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United States Department of State
and the Broadcasting Board of Governors
Office of Inspector General

Middle East Regional Office

Management and Internal Controls over Construction of a Heated Parking Garage and a Recreational Center at the U.S. Embassy in Astana, Kazakhstan

Report Number MERO-I-09-11, November 2009

~~IMPORTANT NOTICE~~

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**United States Department of State
and the Broadcasting Board of Governors**

Office of Inspector General

PREFACE

This report was prepared by the Office of Inspector General (OIG) pursuant to the Inspector General Act of 1978, as amended, and Section 209 of the Foreign Service Act of 1980, as amended. It is one of a series of audit, inspection, investigative, and special reports prepared by OIG periodically as part of its responsibility to promote effective management, accountability and positive change in the Department of State and the Broadcasting Board of Governors.

This report is the result of an assessment of the strengths and weaknesses of the office, post, or function under review. It is based on interviews with employees and officials of relevant agencies and institutions, direct observation, and a review of applicable documents.

The recommendations therein have been developed on the basis of the best knowledge available to the OIG and, as appropriate, have been discussed in draft with those responsible for implementation. It is my hope that these recommendations will result in more effective, efficient, and/or economical operations.

I express my appreciation to all of those who contributed to the preparation of this report.

A handwritten signature in black ink, appearing to read "H. W. Geisel".

Harold W. Geisel
Deputy Inspector General

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INTRODUCTION

The Middle East Regional Office (MERO) of the Office of Inspector General (OIG) performed this limited-scope review under the authority of the Inspector General Act of 1978, as amended,¹ and at the request of the Bureau of Overseas Building Operations (OBO), due to concerns about project expenditures, procurement actions, and a lack of design documents and permits. The objectives of this review were to determine whether: (1) the expenditures at Embassy Astana for the heated garage, recreation center, and the basketball court were authorized and appropriate; (2) the design, permits, and construction by Embassy Astana followed approved Bureau of Overseas Building Operations (OBO) procedures; (3) Embassy Astana followed approved OBO procedures for selection of the contractor(s) to perform the required work; (4) funds were properly paid to either the contractor(s) or subcontractor(s); and (5) OBO has adequate internal management controls in effect that should have been applied by Embassy Astana. To meet these objectives, OIG reviewed the expenditures, procurement actions, and contract files for the projects. OIG also reviewed the regulations for unauthorized commitments, funds for construction, cashier operations, overseas contracting, and the design approval process. Finally, the OIG team physically toured the recreation center and heated parking garage.

OIG's limited-scope review took place from May 2009 to July 2009 in Washington, DC and in Astana, Kazakhstan. During the review, OIG met with Embassy Astana administrative managers and obtained briefings and documents describing financial management and procurement internal controls. The scope of OIG's review did not include a review of the Regional Procurement Support Office (RPSO) procurement actions for these projects or the decisions made by officials in the Department of State's (Department) Bureau of South and Central Asian Affairs (SCA) or OBO. Thus, the results section reflects only information about embassy actions taken after the Department terminated for default the initial design/build contract as this is when Embassy Astana assumed sole responsibility for continuing the construction.

¹5 USC App. 3

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This report was prepared under the direction of Richard “Nick” Arntson, Assistant Inspector General for MERO. (b) (6)(b) (6)(b) (6)(b) (6)(b) (6)
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BACKGROUND

In December 1997, Astana became the new capital city of Kazakhstan, replacing Almaty. Located on the Siberian steppe 800 miles north of the former capital, Astana has now surpassed Ulan Bator, Mongolia as the coldest capital city in the world. The mean temperature in Astana in January is -15°C (5°F); winter temperatures of -35°C (-31°F) are common, and strong winds can drive them even lower.

Astana's new embassy compound (NEC) was designed and constructed without a heated parking garage; a recreation center was included in the original design, but was later deleted from the construction plans. The lack of a heated parking garage posed health and safety risks to post personnel who used tents and portable diesel-fueled heaters to warm and start government-owned vehicles in the morning. Further, in a city with few indoor recreational amenities and winter temperatures that keep most staff housebound for 7 months a year, the lack of a recreation center was identified as a morale issue.

OBO agreed to fund these construction projects² after completion of the NEC, but only as post-managed projects. Embassy Astana requested that RPSO in Frankfurt, Germany solicit a design/build contract for the recreation center and heated parking garage. On August 31, 2007, RPSO awarded the contract to International Construction Services, LLC (ICS), a U.S. company headquartered in Memphis, Tennessee. On November 5 and 8, 2007, RPSO issued limited construction notices to proceed to mobilize and work on the foundation for the heated garage and the recreation center, respectively. Embassy officials reviewed the construction as it proceeded, and made progress payments to the contractor on the basis of completed work.

²Construction of a basketball court was never begun due to funding constraints and increased construction and fuel costs.

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ICS slowed its progress in January 2008, and the construction schedule began to slip. On January 14, 2008, the Embassy submitted 100 percent design drawings. OBO reviewed and commented on the designs, but ICS failed to resubmit amended designs to address and close out open comments. On March 4, 2008, RPSO issued a full notice to proceed for construction of both projects accompanied by a cure notice³ for ICS's failure to maintain progress. On May 21, 2008, a termination for default⁴ was approved by the RPSO contracting officer based on ICS's unsatisfactory replies to the cure notice, continuing lack of progress, failure to provide bank guarantees for progress and payment security, and finally, unilaterally abandoning the project site without serving proper notice.

