

# HSGAC

MINORITY STAFF REPORT

## **FAST CARS, EASY MONEY:**

**How the Pentagon Mismanaged the  
Afghanistan Legacy Program**



UNITED STATES SENATE  
Committee on Homeland Security & Governmental Affairs  
Ranking Member Claire McCaskill

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## Executive Summary

The Legacy and Afghanistan Source Operations Management (ASOM) Programs, an expensive American effort to build the intelligence capacity of Iraq and Afghanistan security forces from 2007 to 2016, have been repeatedly scrutinized by Ranking Member Claire McCaskill and other federal officials, including the Defense Contract Audit Agency (DCAA) and the Special Inspector General for Afghanistan Reconstruction (SIGAR). In August 2017, Ranking Member McCaskill revealed extensive financial abuses by the subcontractor on the Legacy Program contracts, which had spent over \$51 million on, among other things, luxury cars, exorbitant salaries, and unallowable airfare.

While the Army was responsible for executing the Legacy and ASOM Program contracts, a small office in the Pentagon, the Combating Terrorism Technical Support Office (CTTSO), developed the program. At the time of the Legacy Program, the Program Manager for CTTSO was Richard Higgins, a subsequent White House aide whose controversial statements ultimately resulted in his widely-publicized dismissal from the National Security Council in 2017.

The Legacy Program was executed by a contractor named Jorge Scientific Corporation, later known as Imperatis Corporation (Imperatis), which has since become insolvent. This company first attracted the attention of Senator McCaskill in 2012, when allegations arose of drug and alcohol abuse and other misconduct at its compound in Kabul. Last year, Ranking Member McCaskill learned that at the same time Imperatis personnel were reportedly getting drunk and high in Afghanistan, its subcontractor was billing taxpayers for Bentleys, Porsches, and other luxury cars under the contract.

At the request of Ranking Member McCaskill, minority Committee staff sought to determine who was responsible for the Legacy Program and how the contract was awarded. The investigation also sought to determine how such egregious costs could have been approved, whether they would be recovered, and what sort of oversight the military had over the effectiveness of the program. Key findings include:

### **Nearly all work on the contracts passed through to the subcontractor, NCC.**

- The subcontractor, New Century Consulting (NCC), pitched the program and did the vast majority of the work in the Legacy and ASOM Programs—an estimated 80% on the Legacy Program contracts. NCC's CEO, Michael Grunberg, was previously involved in a scandal related to international arms deals. Mr. Grunberg has also been employed by private military companies involved with conflicts in Papua New Guinea, Sierra Leone, and Liberia, and he has connections to multiple diamond companies associated with nonstate activity in West Africa.
- The Department of the Army (Army) acknowledged that if Ranking Member McCaskill's 2013 contracting reform legislation had been in place at the time of the Legacy Program contracts, then it would have at least had to justify allowing NCC to perform the overwhelming majority of the work, and might have disallowed it.

**The original Legacy contract was both developed by the subcontractor and steered towards it.**

- NCC, rather than the prime contractor, originally pitched the program to Mr. Higgins's office.
- Though Mr. Higgins's office claimed it had no influence on NCC's pursuit of subcontractor work on Legacy Program, his office notified NCC that Imperatis was in line to win the Legacy Program contracts and made contact arrangements for NCC.

**The contract award process lacked effective competition. CTISO and the Army relied on an obscure contracting vehicle to award and continue the Legacy Program.**

- The Legacy Program was awarded using a "research and development" contract vehicle that never mentioned training or mentoring security forces, but instead called for research proposals in hard sciences like chemistry, electronics and physics. The award hinged on a passing reference to "HUMINT", human intelligence, that occurred once in a nearly 150-page proposal.
- Proposals accepted under these types of contract vehicles, known as Broad Agency Announcements (BAAs) do not need to be competitively bid, even if they are unique. Minority staff found no evidence that the Army received any other training and mentoring proposal for the Legacy Program contracts.
- The Department of Defense (DOD) continued to use the BAA "research and development" vehicle to award further Legacy and ASOM Program contracts long after the Legacy Program had been established and was no longer new.

**The performance and financial oversight of the Legacy and ASOM contracts was deficient.**

- The Legacy and ASOM Programs failed to establish adequate quantitative metrics measuring the programs' progress, making it difficult to identify the effectiveness of the programs.
- Although the DCAA successfully identified \$51 million in egregious costs under the Legacy Program contracts, post-performance audits are not a fully reliable method for preventing waste, fraud and abuse.
- DCAA's audit only investigated costs between 2008 and 2013, and was not completed until 2016—nearly three years after that period ended and almost eight years after the first costs were incurred. Its audit of the remainder of NCC's costs will not be complete until later this year. DCAA's audit backlog, a longstanding concern of Ranking Member McCaskill, has resulted in an audit inventory whose average age is 14 months.
- Prior to DCAA's audit, Imperatis filed for bankruptcy, meaning that the government may never recover its claim submitted after DCAA completed its work.

**Despite egregious waste and an investigation of NCC by the Army's Criminal Investigative Command (CID), the Army continues to allow NCC to receive government contracts and subcontracts.**

- In April 2016, NCC entered into a subcontract with a prime DOD contractor, Raytheon, that continues to this day. In December 2014, the Army awarded NCC a research and development contract with a ceiling of more than \$83 million that continued through September 2017.
- The Army has elected to delay a decision to suspend or debar NCC until after CID's investigation is complete, even though a CID investigation of the prime contractor took over two years.

## I. Legacy Program Organization and Structure

The Legacy Program was an American effort to build the intelligence capacity of Iraq and Afghanistan security forces. The Legacy Program was executed by a contractor originally named Jorge Scientific Corporation, later known as Imperatis Corporation (Imperatis). Imperatis bid on the contract, was awarded the contract, and served as the prime contractor until September 2013, when the Legacy Program transitioned into ASOM Program and a new contract was awarded.<sup>1</sup>

While the Army was responsible for executing the Legacy and ASOM Program contracts, a small office in the Pentagon developed the program, or "requirement," to be bid out. The office, Combating Terrorism Technical Support Office (CTTSO) falls under the Assistant Secretary of Defense for Special Operations/Low-Intensity Conflict (SOLIC). Typical CTTSO contracts are worth anywhere from \$500,000 to \$1 million, and expected to deliver within 12 to 24 months. The office's base budget is roughly \$70 million a year.<sup>2</sup> At the time of the Legacy Program, the Program Manager for CTTSO was Rich Higgins, who has a history of provocative positions and statements, one of which resulted in his widely-publicized dismissal from the National Security Council last year.<sup>3</sup>

<sup>1</sup> Special Inspector General for Afghanistan Reconstruction, Afghanistan National Defense and Security Forces: DOD Spent \$457.7 Million on Intelligence Capacity-Building Programs, but Impact Cannot Be Fully Assessed Because of a Lack of Performance Metrics (July 27, 2017) (SIGAR 17-57-AR).

<sup>2</sup> Department of Defense, Technical Support Working Group, Combating Terrorism Technical Support Office ([https://www.tswg.gov/?q=vendors\\_about](https://www.tswg.gov/?q=vendors_about)) (accessed Jan. 30, 2018); *Counterterrorism Rapid Acquisition Group Touts its Success*, National Defense (Dec. 20, 2017) (<http://www.nationaldefensemagazine.org/articles/2017/12/20/counterterrorism-rapid-acquisition-group-touts-its-success>).

<sup>3</sup> Mr. Higgins authored a controversial memo entitled "POTUS & Political Warfare" arguing that the Trump Administration is "suffering under withering information campaigns designed to first undermine, then delegitimize and ultimately remove the President." In the memo, Mr. Higgins names several adversaries of President Trump, including the mainstream media, academia, the "deep state", global corporations and bankers, the leadership of both political parties, and "Islamists." The release and circulation of Mr. Higgins's memo resulted in his dismissal from the NSC. See, e.g., *An NSC Staffer is Forced Out Over a Controversial Memo*, The Atlantic (Aug. 2, 2017) (<https://www.theatlantic.com/politics/archive/2017/08/a-national-security-council-staffer-is-forced-out-over-a-controversial-memo/535725/>); *White house Aide Forced Out After Claim of Leftist Conspiracy*, The New York Times (Aug. 11, 2017) (<https://nyti.ms/2uOHH4j>); *Memo highlights friction within White House National Security Council*, CNN (Aug. 11, 2017) (<http://www.cnn.com/2017/08/11/politics/mcmaster-memo-wh-struggle/index.html>).

