

SIGAR ENABLING LEGISLATION

(AS AMENDED)



This is a conformed text of Section 1229 of the National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181 (Jan. 28, 2008), 122 STATUTES AT LARGE 378-85 (establishing the Office of the Special Inspector General for Afghanistan Reconstruction, or “SIGAR”), as amended by Pub. L. No. 111-38, 123 STAT. 1932-33 (June 30, 2009).

SEC. 1229. SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION.

(a) **PURPOSES.**— The purposes of this section are as follows:

(1) To provide for the independent and objective conduct and supervision of audits and investigations relating to the programs and operations funded with amounts appropriated or otherwise made available for the reconstruction of Afghanistan.

(2) To provide for the independent and objective leadership and coordination of, and recommendations on, policies designed to—

(A) promote economy[,], efficiency, and effectiveness in the administration of the programs and operations described in paragraph (1); and

(B) prevent and detect waste, fraud, and abuse in such programs and operations.

(3) To provide for an independent and objective means of keeping the Secretary of State and the Secretary of Defense fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress on corrective action.

(b) **OFFICE OF INSPECTOR GENERAL.**— There is hereby established the Office of the Special Inspector General for Afghanistan Reconstruction to carry out the purposes of subsection (a).

(c) **APPOINTMENT OF INSPECTOR GENERAL; REMOVAL.**—

(1) **APPOINTMENT.**— The head of the Office of the Special Inspector General for Afghanistan Reconstruction is the Special Inspector General for Afghanistan Reconstruction (in this section referred to as the ‘Inspector General’), who shall be appointed by the President. The President may appoint the Special Inspector General for Iraq Reconstruction to serve as the Special Inspector General for Afghanistan Reconstruction, in which case the Special Inspector General for Iraq Reconstruction shall have all of the duties, responsibilities, and authorities set forth under this section with respect to such appointed position for the purpose of carrying out this section.

(2) **QUALIFICATIONS.**— The appointment of the Inspector General shall be made solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.

(3) **DEADLINE FOR APPOINTMENT.**— The appointment of an individual as Inspector General shall be made not later than 30 days after the date of the enactment of this Act.

(4) **COMPENSATION.**— The annual rate of basic pay of the Inspector General shall be the annual rate of basic pay provided for positions at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(5) **PROHIBITION ON POLITICAL ACTIVITIES.**— For purposes of section 7324 of title 5, United States Code, the Inspector General shall not be considered an employee who determines policies to be pursued by the United States in the nationwide administration of Federal law.

(6) **REMOVAL.**— The Inspector General shall be removable from office in accordance with the provisions of section 3(b) of the Inspector General Act of 1978 (5 U.S.C. App.).

(d) **ASSISTANT INSPECTORS GENERAL.**— The Inspector General shall, in accordance with applicable laws and regulations governing the civil service—

(1) appoint an Assistant Inspector General for Auditing who shall have the responsibility for supervising the performance of auditing activities relating to programs and operations supported by amounts appropriated or otherwise made available for the reconstruction of Afghanistan; and

(2) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of investigative activities relating to such programs and operations.

(e) **SUPERVISION.**—

(1) **IN GENERAL.**— Except as provided in paragraph (2), the Inspector General shall report directly to, and be under the general supervision of, the Secretary of State and the Secretary of Defense.

(2) **INDEPENDENCE TO CONDUCT INVESTIGATIONS AND AUDITS.**— No officer of the Department of Defense, the Department of State, or the United States Agency for International Development shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation related to amounts appropriated or otherwise made available for the reconstruction of Afghanistan or from issuing any subpoena during the course of any such audit or investigation.

(f) **DUTIES.**—

(1) **OVERSIGHT OF AFGHANISTAN RECONSTRUCTION.**— It shall be the duty of the Inspector General to conduct, supervise, and coordinate audits and investigations of the treatment, handling, and expenditure of amounts appropriated or otherwise made available for the reconstruction of Afghanistan, and of the programs, operations, and contracts carried out utilizing such funds, including—

(A) the oversight and accounting of the obligation and expenditure of such funds;

(B) the monitoring and review of reconstruction activities funded by such funds;

(C) the monitoring and review of contracts funded by such funds;

(D) the monitoring and review of the transfer of such funds and associated information between and among departments, agencies, and entities of the United States and private and nongovernmental entities;

(E) the maintenance of records on the use of such funds to facilitate future audits and investigations of the use of such fund[s];

(F) the monitoring and review of the effectiveness of United States coordination with the Government of Afghanistan and other donor countries in the implementation of the Afghanistan Compact and the Afghanistan National Development Strategy; and

(G) the investigation of overpayments such as duplicate payments or duplicate billing and any potential unethical or illegal actions of Federal employees, contractors, or affiliated entities and the referral of such reports, as necessary, to the Department of Justice to ensure further investigations, prosecutions, recovery of further funds, or other remedies.

