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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

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November 19, 2012

Lieutenant General Thomas P. Bostick
Commanding General and Chief of Engineers
United States Army Corps of Engineers
441 G Street
Washington, DC 20314

Dear General Bostick:

The oversight jurisdiction of the Senate Homeland Security and Governmental Affairs Committee includes “the duty of studying the efficiency, economy, and effectiveness of all agencies and departments.” For that purpose, we are writing to request information regarding the recent decision by the U.S. Army Corps of Engineers (USACE) to pay the contractor DynCorp International LLC (DynCorp) more than \$70 million, under contracts worth \$72.8 million, despite severe defects with the contractor’s work.

In 2008, USACE awarded DynCorp two contracts to construct a garrison for the Afghan National Army in Kunduz province. The contracts, with a combined value of \$72.8 million, were intended to strengthen Afghanistan’s capacity to train, support, and equip the Afghan National Security Force.¹

On October 25, 2012, the Special Inspector General for Afghanistan Reconstruction (SIGAR) issued a report finding that the construction of the garrison was so poor that several buildings at the garrison were unsafe, uninhabitable, or unusable. According to SIGAR, large areas throughout the construction site had collapsed due to DynCorp’s failure to provide proper grading and drainage of the site. SIGAR also found “virtually non-existent” quality management by USACE during the first nine months of construction. In addition, SIGAR found that the construction of the project was delayed by more than two years.²

¹DynCorp International LLC, Firm Fixed Price Contract, IDV: W917PM-08-C-0033 and W917PM-08-C-0070. Online at www.USASpending.gov (accessed Oct. 26, 2012); Special Inspector General for Afghanistan Reconstruction, *Kunduz ANA Garrison: Army Corps of Engineers Released DynCorp of All Contractual Obligations Despite Poor Performance and Structural Failures* (Oct. 25, 2012) (SIGAR Inspection 13-1).

² Special Inspector General for Afghanistan Reconstruction, *Kunduz ANA Garrison: Army Corps of Engineers Released DynCorp of All Contractual Obligations Despite Poor Performance and Structural Failures* (Oct. 25, 2012) (SIGAR Inspection 13-1).

Despite these failings, in December 2011, USACE reportedly released DynCorp from all contractual obligations, including any obligations to fix or repair existing and latent defects. Under the settlement, USACE paid DynCorp \$70.8 million, more than 97% of the contracts' total value. In addition, USACE retroactively extended the contract's duration by 948 days, effectively absolving DynCorp from any liability for the schedule delays. According to SIGAR, USACE agreed to this settlement despite having previously issued the contractor partial termination notices for default under the contracts and unsatisfactory performance evaluations.³

SIGAR also questioned whether the actions by USACE violated federal regulations, which require settlements over \$100,000 to be submitted to an audit agency for review prior to agreement. According to SIGAR, USACE initially claimed that its settlement was a "negotiated contract modification" which did not trigger the audit requirement. SIGAR found that the substance of the agreement clearly demonstrated settlement terms and conditions and internal USACE documents refer to the agreement as a settlement. USACE has since agreed to submit its actions for review by the Defense Contract Audit Agency.⁴

The terms of this settlement appear materially unfavorable to the government. In light of the harm to taxpayers and the damage to the nation's objectives in Afghanistan that may have resulted from the Corps' actions, we request that you provide us with the following information and documents:

- (1) The number, type, value, and obligations to date of USACE's contracts with DynCorp International LLC;
- (2) Evaluations or audits of the contractor's performance;
- (3) The number, qualifications, and locations of the contracting officers' representatives, quality assurance representatives, and other personnel responsible for conducting oversight of DynCorp International LLC contract(s) in Afghanistan;
- (4) USACE's policy and procedures for entering into settlement agreements, "negotiated modifications" of contracts, recovery of liquidated damages, and enforcement of construction defects on construction contracts;
- (5) The justification for the decision to enter into the settlement agreement with DynCorp, including a copy of the settlement agreement;

³ Special Inspector General for Afghanistan Reconstruction, *Kunduz ANA Garrison: Army Corps of Engineers Released DynCorp of All Contractual Obligations Despite Poor Performance and Structural Failures* (Oct. 25, 2012) (SIGAR Inspection 13-1).

⁴ Federal Acquisition Regulation 49.107(a); Special Inspector General for Afghanistan Reconstruction, *Kunduz ANA Garrison: Army Corps of Engineers Released DynCorp of All Contractual Obligations Despite Poor Performance and Structural Failures* (Oct. 25, 2012) (SIGAR Inspection 13-1).

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- (6) The names and titles of all officials responsible for reviewing and approving the settlement agreement with DynCorp; and
- (7) Additional actions being taken by USACE following SIGAR's report, including whether additional steps will be necessary to recover costs associated with any additional actions necessary to correct performance failures on contracts performed by DynCorp or to complete the contracts.

We request that you provide the information and documents on or before **December 3, 2012**. We also request that you provide a briefing for Subcommittee staff on or before **December 7, 2012**.

Please contact Alan Kahn with Senator McCaskill at (202) 224-3230 or Trey Hicks with Senator Collins at (202) 224-2523 with any questions. Please send any official correspondence relating to this request to kelsey_stroud@hsgac.senate.gov.

Sincerely,



Susan Collins
Ranking Member
Homeland Security and Governmental Affairs
Committee



Claire McCaskill
Chairman
Subcommittee on Contracting Oversight