The Legacy Program arose from a 2007 counterinsurgency pilot program.<sup>4</sup> The Army awarded Imperatis a contract to address intelligence deficiencies in counterinsurgency, the global war on terrorism, and counter transnational threats.<sup>5</sup> Specifically, Imperatis and its subcontractor NCC were tasked with embedding mentors alongside select Iraqi and Afghani police and military intelligence to help professionalize their operations.<sup>6</sup>

The Army applied the Legacy Program to Afghanistan through an additional four contracts to Imperatis valued at over \$314.4 million.<sup>7</sup> Each new contract was considered a new “pilot,” ostensibly to determine the effectiveness of the Legacy Program in a new territory.<sup>8</sup> The first, Legacy Afghanistan, was granted between April 2010 to May 2012, and valued at \$42.3 million;<sup>9</sup> The second, Legacy South, was a cost-plus-fixed-fee term<sup>10</sup> contract granted between July 2010 to May 2012, valued at \$47.9 million; The third, Legacy Kabul was another cost-plus-fixed-fee term<sup>11</sup> contract between September 2010 and May 2012, valued at \$46.6 million; The fourth, Legacy East, shifted to a cost-plus-fixed-fee completion<sup>12</sup> contract between October 2011 and September 2013, and was valued at \$177.6 million.

Each contract was organized into four chronological phases: First was “recruiting, reception and staging”—which recruited, vetted and prepared training and mentoring personnel; Second was “onward movement and training delivery”— which trained and mentored host nation security forces; Third was “integration and implementation”—which aimed to provide the required information, training support, and mentoring while simultaneously refining appropriate publications and documents for the supported command; And fourth was

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<sup>4</sup> Special Inspector General for Afghanistan Reconstruction, Afghanistan National Defense and Security Forces: DOD Spent \$457.7 Million on Intelligence Capacity-Building Programs, but Impact Cannot Be Fully Assessed Because of a Lack of Performance Metrics (July 27, 2017) (SIGAR 17-57-AR); Department of the Army, U.S. Army Security Assistance Command, Statement of Work Project Legacy: Professionalization Program Intelligence Management Continuation (copy on file with Committee).

<sup>5</sup> Special Inspector General for Afghanistan Reconstruction, Afghanistan National Defense and Security Forces: DOD Spent \$457.7 Million on Intelligence Capacity-Building Programs, but Impact Cannot Be Fully Assessed Because of a Lack of Performance Metrics (July 27, 2017) (SIGAR 17-57-AR).

<sup>6</sup> Department of the Army, U.S. Army Security Assistance Command, Statement of Work Project Legacy: Professionalization Program Intelligence Management Continuation (copy on file with Committee).

<sup>7</sup> For the purposes of this report, the four contracts will be collectively referred to as the Legacy contracts. The four components of the Legacy contracts were the following: (1) Legacy Afghanistan, (2) Legacy Kabul, (3) Legacy South, and (4) Legacy East. Special Inspector General for Afghanistan Reconstruction, Afghanistan National Defense and Security Forces: DOD Spent \$457.7 Million on Intelligence Capacity-Building Programs, but Impact Cannot Be Fully Assessed Because of a Lack of Performance Metrics (July 27, 2017) (SIGAR 17-57-AR); Department of the Army, U.S. Army Security Assistance Command, Statement of Work Project Legacy: Professionalization Program Intelligence Management Continuation (copy on file with Committee).

<sup>8</sup> Office of the Special Inspector General for Afghanistan Reconstruction, Briefing with Minority Staff (Mar. 6, 2018).

<sup>9</sup> Minority Staff could not identify the cost reimbursement structure for the Legacy Afghanistan contract.

<sup>10</sup> FAR 16.306 states that cost-plus-fixed-fee are a type of cost-reimbursement contract in which the contractor is paid a negotiated fee that is fixed at the contract’s inception. This type is preferred when the objective is geared towards research performance or preliminary exploration and when the level of effort required is unknown.

<sup>11</sup> FAR 16.307 describes Term forms as general conditions in which the contractor is obligated to devote a specified level of effort for a stated time. Under term forms, performance is satisfactory if the fixed fee is payable at the expiration of the agreed duration, and when the contractor indicates that the work specified has been completed.

<sup>12</sup> Completion forms require the contractor to complete and deliver a specified end product within an estimated cost, if possible, as a condition for payment of the entire fixed fee.

“drawdown, transition and institutionalization”—which required the contractor or subcontractor to develop a logical plan for withdrawal and or transition of capabilities to host nation forces.<sup>13</sup>

Following the conclusion of the Legacy Program contracts in May 2012,<sup>14</sup> the Army requested competitive proposals for a new contract to provide training and mentoring services in Afghanistan. The resulting ASOM contract was awarded to NCC in July 2013 and ran through its conclusion in February 2016.

## II. Investigation by Senator McCaskill

On March 12, 2012, two former Imperatis (then-named Jorge Scientific) employees working as contractors on the Legacy Program filed a complaint in the United States District Court for the District of Columbia, alleging that Imperatis employees engaged in “numerous violations of Afghan and U.S. law; international and/or bilateral agreements; and contractual requirements.”<sup>15</sup> Specific inappropriate activity included the possession and use of illegal weapons, including grenades; the possession and use of alcohol and drugs; and the intentional defrauding of the U.S. government by misrepresenting the location of Imperatis employees and by submitting forged documentation necessary to perform Imperatis’s contractual duties.<sup>16</sup> Senator McCaskill, then-Chairman of the Senate Committee on Homeland Security and Governmental Affairs Subcommittee on Contracting Oversight, began an inquiry into the Army’s management and oversight of contracts with Imperatis.<sup>17</sup> Following this inquiry, Army officials informed the Subcommittee that the individuals involved in the misconduct at issue were no longer employed by the company and that leadership in Kabul had been replaced recently.<sup>18</sup>

An initial audit of Imperatis’ expenditures from October 21, 2011 through March 15, 2014, was commissioned by SIGAR and conducted by Crowe Horwath LLP. The audit, published in April 2015, revealed a lack of proper reporting and accounting standards, specifically as they related to costs billed by NCC. This resulted in the questioning of over \$130 million in costs billed to the U.S. government.<sup>19</sup> Alarmed by the conclusions reached in the Crowe Horwath audit and the large amount of money questioned, Senator McCaskill, then-Ranking Member of the Senate Committee on Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations (PSI), joined by PSI Chairman Rob Portman, wrote a letter to the Commanding General of the Army Contracting Command (ACC), requesting a briefing on the contracts

<sup>13</sup> Department of the Army, U.S. Army Security Assistance Command, Statement of Work Project Legacy: Professionalization Program Intelligence Management Continuation (copy on file with Committee).

<sup>14</sup> Special Inspector General for Afghanistan Reconstruction. Afghanistan National Defense and Security Forces: DOD Spent \$457.7 Million on Intelligence Capacity-Building Programs, but Impact Cannot Be Fully Assessed Because of a Lack of Performance Metrics (July 27, 2017) (SIGAR 17-57 Audit Report).

<sup>15</sup> Plaintiff’s Complaint for Violations of the False Claims Act, 31 U.S.C. §§ 3729, et seq. (March 12, 2012), *United States of America, ex rels. John Melson & Kenneth Smith v. Jorge Scientific Corporation*, D.D.C. (No. 1:12-cv-00389-EGS).

<sup>16</sup> Plaintiff’s Complaint for Violations of the False Claims Act, 31 U.S.C. §§ 3729, et seq. (March 12, 2012), *United States of America, ex rels. John Melson & Kenneth Smith v. Jorge Scientific Corporation*, D.D.C. (No. 1:12-cv-00389-EGS).

<sup>17</sup> Letter from Chairman Claire McCaskill, Subcommittee on Contracting Oversight, to Secretary John McHugh, Department of the Army (Oct. 22, 2012).

<sup>18</sup> Letter from Secretary John McHugh, Department of the Army, to Chairman Claire McCaskill, Subcommittee on Contracting Oversight (Nov. 27, 2012).