(2) **OTHER DUTIES RELATED TO OVERSIGHT.**— The Inspector General shall establish, maintain, and oversee such systems, procedures, and controls as the Inspector General considers appropriate to discharge the duties under paragraph (1).

(3) **DUTIES AND RESPONSIBILITIES UNDER INSPECTOR GENERAL ACT OF 1978.**— In addition to the duties specified in paragraphs (1) and (2), the Inspector General shall also have the duties and responsibilities of inspectors general under the Inspector General Act of 1978.

(4) **COORDINATION OF EFFORTS.**— In carrying out the duties, responsibilities, and authorities of the Inspector General under this section, the Inspector General shall coordinate with, and receive the cooperation of each of the following:

(A) The Inspector General of the Department of Defense.

(B) The Inspector General of the Department of State.

(C) The Inspector General of the United States Agency for International Development.

(g) **POWERS AND AUTHORITIES.**—

(1) **AUTHORITIES UNDER INSPECTOR GENERAL ACT OF 1978.**— In carrying out the duties specified in subsection (f), the Inspector General shall have the authorities provided in section 6 of the Inspector General Act of 1978, including the authorities under subsection (e) of such section.

(2) **AUDIT STANDARDS.**— The Inspector General shall carry out the duties specified in subsection (f)(1) in accordance with section 4(b)(1) of the Inspector General Act of 1978.

(h) **PERSONNEL, FACILITIES, AND OTHER RESOURCES.**—

(1) **PERSONNEL.**—

(A) **IN GENERAL.**— The Inspector General may select, appoint, and employ such officers and employees as may be necessary for carrying out the duties of the Inspector General, subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(B) **ADDITIONAL AUTHORITIES.**—

(i) **IN GENERAL.**— Subject to clause (ii), the Inspector General may exercise the authorities of subsections (b) through (i) of section 3161 of title 5, United States Code (without regard to subsection (a) of that section).

(ii) **PERIODS OF APPOINTMENTS.**— In exercising the employment authorities under subsection (b) of section 3161 of title 5, United States Code, as provided under clause (i) of this subparagraph—

(I) paragraph (2) of that subsection (relating to periods of appointments) shall not apply; and

(II) no period of appointment may exceed the date on which the Office of the Special Inspector General for Afghanistan Reconstruction terminates under subsection (o).

(2) **EMPLOYMENT OF EXPERTS AND CONSULTANTS.**— The Inspector General may obtain services as authorized by section 3109 of title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS-15 of the General Schedule by section 5332 of such title.

(3) **CONTRACTING AUTHORITY.**— To the extent and in such amounts as may be provided in advance by appropriations Acts, the Inspector General may enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and make such payments as may be necessary to carry out the duties of the Inspector General.

(4) **RESOURCES.**— The Secretary of State or the Secretary of Defense, as appropriate, shall provide the Inspector General with appropriate and adequate office space at appropriate locations of the Department of State or the Department of Defense, as the case may be, in Afghanistan, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of such offices, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

(5) **ASSISTANCE FROM FEDERAL AGENCIES.**—

(A) **IN GENERAL.**— Upon request of the Inspector General for information or assistance from any department, agency, or other entity of the Federal Government, the head of such entity shall, insofar as is practicable and not in contravention of any existing law, furnish such information or assistance to the Inspector General, or an authorized designee.

(B) **REPORTING OF REFUSED ASSISTANCE.**— Whenever information or assistance requested by the Inspector General is, in the judgment of the Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the Secretary of State or the Secretary of Defense, as appropriate, and to the appropriate congressional committees without delay.

