the Military Extraterritorial Jurisdiction Act (MEJA):

A. DoD will collect and refer information relating to possible offenses under the Uniform Code of Military Justice (UCMJ) or the Military Extraterritorial Jurisdiction Act

(MEJA) by its contractors in accordance with established DOD procedures in coordination with the Department of Justice (DOJ).

B. DOS and USAID will collect and refer information to DOJ, when appropriate, relating to possible offenses under applicable U.S. criminal law by their respective contractors. In those cases where the Regional Security Office conducts the preliminary investigation of a serious incident involving a contractor working under an Agency subject to Chief of Mission (COM) authority, DOS will refer information to DOJ, when appropriate, related to possible offenses under applicable U.S. criminal law, unless other arrangements have been agreed upon.

X. Mechanisms for Ensuring that Contractors are Required to Report Offenses Alleged to have been Committed by or Against Contractor Personnel to Appropriate Investigative Authorities:

A. It is the responsibility of DOD to establish mechanisms for ensuring its contractors are required to report offenses alleged to have been committed by or against contractor personnel to appropriate investigative authorities.

B. It is the responsibility of DOS, in coordination with USAID, to establish mechanisms for ensuring DOS and USAID contractors are required to report offenses alleged to have been committed by or against contractor personnel to appropriate investigative authorities.

XI. Responsibility for Providing Victim and Witness Protection and Assistance to Contractor Personnel in Connection with Alleged Offenses:

A. DOD will assign responsibility within DoD for providing victim and witness protection and assistance to contractor personnel in connection with alleged offenses.

B. DOS and USAID will coordinate, with host government authorities and/or federal law enforcement agencies as appropriate, responsibility for providing victim and witness protection and assistance to their contractor personnel in connection with alleged offenses.

XII. Development of a Requirement that a Contractor Shall Provide to all Contractor Personnel who will Perform Work on a Contract in Iraq or Afghanistan Information on How and Where to Report Alleged Offenses and Where to Seek Assistance:

DOD and DOS will modify existing federal acquisition regulations to include instructions to USG contractor personnel performing work in Iraq or Afghanistan on how and where to report alleged offenses.

XIII. Execution, Coordination, and Dispute Resolution:

A. On behalf of the Secretary of State, Secretary of Defense, and the USAID Administrator, the COMs, CCDRs, and USAID Mission Directors in Iraq and Afghanistan shall be responsible for implementing and coordinating execution of this MOU.

B. The Secretary of State, Secretary of Defense, and USAID Administrator shall designate Washington representatives to meet as frequently as necessary for the purpose of reviewing the implementation of this MOU.

C. In the event that issues arise under this MOU that the responsible COM, CCDR, and USAID Mission Director are unable to resolve, they shall promptly refer such issues to the Washington representatives designated by the Secretary of State, the Secretary of Defense, and the USAID Administrator for resolution.

D. In the event that the Washington representatives are unable to resolve any difference, or any other issue that may arise under this MOU, they shall promptly refer the matter to the Under Secretary of State for Management, the Deputy Under Secretary of Defense for Logistics and Materiel Readiness, and the USAID Assistant Administrator for Management for resolution.

E. In the event that any matter cannot be resolved under the procedures specified above, it shall be referred to the Secretary of State, the Secretary of Defense, and the USAID Administrator for resolution.

XIV. Authorities:

Nothing in this MOU shall otherwise affect the authorities of the Secretary of State, the Secretary of Defense, the USAID Administrator, and the COM or the CCDR.

XV. Other Agreements and Arrangements:

A. All existing agreements and arrangements, however styled, between DoS and DoD and USAID shall remain in force to the extent that they do not conflict with the provisions of this MOU. Existing regulations, directives, policies or guidance issued by the Parties regarding any of the matters discussed in this MOU shall remain in effect until such time as subsequently amended or replaced by new issuances.

B. In particular, the Memorandum of Agreement between DoD and DoS on USG Private Security Contractors (PSCs) in Iraq, signed on December 5, 2007, is unaffected by this agreement and continues to prescribe the two agencies' respective roles and responsibilities for, *inter alia*, movement control and coordination, and the reporting and

investigation of serious incidents, of USG PSCs in Iraq. This MOA will also form the basis of similar arrangements to be developed in Afghanistan.

XVI. Modifications:

This MOU may be modified upon agreement of all Parties at any time. The Under Secretary of Defense (Acquisition, Technology, and Logistics) is authorized to execute modifications to this MOU for DoD and the Under Secretary of State for Management is authorized to execute modifications for DoS.

XVII. Termination:

This MOU shall remain in force until terminated by all Parties. Thirty days prior notice will be provided to relevant Congressional Committees of such termination.

Signed:



Administrator, USAID

Signed:



Deputy Secretary of Defense

Signed:



Deputy Secretary of State

Date: March 24, 2010

Date: FEB 19 2010

Date: April 7, 2010