<sup>19</sup> Special Inspector General for Afghanistan Reconstruction. Department of the Army’s Legacy East Project: Jorge Scientific Corporation’s Lack of Supporting Documentation Results in about \$135 Million in Questionable Project Costs (Apr. 21, 2015) (SIGAR 15-43 Financial Audit).

audited, any other contracts ACC had with Imperatis, and the status of any investigations into Imperatis.<sup>20</sup>

The Crowe Howarth audit led DCAA to perform its own nonpublic audit of NCC, which it completed on August 31, 2016. DCAA examined NCC's incurred costs between 2008 and 2013 and revealed that NCC improperly incurred costs over \$50 million, including exorbitant salaries, unallowable travel expenses, and Bentleys, Porsches and other "luxury" cars that were used by NCC executives and their assistants.<sup>21</sup>

In July 2017, SIGAR released a performance audit of the Legacy and ASOM Programs, which examined the programs from 2010 through their conclusion in 2016, questioning their success, effectiveness, and whether or not they were properly monitored. SIGAR concluded that because of a lack of metrics for the Legacy Program and a reliance on contractor-provided data for ASOM, it is almost impossible to gauge the U.S. government's return on investment for the \$457.7 million spent on both programs.<sup>22</sup> SIGAR also found that NCC's accounting system was so poor that the government could and should have disallowed its use, but the agencies responsible for contract oversight continued to permit it. Had NCC been required to use a satisfactory accounting system from the beginning, its unallowable costs could have been identified earlier and before the company was reimbursed.

In August 2017, after DCAA's 2016 audit of NCC and SIGAR's 2017 audit report of the Legacy and ASOM Programs were provided to Committee staff, Ranking Member McCaskill sent a letter to DOD Secretary James Mattis, questioning waste of millions of taxpayer dollars spent by NCC.<sup>23</sup> In response, DOD provided Committee staff with an in-person briefing with CTTSO,<sup>24</sup> Army Contracting Command-Aberdeen Proving Ground (ACC-APG), the Defense Contract Management Agency (DCMA), the DCAA, and the Office of the Deputy Assistant Secretary of the Army for Procurement.<sup>25</sup> Following this briefing Committee staff requested white papers, contracts, performance and compliance reports, and statements of work and training manuals related to the Legacy Programs. In response to these requests, DOD provided limited information, including the Legacy Afghanistan, Kabul, South, and East contracts and statements of work, two compliance reports and weekly updates for July 2011 and December 2012, two trip reports from December 2012 and October through November 2013, a monthly status report from June 2013, three Contractor Performance Assessment Reports, two of DCAA's audits of Imperatis, and performance assessments from Army Generals. DOD did not provide Committee

<sup>20</sup> Letter from Senator Claire McCaskill and Senator Rob Portman to MG Theodore Harrison, U.S. Army Contracting Command (May 12, 2015).

<sup>21</sup> Defense Contract Audit Agency, Independent Audit Report on New Century Consulting Ltd's Proposed Amounts on Unsettled Flexibly Priced Contracts for Fiscal Years 2008, 2009, 2010, 2011, 2012, and 2013 (Aug. 31, 2016) (Audit Report No. 02191-2015T10160001).

<sup>22</sup> Special Inspector General for Afghanistan Reconstruction. Afghanistan National Defense and Security Forces: DOD Spent \$457.7 Million on Intelligence Capacity-Building Programs, but Impact Cannot Be Fully Assessed Because of a Lack of Performance Metrics (July 2017) (SIGAR 17-57 Audit Report).

<sup>23</sup> Letter from Senator Claire McCaskill to Secretary James Mattis, Department of Defense (Aug. 7, 2017); This letter incorrectly stated the salaries for the executive assistants reached "approximately \$420,000 each." The correct average salary reached for the assistants was \$190,500 each.

<sup>24</sup> The Combating Terrorism Technical Support Office is an office within the office of the Assistant Secretary of Defense for Special Operations/Low-Intensity Conflict.

<sup>25</sup> Combating Terrorism Technical Support Office, Army Contracting Command-Aberdeen Proving Ground, Defense Contract Management Agency, Defense Contract Audit Agency, and Office of the Deputy Assistant Secretary of the Army for Procurement, Briefing with Senate Committee on Homeland Security and Governmental Affairs Staff (Oct. 4, 2017).

staff with any of the other information requested. In addition, SIGAR briefed minority staff regarding their audit of the Legacy East contracts.

In addition to investigating the Legacy Program contracts, minority staff also attempted to review other DCAA audits that may have identified similar waste, fraud and abuse among other contractors. While DCAA offered an overview of questionable costs that it had identified over the past two years, it refused to provide any further audits to minority staff. Senator McCaskill most recently requested access to these audits at a Senate Committee on Armed Services hearing earlier this month.<sup>26</sup>

This report is a staff analysis of the information received by the Committee.

### III. Nearly All Work under the Contracts Passed Through to Subcontractor NCC

In September 2007, the Army, through ACC, awarded an indefinite delivery-indefinite quantity contract to develop the doctrine that would become the Legacy Program to Jorge Scientific Corporation. Founded by Judith Jorge Hartman in 1986, Jorge Scientific Corporation, later rebranded as Imperatis, was a contractor for the United States for decades, and was awarded its first contract with the Departments of Labor and Navy in 1992.<sup>27</sup> Imperatis has had 1,739 contract actions with the United States government since 1992, of which 66% were with DOD.<sup>28</sup>

Following the award of each Legacy Program contract, Imperatis subcontracted a significant portion of the work to NCC. The Army estimated that NCC was responsible for approximately 80% of the work on the Legacy East contract<sup>29</sup>—but that percentage could be even higher. Despite numerous inquiries, minority staff was unable to identify evidence of any substantive work that Imperatis conducted in Afghanistan. According to monthly reports provided by both DOD and SIGAR, all of the mentoring and training of Afghanistan security forces under the Legacy Program appeared to be completed by NCC. NCC takes credit for creating and implementing the Legacy and ASOM Programs on its website.<sup>30</sup> This arrangement effectively made Imperatis a pass-through organization. It operated as the prime contractor in name only, allowing NCC to develop the doctrine and perform the vast majority of the work for the Legacy Program.<sup>31</sup>

<sup>26</sup> Senate Committee on Armed Services, *Hearing on Posture of the Department of the Army* (Apr. 12, 2018).

<sup>27</sup> Federal Procurement Data System (<https://www.fpds.gov/common/jsp/easySearchDocumentController.jsp?agencyID=1152&PIID=11520199209DCCP0502C0020280&modNumber=0&transactionNumber=0&idvAgencyID=&idvPIID=&actionSource=searchScreen&actionCode=&documentVersion=1.0&contractType=AWARD&docType=D>) (accessed Jan. 30, 2018).

<sup>28</sup> Of the 1739 contract obligations listed on FPDS, 1148 of them were with some agency with the Department of Defense. Action obligations are the amount of federal government's obligation, de-obligation, or liability, in dollars, for an award transaction. Federal Spending Transparency: DATA Act Collaboration Space (<https://fedspendingtransparency.github.io/whitepapers/amount/>) (accessed Oct. 24, 2017).

<sup>29</sup> Email from Lieutenant Colonel Michael D. Jones, Legislative Counsel, Office of the Chief, Legislative Division, Department of the Army, to Senate Committee on Homeland Security and Governmental Affairs (Dec. 8, 2017).

<sup>30</sup> NCC's website states that NCC "created techniques for recruiting and handling sources in hostile environments such as Iraq and Afghanistan" through the Legacy Program while crafting a "specialist intelligence program in Afghanistan to support national and provincial police command structures" through its ASOM contracts with the DOD. New Century, *The Legacy Model* (<http://www.newcentcorp.com/the-legacy-model/>) (accessed Oct. 24, 2017); New Century, *Afghanistan Source Operations Model* (<http://www.newcentcorp.com/afghanistan-source-operations-model/>) (accessed Oct. 24, 2017).

<sup>31</sup> Jorge Scientific Corporation, *Monthly Financial Status Report: March 1<sup>st</sup>-March 31<sup>st</sup> 2013* (copy on file with Committee).