(6) **USE OF PERSONNEL, FACILITIES, AND OTHER RESOURCES OF THE OFFICE OF THE SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION.**— Upon the request of the Inspector General, the Special Inspector General for Iraq Reconstruction—

(A) may detail, on a reimbursable basis, any of the personnel of the Office of the Special Inspector General for Iraq Reconstruction to the Office of the Inspector General for Afghanistan Reconstruction for the purpose of carrying out this section; and

(B) may provide, on a reimbursable basis, any of the facilities or other resources of the Office of the Special Inspector General for Iraq Reconstruction to the Office of the Inspector General for Afghanistan Reconstruction for the purpose of carrying out this section.

(i) **REPORTS.**—

(1) **QUARTERLY REPORTS.**— Not later than 30 days after the end of each fiscal-year quarter, the Inspector General shall submit to the appropriate congressional committees a report summarizing, for the period of that quarter and, to the extent possible, the period from the end of such quarter to the time of the submission of the report, the activities during such period of the Inspector General and the activities under programs and operations funded with amounts appropriated or otherwise made available for the reconstruction of Afghanistan. Each report shall include, for the period covered by such report, a detailed statement of all obligations, expenditures, and revenues associated with reconstruction and rehabilitation activities in Afghanistan, including the following:

(A) Obligations and expenditures of appropriated funds.

(B) A project-by-project and program-by program accounting of the costs incurred to date for the reconstruction of Afghanistan, together with the estimate of the Department of Defense, the Department of State, and the United States Agency for International Development, as applicable, of the costs to complete each project and each program.

(C) Revenues attributable to or consisting of funds provided by foreign nations or international organizations to programs and projects funded by any department or agency of the United States Government, and any obligations or expenditures of such revenues.

(D) Revenues attributable to or consisting of foreign assets seized or frozen that contribute to programs and projects funded by any department or agency of the United States Government, and any obligations or expenditures of such revenues.

(E) Operating expenses of agencies or entities receiving amounts appropriated or otherwise made available for the reconstruction of Afghanistan.

(F) In the case of any contract, grant, agreement, or other funding mechanism described in paragraph (2)—

(i) the amount of the contract, grant, agreement, or other funding mechanism;

(ii) a brief discussion of the scope of the contract, grant, agreement, or other funding mechanism;

(iii) a discussion of how the department or agency of the United States Government involved in the contract, grant, agreement, or other funding mechanism identified, and solicited offers from, potential individuals or entities to perform the contract, grant, agreement, or other funding mechanism, together with a list of the potential individuals or entities that were issued solicitations for the offers; and

(iv) the justification and approval documents on which was based the determination to use procedures other than procedures that provide for full and open competition.

(2) **COVERED CONTRACTS, GRANTS, AGREEMENTS, AND FUNDING MECHANISMS.**— A contract, grant, agreement, or other funding mechanism described in this paragraph is any major contract, grant, agreement, or other funding mechanism that is entered into by any department or agency of the United States Government that involves the use of amounts appropriated or otherwise made available for the reconstruction of Afghanistan with any public or private sector entity for any of the following purposes:

(A) To build or rebuild physical infrastructure of Afghanistan.

(B) To establish or reestablish a political or societal institution of Afghanistan.

(C) To provide products or services to the people of Afghanistan.

(3) **PUBLIC AVAILABILITY.**— The Inspector General shall publish on a publically-available Internet website each report under paragraph (1) of this subsection in English and other languages that the Inspector General determines are widely used and understood in Afghanistan.

(4) **FORM.**— Each report required under this subsection shall be submitted in unclassified form, but may include a classified annex if the Inspector General considers it necessary.

(5) **RULE OF CONSTRUCTION.**— Nothing in this subsection shall be construed to authorize the public disclosure of information that is—

(A) specifically prohibited from disclosure by any other provision of law;

(B) specifically required by Executive order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.

(j) **REPORT COORDINATION.**—

(1) **SUBMISSION TO SECRETARIES OF STATE AND DEFENSE.**— The Inspector General shall also submit each report required under subsection (i) to the Secretary of State and the Secretary of Defense.

(2) **SUBMISSION TO CONGRESS.**— Not later than 30 days after receipt of a report under paragraph (1), the Secretary of State or the Secretary of Defense may submit to the appropriate congressional committees any comments on the matters covered by the report as the Secretary of State or the Secretary of Defense, as the case may be, considers appropriate. Any comments on the matters covered by the report shall be submitted in unclassified form, but may include a classified annex if the Secretary of State or the Secretary of Defense, as the case may be, considers it necessary.