NCC is a closely held corporation headquartered in the Channel Islands between Great Britain and France.<sup>32</sup> NCC's website offers only broad descriptions of its business: "capacity building", "intelligence led solutions", "security sector reform", "specialist military training", and "doctrine-based training", providing subject matter expertise, interpreters, and accredited cultural advisors.<sup>33</sup> NCC's current leadership includes CEO and co-founder Michael Grunberg, Chairman and co-founder Colonel Tim Collins (a retired British Army officer), and CFO Guy Hendry.<sup>34</sup> Prior to co-founding NCC, Mr. Grunberg worked closely with a series of companies described as private military firms.<sup>35</sup> He worked for several years as a spokesman and advisor for Sandline International, a British private military company that was involved in conflicts in Papua New Guinea, Sierra Leone, and Liberia, as well as multiple diamond companies associated with nonstate activity in West Africa.<sup>36</sup> In 1998, Sandline was investigated for potential sanctions violations related to a United Nations arms embargo that followed a 1997 coup in Sierra Leone.<sup>37</sup> The company was so deeply involved in a 1997 internal conflict in Papua New Guinea—resulting in a near military coup and the resignation of the prime minister—that the events were dubbed the "Sandline Affair."<sup>38</sup>

Imperatis continued to perform its role as prime contractor for all of the Legacy Program contracts, subcontracting the majority of work to NCC until NCC became the prime contractor for the ASOM Program in 2013.<sup>39</sup> Imperatis ceased all operations on May 9, 2016.<sup>40</sup> Citing "financial distress," Imperatis subsequently filed for bankruptcy and is no longer a contractor with the U.S. government.<sup>41</sup>

Under current procurement law, Imperatis' pass-through arrangement to NCC likely would have been heavily scrutinized, if not prohibited. Ranking Member McCaskill was the chief

<sup>32</sup> Specifically, NCC is headquartered in the Bailiwick of Guernsey, a self-governing possession of the English Crown. The Crown is the state in all its aspects within the jurisdiction of the Commonwealth realms and their sub-divisions.

<sup>33</sup> New Century, Services and Expertise (<http://www.newcentcorp.com/services-and-expertise/>) (accessed Oct. 24, 2017).

<sup>34</sup> New Century, Executive Leaders (<http://www.newcentcorp.com/about-new-century/#executive>) (accessed Oct. 24, 2017); Defense Contract Audit Agency, *Independent Audit Report on New Century Consulting Ltd's Proposed Amounts on Unsettled Flexibly Priced Contracts for Fiscal Years 2008, 2009, 2010, 2011, 2012, and 2013* (Aug. 31, 2016) (Audit Report No. 02191-2015T10160001).

<sup>35</sup> *With One Foot in the Grave*, The New York Times (May 3, 2004) (<https://nyti.ms/2GWt3Tk>).

<sup>36</sup> *Mercenaries in Africa*, BBC News (Mar. 15, 2004) (<http://news.bbc.co.uk/2/hi/africa/3501632.stm>); A Sierra Leone Contract: LETTERS TO THE EDITOR, International Herald Tribune (Aug. 28, 2001) (<http://www.nytimes.com/2001/08/28/opinion/a-sierra-leone-contract-letters-to-the-editor.html>); Dean Andromidas, *Sandline scandal causes tremors in Tony Blair's 'Cool Britannia'*, Executive Intelligence Review (June 5, 1998); Abdel-Fatau Musah and J. 'Kayode Fayemi, *Africa in Search of Security: Mercenaries and Conflicts—An Overview* (2000); Ian Smillie, Lansana Gberie, & Ralph Hazlton, *The Heart of the Matter: Sierra Leone, Diamonds & Human Security* (2000).

<sup>37</sup> Parliament of the United Kingdom, House of Commons, *Report of the Sierra Leone Arms Investigation* (July 27, 1998) ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/235405/1016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235405/1016.pdf)); Parliament of the United Kingdom, House of Commons, Select Committee on Foreign Affairs, Minutes of Evidence: Appendix 2, Sierra Leone Arms Investigation (Leagg Inquiry): Note of a hearing with Lt Colonel Tim Spicer OBE (Sandline) held at 2.00 pm on 24 June 1998 (June 24, 1998) (<https://publications.parliament.uk/pa/cm199899/cmselect/cmcaff/116/116app05.htm>).

<sup>38</sup> *Sir Julius Chan Says He Has No Regrets Over handling of Sandline Affair*, Australian Broadcasting Corporation, (Mar. 17, 2016) (<http://www.abc.net.au/news/2016-03-17/no-regrets-over-papua-new-guinea-sandline-affair-sir-julius/7256118>).

<sup>39</sup> Department of the Army, ACC- Adelphi, *Afghanistan SOM Contract (W911QX-13-C-0170)* (copy on file with Committee).

<sup>40</sup> *Vendor hired to improve security of OPM's network goes out of business*, Federal News Radio (May 16, 2016) (<https://federalnewsradio.com/contractsawards/2016/05/vendor-hired-improve-security-opms-network-goes-business/>).

<sup>41</sup> *Vendor hired to improve security of OPM's network goes out of business*, Federal News Radio (May 16, 2016) (<https://federalnewsradio.com/contractsawards/2016/05/vendor-hired-improve-security-opms-network-goes-business/>).

architect of legislation in 2013 to address pass-through contracting abuses, ensuring that where an offeror on a DOD contract informs the agency it intends to award subcontracts for more than 70% of the total cost of the work to be performed under the contract, the contracting officer must consider alternative contracting vehicles.<sup>42</sup> If the contracting officer determines the offeror who anticipates subcontracting over 70% of the contract out is the best option, it must provide the basis for such determination.<sup>43</sup> Had this reform been in effect beginning in 2007, the Army would have been forced to justify the need for a contracting structure in which NCC performed approximately 80% of the work on the Legacy Program.<sup>44</sup> The Army acknowledged that had that requirement been in place at the time, it might have decided this pass-through contract was unacceptable.<sup>45</sup>

#### IV. Contracts Developed by NCC, Steered to NCC

Subcontractor NCC, rather than Imperatis, originally pitched the Legacy Program proposal to CTTSO. This finding further questions the need for Imperatis to have served as a prime contractor. In addition, CTTSO advised NCC on how to become the subcontractor for the Legacy Program work. Given that Imperatis became the prime contractor for the Legacy Program, it might be expected that Imperatis would serve as the driving force behind the program. Instead, NCC initially presented to CTTSO in mid-2006 the intelligence gathering and mentoring program that would become the Legacy Program.<sup>46</sup> NCC made a subsequent presentation to the Marine Corps Intelligence Activity (MCIA) in February 2007.<sup>47</sup> Next, Andrew Lomax, a CTTSO contractor supporting Mr. Higgins, the Program Director, informed NCC that Imperatis was in line to secure a contract to execute the Legacy Program in Iraq.<sup>48</sup> CTTSO then provided NCC contact arrangements with Imperatis.<sup>49</sup> In an interview with Committee staff, Mr. Lomax denied that he influenced NCC to seek out Imperatis for work on the Legacy Program.<sup>50</sup> However, his disagreement conflicts with accounts provided by NCC to SIGAR.<sup>51</sup> As NCC stated,

<sup>42</sup> National Defense Authorization Act for Fiscal Year 2013, Pub. L. 112-239, Sec. 802(1) (2013).

<sup>43</sup> National Defense Authorization Act for Fiscal Year 2013, Pub. L. 112-239, Sec. 802(3) (2013).

<sup>44</sup> The initial contract was awarded to Imperatis by ACC on September 27, 2007. The first task order awarded to Imperatis with NCC as subcontractor was later in September 2007. Special Inspector General for Afghanistan Reconstruction. *Afghanistan National Defense and Security Forces: DOD Spent \$457.7 Million on Intelligence Capacity-Building Programs, but Impact Cannot Be Fully Assessed Because of a Lack of Performance Metrics* (July 2017) (SIGAR 17-57 Audit Report).

<sup>45</sup> Combating Terrorism Technical Support Office, Army Contracting Command-Aberdeen Proving Ground, Defense Contract Management Agency, Defense Contract Audit Agency, and Office of the Director of the Army Staff, Briefing with Senate Committee on Homeland Security and Governmental Affairs Staff (Oct. 4, 2017).

<sup>46</sup> Email from Programme Manager, New Century Consulting, to Office of the Special Inspector General for Afghanistan Reconstruction Staff (Dec. 3, 2016).

<sup>47</sup> Email from Programme Manager, New Century Consulting, to Office of the Special Inspector General for Afghanistan Reconstruction Staff (Dec. 3, 2016).

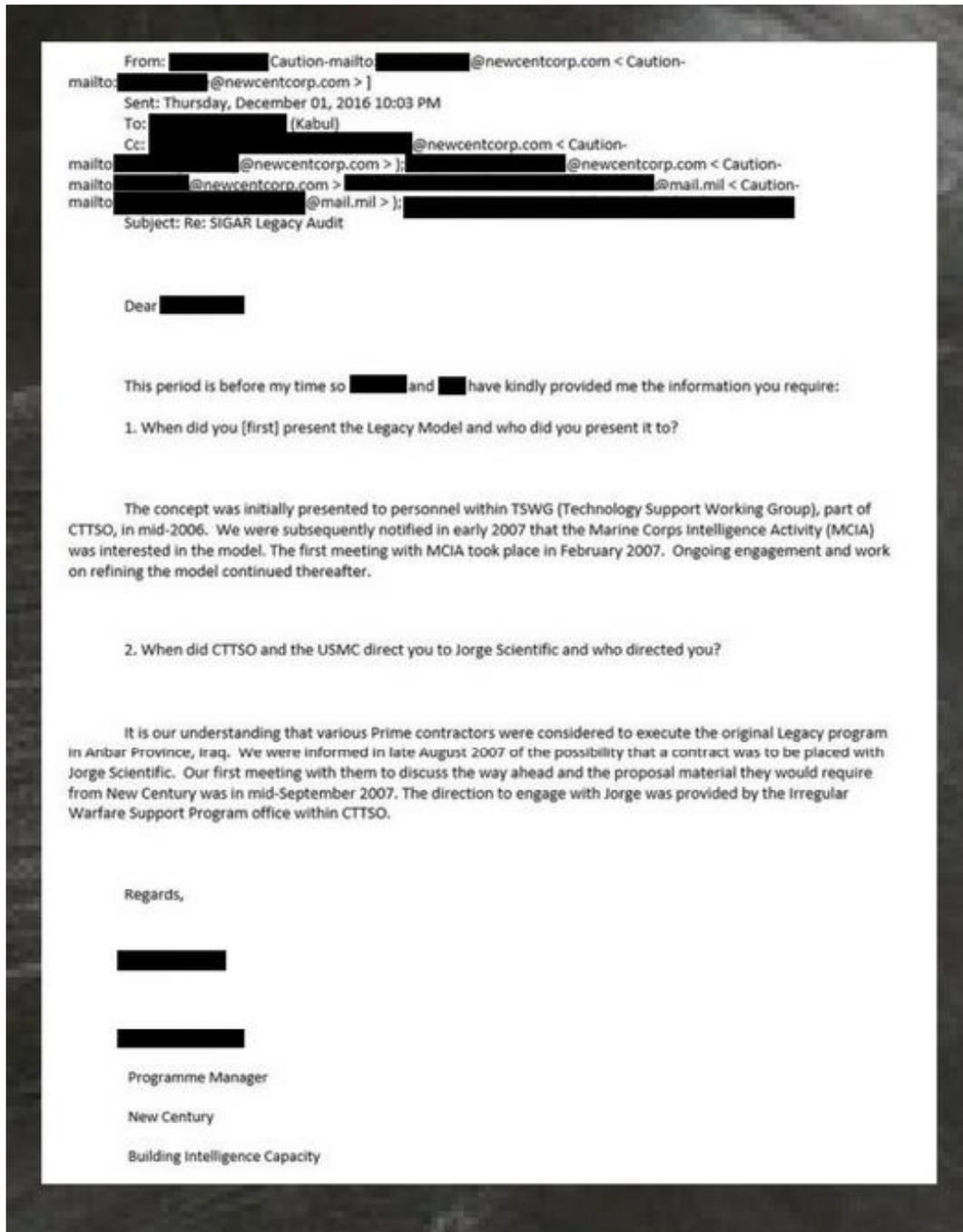
<sup>48</sup> Email from Programme Manager, New Century Consulting, to Office of the Special Inspector General for Afghanistan Reconstruction Staff (Dec. 1, 2016).

<sup>49</sup> Email from Programme Manager, New Century Consulting, to Office of the Special Inspector General for Afghanistan Reconstruction Staff (Dec. 3, 2016).

<sup>50</sup> Combating Terrorism Technical Support Office, Army Contracting Command-Aberdeen Proving Ground, Defense Contract Management Agency, Defense Contract Audit Agency, and Office of the Director of the Army Staff, Briefing with Senate Committee on Homeland Security and Governmental Affairs Staff (Oct. 4, 2017).

<sup>51</sup> Email from Programme Manager, New Century Consulting, to Office of the Special Inspector General for Afghanistan Reconstruction Staff (Dec. 3, 2016).

“The direction to engage with [Imperatis] was provided by the Irregular Warfare Support Program office within CTTSO.”<sup>52</sup>



<sup>52</sup> Email from Programme Manager, New Century Consulting, to Office of the Special Inspector General for Afghanistan Reconstruction Staff (Dec. 1, 2016).

## V. Lack of Effective Competition

CTTSO and the Army relied on an obscure contracting vehicle to award and continue the Legacy Program without effective competition.

### A. DOD Used a Broad Agency Announcement “Research and Development” Contract Vehicle for the Legacy Program

In order for the Legacy Program to move forward, DOD needed a vehicle by which to award a contract. Such a tool was attained through a seemingly unrelated announcement by the Army in October 2006. The Army had publicly issued a BAA for Basic and Applied Scientific Research. A BAA is a procurement procedure used to seek proposals for basic and applied research when facing a development challenge that does not have a clear solution or shows an opportunity for innovation.<sup>53</sup> BAAs are designed for agencies to explore scientific study and experimentation for the purpose of advancing knowledge, rather than focusing on a specific system or hardware solutions.<sup>54</sup> Once proposals are submitted, the agency selects one (or more) for an award. An advantage of BAAs is that they allow the government to solicit creative ideas that may be missed if an agency prescribed a specific solution. However, a disadvantage of BAAs is that they can allow contractors to win awards that extend far beyond the original purpose of the research solicitation.

With regard to the Legacy Program, Defense officials stated that the purpose of the BAA was to defeat improvised explosive devices, which at the time were killing and wounding American service members in Iraq at alarming rates. The BAA sought research proposals from educational institutions, nonprofit organizations, and commercial organizations for research in “chemistry, electronics, environmental sciences, life sciences, materials science, mathematical and computer sciences, mechanical sciences, physics, computational and information sciences, sensors and electron devices, survivability/lethality analysis, and weapons and materials research.”<sup>55</sup>

<sup>53</sup> Army Research Lab, Broad Agency Announcements Page (<https://www.arl.army.mil/www/default.cfm?page=8>) (accessed Feb. 15, 2018); United States Agency for International Development, Broad Agency Announcements Page (<https://www.usaid.gov/partnership-opportunities/respond-solicitation/broad-agency-announcements>) (accessed Feb. 15, 2018).

<sup>54</sup> FAR 35.016.

<sup>55</sup> Army Research Laboratory, Army Research Laboratory and the Army Research Office Broad Agency Announcement for Basic and Applied Scientific Research (W911NF-07-R-0001-03) (FY 2007 – FY 2011) (Oct. 16, 2006).

### Description of Research called for under the BAA used to award the Legacy Contract:

Research proposals are sought from educational institutions, nonprofit organizations, and commercial organizations (chemistry, electronics, environmental sciences, life sciences, materials science, mathematical and computer sciences, physics, computational and information sciences, sensors and electron devices, survivability/lethality and weapons and materials research. Proposals shall be evaluated only if they are for scientific study and experimentation directed toward advancing the state of the art or increasing knowledge and understanding. Research proposals are sought from other

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Source: Army Research Laboratory, Army Research Laboratory and the Army Research Office Broad Agency Announcement for Basic and Applied Scientific Research (W911NF-07-R-0001-03) (FY 2007 – FY 2011) (Oct. 16, 2006) (p. 5 of 147)

The list makes no mention of Iraq or Afghanistan, let alone providing training or mentoring programs in those countries. However, the BAA goes on to describe in greater detail research that is needed. On page 78, roughly halfway through the 147-page solicitation, under a section describing research proposals in “Mathematical Sciences” the BAA stated described a need for “Information Fusion in Complex Networks.” It stated that this included not only information gathered through technology, using physics-based sensors, but also human intelligence.