(k) **TRANSPARENCY.**—

(1) **REPORT.**— Not later than 60 days after submission to the appropriate congressional committees of a report under subsection (i), the Secretary of State and the Secretary of Defense shall jointly make copies of the report available to the public upon request, and at a reasonable cost.

(2) **COMMENTS ON MATTERS COVERED BY REPORT.**— Not later than 60 days after submission to the appropriate congressional committees under subsection (j)(2) of comments on a report under subsection (i), the Secretary of State and the Secretary of Defense shall jointly make copies of the comments available to the public upon request, and at a reasonable cost.

(l) **WAIVER.**—

(1) **AUTHORITY.**— The President may waive the requirement under paragraph (1) or (2) of subsection (k) with respect to availability to the public of any element in a report under subsection (i), or any comment under subsection (j)(2), if the President determines that the waiver is justified for national security reasons.

(2) **NOTICE OF WAIVER.**— The President shall publish a notice of each waiver made under this subsection in the Federal Register no later than the date on which a report required under subsection (i), or any comment under subsection (j)(2), is submitted to the appropriate congressional committees. The report and comments shall specify whether waivers under this subsection were made and with respect to which elements in the report or which comments, as appropriate.

(m) **DEFINITIONS.**— In this section:

(1) **AMOUNTS APPROPRIATED OR OTHERWISE MADE AVAILABLE FOR THE RECONSTRUCTION OF AFGHANISTAN.**— The term “amounts appropriated or otherwise made available for the reconstruction of Afghanistan” means—

(A) amounts appropriated or otherwise made available for any fiscal year—

(i) to the Afghanistan Security Forces Fund; or

(ii) to the program to assist the people of Afghanistan established under subsection (a)(2) of section 1202 of the National Defense Authorization for Fiscal Year 2006 (Public Law 109-163; 119 Stat. 3455-3456); and

(B) amounts appropriated or otherwise made available for any fiscal year for the reconstruction of Afghanistan under—

- (i) the Economic Support Fund;
- (ii) the International Narcotics Control and Law Enforcement account; or
- (iii) any other provision of law.

(2) **APPROPRIATE CONGRESSIONAL COMMITTEES.**— The term “appropriate congressional committees” means—

(A) the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate; and

(B) the Committees on Appropriations, Armed Services, and Foreign Affairs of the House of Representatives.

(n) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) **IN GENERAL.**— There is authorized to be appropriated \$20,000,000 for fiscal year 2008 to carry out this section.

(2) **OFFSET.**— The amount authorized to be appropriated by section 1513 for the Afghanistan Security Forces Fund is hereby reduced by \$20,000,000.

(o) **TERMINATION.**—

(1) **IN GENERAL.**— The Office of the Special Inspector General for Afghanistan Reconstruction shall terminate 180 days after the date on which amounts appropriated or otherwise made available for the reconstruction of Afghanistan that are unexpended are less than \$250,000,000.

(2) **FINAL REPORT.**— The Inspector General shall, prior to the termination of the Office of the Special Inspector General for Afghanistan Reconstruction under paragraph (1), prepare and submit to the appropriate congressional committees a final forensic audit report on programs and operations funded with amounts appropriated or otherwise made available for the reconstruction of Afghanistan.

SEC. 842 – WARTIME CONTRACTS & CONTRACTING PROCESSES

Section 842 of the Public Law containing SIGAR's enabling legislation, the National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181 (Jan. 28, 2008), 122 STATUTES AT LARGE 234-36, provides in addition as follows:

SEC. 842. INVESTIGATION OF WASTE, FRAUD, AND ABUSE IN WARTIME CONTRACTS AND CONTRACTING PROCESSES IN IRAQ AND AFGHANISTAN.

(a) **AUDITS REQUIRED.**— Thorough audits shall be performed in accordance with this section to identify potential waste, fraud, and abuse in the performance of—

(1) Department of Defense contracts, subcontracts, and task and delivery orders for the logistical support of coalition forces in Iraq and Afghanistan; and

(2) Federal agency contracts, subcontracts, and task and delivery orders for the performance of security and reconstruction functions in Iraq and Afghanistan.