### Portion of BAA used to award the Legacy Contract:

Research proposals are sought from educational institutions, nonprofit organizations, and commercial organizations (chemistry, electronics, environmental sciences, life sciences, materials science, mathematical and computer sciences, physics, computational and information sciences, sensors and electron devices, survivability/lethality and weapons and materials research. Proposals shall be evaluated only if they are for scientific study and experimentation directed toward advancing the state of the art or increasing knowledge and understanding. Research proposals are sought from other

especially in urban conflict, there are often not a lot of them in places where needed. Operations depend not only on information from physics-based sensors but also on signals intelligence (SIGINT—information from intercepted communications, radar, and other forms of electromagnetic transmissions), communications intelligence (COMINT—intercepted messages or voice information), open-source intelligence (OSINT—newspapers, radio and TV programs), **human intelligence (HUMINT)** and databases, which we will call “soft information”. Extraction and progress and materials research. Proposals shall be evaluated only if they are for scientific study and experiment

Research proposals are sought from educational institutions, nonprofit organizations, and commercial organizations (chemistry, electronics, environmental sciences, life sciences, materials science, mathematical and computer sciences, physics, computational and information sciences, sensors and electron devices, survivability/lethality and weapons and materials research. Proposals shall be evaluated only if they are for scientific study and experimentation directed toward advancing the state of the art or increasing knowledge and understanding. Research proposals are sought from other

Source: Army Research Laboratory, Army Research Laboratory and the Army Research Office Broad Agency Announcement for Basic and Applied Scientific Research (W911NF-07-R-0001-03) (FY 2007 – FY 2011) (Oct. 16, 2006) (p. 78 of 147)

Imperatis and NCC would go on to make hundreds of millions of dollars on the Legacy Program, a proposal that hinged on the term “HUMINT” appearing only once in an approximately 150-page BAA for basic and applied scientific research. While the BAA that was used for the Legacy Program has expired, earlier this month the Army posted another 122-page BAA calling for new research and development proposals through March 2022.<sup>56</sup>

## **2. BAAs Allow for Elimination of Competition, And DOD Continued to Award “Research and Development” Contracts Even After Legacy Program Matured**

Once an agency collects responses to a BAA<sup>57</sup>, it can select one or more proposals for a contract, without needing to conduct a standard contract competition. As a substitute, the Army conducts a “scientific review process” prior to selection.<sup>58</sup> However, given the wide variety of proposals that are possible under BAAs—and certainly under the nearly 150-page BAA—proposals are frequently unique. In a briefing to investigators, DOD officials acknowledged that BAAs allow for the possibility of unique proposals that eliminate competition. When a contractor submits a proposal with distinct solution, that contractor may be placed in its own, solo, category—void of competition.<sup>59</sup>

Minority Committee staff sought the proposals, or “white papers,” that the Army received in response to the BAA in order to examine both how many proposals were received, which were selected, and whether any were similar to the Legacy Program proposal. However, the Army never produced them. Staff was therefore unable to identify whether there was an effective competitive bid to provide mentoring and training services to Iraqi intelligence services.

DOD also continued to use the BAA vehicle to award further “research and development” Legacy Program contracts long after the Legacy Program had been established and was no longer new. By design, the majority of research and development contracts are directed toward objectives for which the work or methods cannot be precisely described in advance.<sup>60</sup> Legacy Afghanistan, Kabul, South and East, however, were all granted as research and development contracts after the original Legacy Iraq contract ended in March 2010. By that point, DOD had three years of experience in running the Legacy Program. Every Legacy Program contract in Afghanistan was considered a “pilot program,” even though the only difference between them was geographic location.<sup>61</sup> It is unclear why DOD continued to fund the program through the BAA research and development vehicle, given its flaws, once the program matured.

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<sup>56</sup> Army Research Laboratory, Army Research Laboratory and the Army Research Office Broad Agency Announcement for Basic and Applied Scientific Research (W911NF-17-S-0003) (01 April 2017 – 31 March 2022) (Apr. 1, 2017).

<sup>57</sup> FAR 36.016. BAAs are published annually (at minimum), typically through the public website, [www.fbo.gov](http://www.fbo.gov) to induce competition at least at the beginning of the process.

<sup>58</sup> In this case, proposals were selected based on technicality, importance to agency programs, and fund availability. Army Research Laboratory and the Army Research Office Broad Agency Announcement for Basic and Applied Scientific Research (W911NF-07-R-0001-03) (FY 2007-2011).

<sup>59</sup> Combating Terrorism Technical Support Office, Army Contracting Command-Aberdeen Proving Ground, Defense Contract Management Agency, Defense Contract Audit Agency, and Office of the Director of the Army Staff, Briefing with Senate Committee on Homeland Security and Governmental Affairs Staff (Oct. 4, 2017).

<sup>60</sup> FAR 35.002.

<sup>61</sup> Office of the Special Inspector General for Afghanistan Reconstruction, Briefing with Committee Staff (Mar. 6, 2018).

## VI. Deficient Contract Management and Oversight

The Army served as the projects' contracting officer's representative (COR),<sup>62</sup> and was responsible for the oversight of Imperatis and NCC's performance.<sup>63</sup> CTSO used "performance metrics for Legacy Program field work, collecting feedback from the Commands, and the respective Army-appointed military Technical Monitors on the ground; [CTSO also] organized and managed numerous RAND Corp. third-party assessments; and conducted routine in-theater oversight visits," according to DOD.<sup>64</sup> Finally, the Army delegated administrative contracting officer responsibility to DCMA, which gave them the responsibility of reviewing and approving invoices. DCMA delegated DCAA as its authorized representative to assist with reviewing contractor and subcontractor invoices.<sup>65</sup> Despite (or perhaps because of) this delegation of responsibilities, there were deficiencies in the oversight of the Legacy Program and ASOM programs. This included both Imperatis's and NCC's performance under the contract, as well as financial controls.

### 1. The Legacy and ASOM Programs Failed to Establish Adequate Metrics Measuring the Program's Effectiveness

Performance oversight of the Legacy and ASOM Programs suffered because the contracts themselves lacked adequate performance metrics, and because the Army tolerated poor performance reporting. While each contract required regular reporting and planning, none of the contracts—Legacy Iraq, Legacy Afghanistan or ASOM—included quantitative performance metrics.<sup>66</sup> Without quantitative metrics, it is difficult to determine the success or value of the Legacy and ASOM Programs.

Minority staff sought all of the Army's monthly reports for the Legacy and ASOM Program contracts in order to examine the Army's oversight efforts, but the Army only provided a limited assortment of reports.<sup>67</sup> In the COR monthly reports provided to minority staff by SIGAR, the qualitative ratings suggested a lack of robust oversight. Mostly satisfactory ratings were awarded in each report<sup>68</sup> and the overwhelming majority of reports did not include comments to support the evaluation rankings.<sup>69</sup> The Army explained that evaluation similarities were due in

<sup>62</sup> Special Inspector General for Afghanistan Reconstruction, Afghanistan National Defense and Security Forces: DOD Spent \$457.7 Million on Intelligence Capacity-Building Programs, but Impact Cannot Be Fully Assessed Because of a Lack of Performance Metrics (July 27, 2017) (SIGAR 17-57-AR).

<sup>63</sup> FAR 1.604.

<sup>64</sup> Email from Office of Assistant Secretary of Defense for Legislative Affairs to Senate Committee on Homeland Security and Governmental Affairs Minority Staff (Apr. 24, 2018).

<sup>65</sup> Special Inspector General for Afghanistan Reconstruction, Afghanistan National Defense and Security Forces: DOD Spent \$457.7 Million on Intelligence Capacity-Building Programs, but Impact Cannot Be Fully Assessed Because of a Lack of Performance Metrics (July 27, 2017) (SIGAR 17-57-AR).

<sup>66</sup> Special Inspector General for Afghanistan Reconstruction, Afghanistan National Defense and Security Forces: DOD Spent \$457.7 Million on Intelligence Capacity-Building Programs, but Impact Cannot Be Fully Assessed Because of a Lack of Performance Metrics (July 27, 2017) (SIGAR 17-57-AR).

<sup>67</sup> The Army provided the Committee with a July 2013 compliance report for Legacy Afghanistan, a December 2012 and July 2011 in-theater report, a trip report from December 2012 and another ranging from October to November 2013, a June 2013 monthly status report, a December 2011 RAND evaluation, three Contractor Performance Assessment Reports, two of DCAA's audits of Imperatis, and an end of course report ranging from April to May 2013.

<sup>68</sup> Despite the Committee's request to DOD for all performance reviews conducted throughout Legacy and ASOM between 2007 and 2016, DOD only provided COR monthly reports between January 2013 and February 2014. The Committee was unable to obtain additional monthly reports.

<sup>69</sup> Department of the Army, ACC-Adelphi, *COR Monthly Report: Afghanistan* (W911QX-12-C-0011) (copy on file with Committee).

part to the operational design of the Contractor Performance Assessment Reporting System (CPARS).<sup>70</sup> The operational design, however, does not account for the lack of comments to support evaluation rankings or explain why the Army could produce only 13 months of oversight reports for a nine year program. The Army also provided excerpts of statements and letters written between 2009 and 2011 by Army senior leadership advocating for the increase in Legacy Program training and implementation, although again, none appeared to be based on any quantitative performance metrics.<sup>71</sup>

As part of its oversight responsibilities, CTTSO awarded two contracts to facilitate management responsibilities to Research and Development Corporation (RAND) and ManTech International Corporation (ManTech).<sup>72</sup> RAND was responsible for six-month incremental study evaluations summarizing work performed and offering recommendations for the next period.<sup>73</sup> RAND also completed a final evaluation and compiled lessons learned throughout the project duration. Between RAND, and Mantech, the two firms shared a number of potential oversight tasks, including visits to mentoring sites in Afghanistan, reviews of NCC reports, and interviews of contractor and subcontractor personnel.

DOD asserted that CTTSO collected significant, positive performance information on the Legacy and ASOM Programs.<sup>74</sup> Minority staff sought to evaluate any oversight products that CTTSO or its contractors produced. In response, CTTSO provided RAND studies evaluating the Legacy Program between January 2010 and September 2012, as well as two trip reports completed by a ManTech Subject Matter Expert (SME).<sup>75</sup> While overall characterizations of the Legacy and ASOM Programs were positive, these documents provided limited perspective of programs that spanned from 2007 to 2016. A December 2012 trip report, one of two provided by CTTSO, noted several deficiencies. Notably, the report questioned the ability of the Legacy Program to transition to a sustainable and long lasting HUMINT program in Afghanistan. The report noted high leader and mentor turnover which caused disruptions to program progress. At some sites, despite years of mentoring, Afghan mentees had only completed a few months of training. Some key leaders questioned the Legacy Program's effectiveness in Afghanistan due to possible lack of commitment by the host nation. The report's overall conclusion was that lack of commitment from the host nation may prove to be the overreaching factor for success of the

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<sup>70</sup> Combating Terrorism Technical Support Office, Army Contracting Command-Aberdeen Proving Ground, Defense Contract Management Agency, Defense Contract Audit Agency, and Office of the Director of the Army Staff, Briefing with Senate Committee on Homeland Security and Governmental Affairs Staff (Oct. 4, 2017). The system is known as the Contractor Performance Assessment Reporting System (CPARS).

<sup>71</sup> Department of the Army, CTTSO, Senior Leader and Congressional Authorization Quotes on Program Effectiveness (copy on file with Committee).

<sup>72</sup> Special Inspector General for Afghanistan Reconstruction, Afghanistan National Defense and Security Forces: DOD Spent \$457.7 Million on Intelligence Capacity-Building Programs, but Impact Cannot Be Fully Assessed Because of a Lack of Performance Metrics (July 27, 2017) (SIGAR 17-57-AR).

<sup>73</sup> Department of the Army, U.S. Army Security Assistance Command, Statement of Work Project Legacy: Professionalization Program Intelligence Management Continuation (copy on file with Committee).

<sup>74</sup> DOD stated that the success of the Legacy Programs was validated through senior officer requests for expansion, annual funding continuation, and praise from the House Committee on Armed Services. Email from Office of Assistant Secretary of Defense for Legislative Affairs to Senate Committee on Homeland Security and Governmental Affairs Minority Staff (Apr. 24, 2018).

<sup>75</sup> Department of the Army, Combating Terrorism Technical Support Office, Dec. 2012 Legacy Trip Report (copy on file with Committee); Department of the Army, Combating Terrorism Technical Support Office, Oct. 23-Nov. 21, 2013 Legacy Trip Report (copy on file with Committee); Department of the Army, Combating Terrorism Technical Support Office, Pre-ASOM RAND Studies (copy on file with Committee).

Legacy Program and that host nation commitment should be reviewed before investing a similar program for any designated country.<sup>76</sup>

## **2. Delayed Audits of the Legacy Program and Bankruptcy of Contractor Raise Risk that Government Will Never Fully Recover \$51 Million in Questioned Costs**

Under the Legacy Program contracts, like other companies, Imperatis submitted its invoices to DCAA at regular intervals—typically monthly—and DCAA would make an initial review for questionable costs. Once DCAA approved the invoice, it sent them to DCMA to pay the contractors as required by the contracts.<sup>77</sup> DCAA was allowed five days to review the invoices, which were not detailed enough to identify unallowable costs in that time. If DCAA had identified a “red flag,” or questionable cost, DCMA would then perform an audit of that specific invoice to determine if the costs should be questioned. Under the Legacy Program contracts, no questionable costs were identified during the invoicing period.<sup>78</sup>

However, as with other contracts, DCAA conducted a second, more thorough review. After completion of the contract, DCAA performed an audit, examining the contractor's and subcontractor's books and records to confirm that the original costs paid were appropriate. Any questionable costs could be referred to DCMA. DCMA could then negotiate with the contractor for reimbursement, or pursue a civil action against the contractor. It was this second DCAA review which identified \$51 million in questionable costs by NCC.<sup>79</sup>

According to the Army, DCAA's ultimate identification of NCC's outrageous spending indicated that there was adequate financial oversight of the Legacy Program contracts. The Army denied any officials should be held accountable for NCC's spending, because the Army had identified the spending and was taking action to recoup the money. ACC explained that future contract provisions could allow for additional scrutiny of invoices prior to payment, such as by requiring additional cost detail or by delaying payment to allow DCAA more time for examination. However, such provisions would likely reduce the number of interested bidders and would result in increased costs.<sup>80</sup>

Reliance on a post-performance audit for financial oversight is not foolproof, as the Legacy Program itself demonstrates. Such audits need to be timely, but DCAA's audit of costs between 2008 and 2013 was not completed until 2016—nearly three years after that period

<sup>76</sup> Irregular Warfare Support Program, In Country Review: Legacy, Insider Threat—Situational Awareness Training and Intelligence—Mobile Education and Training Team Trip Report (Dec. 12, 2012).

<sup>77</sup> The process was described to Committee staff at a briefing by representative from multiple agencies responsible for the different aspects of contract awarding and oversight; Combating Terrorism Technical Support Office, Army Contracting Command-Aberdeen Proving Ground, Defense Contract Management Agency, Defense Contract Audit Agency, and Office of the Deputy Assistant Secretary of the Army for Procurement, Briefing with Senate Committee on Homeland Security and Governmental Affairs Staff (Oct. 4, 2017).

<sup>78</sup> Combating Terrorism Technical Support Office, Army Contracting Command-Aberdeen Proving Ground, Defense Contract Management Agency, Defense Contract Audit Agency, and Office of the Deputy Assistant Secretary of the Army for Procurement, Briefing with Senate Committee on Homeland Security and Governmental Affairs Staff (Oct. 4, 2017).

<sup>79</sup> Combating Terrorism Technical Support Office, Army Contracting Command-Aberdeen Proving Ground, Defense Contract Management Agency, Defense Contract Audit Agency, and Office of the Deputy Assistant Secretary of the Army for Procurement, Briefing with Senate Committee on Homeland Security and Governmental Affairs Staff (Oct. 4, 2017).