(b) **AUDIT PLANS.**—

(1) The Department of Defense Inspector General shall develop a comprehensive plan for a series of audits of contracts, subcontracts, and task and delivery orders covered by subsection (a)(1), consistent with the requirements of subsection (g), in consultation with other Inspectors General specified in subsection (c) with regard to any contracts, subcontracts, or task or delivery orders over which such Inspectors General have jurisdiction.

(2) The Special Inspector General for Iraq Reconstruction shall develop a comprehensive plan for a series of audits of contracts, subcontracts, and task and delivery orders covered by subsection (a)(2) relating to Iraq, consistent with the requirements of subsection (h), in consultation with other Inspectors General specified in subsection (c) with regard to any contracts, subcontracts, or task or delivery orders over which such Inspectors General have jurisdiction.

(3) The Special Inspector General for Afghanistan Reconstruction shall develop a comprehensive plan for a series of audits of contracts, subcontracts, and task and delivery orders covered by subsection (a)(2) relating to Afghanistan, consistent with the requirements of subsection (h), in consultation with other Inspectors General specified in subsection (c) with regard to any contracts, subcontracts, or task or delivery orders over which such Inspectors General have jurisdiction.

(c) **PERFORMANCE OF AUDITS BY CERTAIN INSPECTORS GENERAL.**— The Special Inspector General for Iraq Reconstruction, during such period as such office exists, the Special Inspector General for Afghanistan Reconstruction, during such period as such office exists, the Inspector General of the Department of Defense, the Inspector General of the Department of State, and the Inspector General of the United States Agency for International Development shall perform such audits as required by subsection (a) and identified in the audit plans developed pursuant to subsection (b) as fall within the respective scope of their duties as specified in law.

(d) **COORDINATION OF AUDITS.**— The Inspectors General specified in subsection (c) shall work to coordinate the performance of the audits required by subsection (a) and identified in the audit plans developed under subsection (b) including through councils and working groups composed of such Inspectors General.

(e) **JOINT AUDITS.**— If one or more audits required by subsection (a) and identified in an audit plan developed under subsection (b) falls within the scope of the duties of more than one of the Inspectors General specified in subsection (c), and such Inspectors General agree that such audit or audits are best pursued jointly, such Inspectors General shall enter into a memorandum of understanding relating to the performance of such audit or audits.

(f) **SEPARATE AUDITS.**— If one or more audits required by subsection (a) and identified in an audit plan developed under subsection (b) falls within the scope of the duties of more than one of the Inspectors General specified in subsection (c), and such Inspectors General do not agree that such audit or audits are best pursued jointly, such audit or audits shall be separately performed by one or more of the Inspectors General concerned.

(g) **SCOPE OF AUDITS OF CONTRACTS.**— Audits conducted pursuant to subsection (a)(1) shall examine, at a minimum, one or more of the following issues:

(1) The manner in which contract requirements were developed.

(2) The procedures under which contracts or task or delivery orders were awarded.

(3) The terms and conditions of contracts or task or delivery orders.

(4) The staffing and method of performance of contractors, including cost controls.

(5) The efficacy of Department of Defense management and oversight, including the adequacy of staffing and training of officials responsible for such management and oversight.

(6) The flow of information from contractors to officials responsible for contract management and oversight.

(h) **SCOPE OF AUDITS OF OTHER CONTRACTS.**— Audits conducted pursuant to subsection (a)(2) shall examine, at a minimum, one or more of the following issues:

(1) The manner in which contract requirements were developed and contracts or task and delivery orders were awarded.

(2) The manner in which the Federal agency exercised control over the performance of contractors.

(3) The extent to which operational field commanders were able to coordinate or direct the performance of contractors in an area of combat operations.

(4) The degree to which contractor employees were properly screened, selected, trained, and equipped for the functions to be performed.

(5) The nature and extent of any incidents of misconduct or unlawful activity by contractor employees.

(6) The nature and extent of any activity by contractor employees that was inconsistent with the objectives of operational field commanders.

(7) The extent to which any incidents of misconduct or unlawful activity were reported, documented, investigated, and (where appropriate) prosecuted.

(i) **INDEPENDENT CONDUCT OF AUDIT FUNCTIONS.**— All audit functions under this section, including audit planning and coordination, shall be performed by the relevant Inspectors General in an independent manner, without consultation with the Commission established pursuant to section 841 of this Act. All audit reports resulting from such audits shall be available to the Commission.