<sup>80</sup> Combating Terrorism Technical Support Office, Army Contracting Command-Aberdeen Proving Ground, Defense Contract Management Agency, Defense Contract Audit Agency, and Office of the Deputy Assistant Secretary of the Army for Procurement, Briefing with Senate Committee on Homeland Security and Governmental Affairs Staff (Oct. 4, 2017).

ended and almost eight years after the first costs were incurred. Although the Legacy Program ended two years ago, DCAA's audit of the remainder of the program will not be completed until later this year.<sup>81</sup> This delay is not unusual. For many years, DCAA has had a severe backlog of audits.<sup>82</sup> This backlog has been a source of concern for Ranking Member McCaskill. A report last fall by the Government Accountability Office (GAO), prepared in part at her request, found that despite improvements in reducing the backlog, DCAA would be challenged in eliminating audits more than two years old by the end of 2018.<sup>83</sup> In response to a request from Ranking Member McCaskill last October, DCAA stated that the average age of DOD incurred cost audits is 14.3 months.<sup>84</sup>

Additionally, a post-performance audit, by definition, requires that the government recoup money after it has already paid it to the contractor. But, as in the case of the Legacy Program, if the contractor has gone out of business, the government may be at a loss (Although DCAA questioned the costs of NCC, the government can only recover money from the prime contractor, rather than the subcontractor). Because Imperatis ceased business operations in 2016, the government has been forced to submit its claim for reimbursement with the company's bankruptcy trustee. Unfortunately, Imperatis's assets amount to only \$900,000. Even if the Army becomes the highest priority creditor, it is unlikely that it would ever recoup the full \$51 million that DCAA questioned.<sup>85</sup>

## **VII. NCC is Under Criminal Investigation But Continues to Profit from Federal Contracts**

As discussed, the Army is legally handicapped in recovering the \$51 million in questioned NCC costs because the prime Legacy Program contractor is insolvent. However, DCMA is attempting to negotiate a voluntary settlement directly with NCC. DCMA could not say how much, if anything, the Army has successfully recovered at this point in its negotiations.<sup>86</sup>

There have also been criminal investigations related to the Legacy Program. According to DCAA, Imperatis was the subject of a joint Defense Criminal Investigative Service (DCIS) and

<sup>81</sup> Combating Terrorism Technical Support Office, Army Contracting Command-Aberdeen Proving Ground, Defense Contract Management Agency, Defense Contract Audit Agency, and Office of the Deputy Assistant Secretary of the Army for Procurement, Briefing with Senate Committee on Homeland Security and Governmental Affairs Staff (Oct. 4, 2017).

<sup>82</sup> Combating Terrorism Technical Support Office, Army Contracting Command-Aberdeen Proving Ground, Defense Contract Management Agency, Defense Contract Audit Agency, and Office of the Deputy Assistant Secretary of the Army for Procurement, Briefing with Senate Committee on Homeland Security and Governmental Affairs Staff (Oct. 4, 2017).

<sup>83</sup> Government Accountability Office, Federal Contracting: Additional Management Attention and Action Needed to Close Contracts and Reduce Audit Backlog (GAO-17-738) (Sept. 2017).

<sup>84</sup> Letter from Anita F. Bales, Director, Defense Contract Audit Agency, to Senator Claire McCaskill (Nov. 13, 2017).

<sup>85</sup> The Defense Finance and Accounting Services (DFAS) submitted a claim with the bankruptcy trustee for \$23.1 million. It is unclear why DFAS submitted a claim for \$27.9 million less than the DCAA Audit questioned. DCAA stated that this claim "represents the outstanding NCC overbillings and other DCAA questioned amounts from Imperatis incurred cost audits including penalties and interest." It is unclear whether the reason this claim is \$27.9 million less than the DCAA audit is because NCC or Imperatis had already reimbursed the government for questioned costs or whether further work had led DCAA to reduce the amount of costs it had questioned. Combating Terrorism Technical Support Office, Army Contracting Command-Aberdeen Proving Ground, Defense Contract Management Agency, Defense Contract Audit Agency, and Office of the Deputy Assistant Secretary of the Army for Procurement, Briefing with Senate Committee on Homeland Security and Governmental Affairs Staff (Oct. 4, 2017).

<sup>86</sup> Combating Terrorism Technical Support Office, Army Contracting Command-Aberdeen Proving Ground, Defense Contract Management Agency, Defense Contract Audit Agency, and Office of the Deputy Assistant Secretary of the Army for Procurement, Briefing with Senate Committee on Homeland Security and Governmental Affairs Staff (Oct. 4, 2017).

U.S. Army CID investigation that began in October 2014. However, DCIS and CID closed the Imperatis case in January 2017, with no apparent action.<sup>87</sup> On the other hand, a CID investigation of NCC is currently underway.<sup>88</sup>

Despite the findings of the DCAA and SIGAR audits, the attempts by DCMA to recover questioned costs, and an ongoing criminal investigation, NCC apparently continues to profit from government contracts. In April 2016, NCC entered into a subcontract with a prime DOD contractor, Raytheon, that continues to this day.<sup>89</sup> In December 2014, the Army awarded NCC another research and development contract with a ceiling value of more than \$83 million that continued through September 2017.<sup>90</sup> At a Senate Committee on Armed Services hearing on April 12, 2018, Senator McCaskill asked Secretary of the Army Dr. Mark Esper for a full list of contracts on which NCC is a contractor or subcontractor.<sup>91</sup>

Although suspension and debarment is one of the most powerful tools that government has to hold contractors accountable, in this case the Army has not yet chosen to wield it. Even though there is no legal requirement to wait, and even though the standard for suspension and debarment is far lower than for criminal liability, the Army stated that it would delay a suspension and debarment decision until after CID completes its investigation of NCC.<sup>92</sup> Given that the CID investigation of Imperatis took over two years, it may be a profitable wait for NCC.<sup>93</sup>

## VIII. Conclusion

Ranking Member McCaskill's investigation into the Legacy and ASOM Programs uncovered several deficiencies in the Army's contract award processes. The Army granted the Legacy and ASOM Programs under a "research and development" contract vehicle, which allowed Imperatis to win the Legacy Program contracts without effective competition. The programs lacked effective performance metrics and were considered pilot programs even after they matured. Additionally, the Army allowed Imperatis, its prime contractor, to subcontract an estimated 80% of the work to NCC. The pass-through contracting between Imperatis and NCC would have been severely restricted had laws sponsored by Ranking Member McCaskill been in place at the time of the award. This legislation requires that alternative vehicles be considered if

<sup>87</sup> Defense Contract Audit Agency, DCAA Oversight of Imperatis (formerly Jorge Scientific Corporation) June 2017 Update (copy on file with Committee).

<sup>88</sup> Combating Terrorism Technical Support Office, Army Contracting Command-Aberdeen Proving Ground, Defense Contract Management Agency, Defense Contract Audit Agency, and Office of the Director of the Army Staff, Briefing with Senate Committee on Homeland Security and Governmental Affairs Staff (Oct. 4, 2017).

<sup>89</sup> Email Office of Assistant Secretary of Defense for Legislative Affairs to Senate Committee on Homeland Security and Governmental Affairs Minority Staff (Apr. 24, 2018); Defense Contract Audit Agency, DCAA Oversight of Imperatis (formerly Jorge Scientific Corporation) June 2017 Update (copy on file with Committee).

<sup>90</sup> Federal Procurement Data System ([https://www.fpds.gov/DataCollection/contracts/jsp/1\\_4/idvController.jsp?agencyID=9700&PIID=W911QX15D0002&modNumber=0&actionSource=searchScreen&actionCode=&status=F&documentVersion=1\\_4](https://www.fpds.gov/DataCollection/contracts/jsp/1_4/idvController.jsp?agencyID=9700&PIID=W911QX15D0002&modNumber=0&actionSource=searchScreen&actionCode=&status=F&documentVersion=1_4)) (accessed Apr. 13, 2017); Email Office of the Chief, Legislative Liaison, Department of the Army to Senate Committee on Homeland Security and Governmental Affairs Minority Staff (April 25, 2018). The contract number for the December 2014 NCC contract is W911QX-15-D-0002.

<sup>91</sup> Senate Committee on Armed Services, *Hearing on Posture of the Department of the Army* (Apr. 12, 2018).

<sup>92</sup> Combating Terrorism Technical Support Office, Army Contracting Command-Aberdeen Proving Ground, Defense Contract Management Agency, Defense Contract Audit Agency, and Office of the Deputy Assistant Secretary of the Army for Procurement, Briefing with Senate Committee on Homeland Security and Governmental Affairs Staff (Oct. 4, 2017).

<sup>93</sup> Defense Contract Audit Agency, DCAA Oversight of Imperatis (formerly Jorge Scientific Corporation) June 2017 Update (copy on file with Committee).

an offeror on a DOD contract informs the agency that it intends to award subcontracts for more than 70% of the total costs.<sup>94</sup>

Minority staff also found that financial and performance oversight of the Legacy and ASOM programs was deficient. While DCAA's audit examined costs incurred between 2008 and 2013, those costs incurred after 2013 have yet to be assessed. With DCAA's audit inventory backlog average of 14 months, additional recovery of wasteful spending by Army contractors and subcontractors will be delayed—and even uncertain, given the insolvency of Imperatis.

Despite its history of egregious waste and an ongoing CID investigation, DOD continues to conduct business with NCC. NCC is currently a subcontractor on another DOD contract.

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<sup>94</sup> National Defense Authorization Act for Fiscal Year 2013, Pub. L. 112-239, Sec. 802(1) (2013).