Given the need to complete both projects and protect finished work from the elements, as well as safety concerns posed by unfinished foundations, Embassy Astana officials requested that OBO allow expenditure of unspent funds from the initial ICS contract to complete work to the extent possible, based on increased cost estimates. This request was approved by OBO, and approximately \$500,000 was reprogrammed and spent; the Embassy then requested an additional \$700,000.

In response to the request for additional construction funds, OBO sent a team to conduct an on-site review in May 2009. The OBO team identified many potential irregularities including a lack of design documents and permits, use of proceeds of sale to pay a subcontractor, and a high volume of cash payments. The team also found that although Embassy Astana had expended all of the OBO funds available for the project, the buildings were not completed and lacked various safety systems such as lightning protection and handicap accessibility. As a result, OBO designed a strategy to complete the recreation center and heated garage and directed the Embassy to cease all associated procurement activities; secure the structures, equipment, and materials; and collect information required to support an architectural/engineering assessment.

³Per 14 FAH-2 H-542(4), a cure notice is "a letter pointing out the failure of performance and its importance to the Department, and directing that the deficiency be "cured" within a specified time period—usually 10 days."

⁴Per 14 FAH-2 H-543.2-2(a), "The Termination for Default clause allows the U.S. Government to terminate the contract when the contractor fails to make progress or to perform any other contract requirements within the period specified by the 'cure notice.'"

RESULTS OF LIMITED-SCOPE REVIEW

EXPENDITURES

OIG found that, except for questioning the use of \$73,100 in funds not provided by OBO (see Recommendation 1), Embassy Astana's project expenditures for the heated parking garage and recreation center were authorized and appropriate. The Embassy expended approximately \$1.9 million for construction and technical oversight of the heated parking garage and recreation center. Embassy Astana did not proceed with the construction of the basketball court due to funding constraints and increased construction and fuel costs.

One-third (\$650,000) of the projects' expenses were paid in cash due to Kazakhstan's largely cash economy, and local vendors' reluctance to accept checks and electronic fund transfers. The Embassy's request to waive the policy that prohibits cash payments exceeding \$500⁵ was granted by the Bureau of Resource Management's Office of Financial Policy and Management Controls and remains in effect. The embassy financial management officer (FMO) receives a monthly activity report of all processed cash transactions from the disbursing officer in the United States, and tracks all transactions (including cash) from receipt of request through payment.

OIG found that: (1) expenditures were directly related to the projects; (2) purchase orders (PO) and payment requests were duly authorized and approved; (3) funds were appropriated and obligated, in accordance with applicable procedures; and (4) payment requests and POs were supported by proper documentation. Specifically, all expenses were documented by invoices; emails among the technical advisor, the general services officer (GSO), and the procurement specialist; vendor receipts and quotes; FMO certification of funds; and receiving and inspection reports.

When Embassy Astana exhausted all of the funds remaining from the ICS contract, it expended approximately \$60,500 of International Cooperative Administrative Support Services (ICASS) funds. In addition, the Embassy spent approxi-

⁵Per 4 FAH-3 H-394.2-6

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mately \$12,600 of Diplomatic and Consular Program (DCP) funds on project items including 16 air conditioning units, shower panels, water faucets, and a bathroom washbasin. Use of these ICASS and DCP funds was inappropriate because 7 FAH-1 H-434.4 states that OBO is “the lead bureau on the construction and renovation of the Department’s overseas facilities. Congress provides OBO a separate authorization for this purpose. Other funds may not be used for construction and renovation, unless authorized by Congress.”

In the initial design/build phase, the contractor, ICS, failed to pay a subcontractor for concrete testing results. Therefore, after the ICS contract was terminated, the Embassy used the proceeds from the sale of five U.S. Government-owned shipping containers (for the garage and recreation center prefabricated shells) to pay \$3,438 to the subcontractor for concrete testing. The embassy management counselor stated to OIG that this subcontractor is the only source for concrete testing in Kazakhstan, and was not likely to enter into another agreement to perform testing with an outstanding debt for the first test. OIG concludes the Embassy should have followed guidance in 14 FAM 417.2-3, which states, “proceeds from the sale of personal property...originally purchased by the Bureau of Overseas Building Operations (OBO) will be deposited to the Embassy, Security, Construction, and Maintenance Appropriation.” Such action was not taken in this case.

DESIGN, PERMITS, AND CONSTRUCTION

Embassy Astana did not follow OBO procedures for completing the design approval process. OBO has not issued a permit for the project nor was a final permit submission by the Embassy ever registered. Per 15 FAM 645.1-2 (3), OBO must review construction documents for large, complex efforts requiring professional architectural and/or engineering services. OBO reviews the documents for completeness and compliance with current policy and requirements. Approval includes a review to ensure that the project conforms to building codes adopted by the Department. If the project complies with such building codes, OBO issues a building permit to be posted at the project site.

ICS submitted the full design for OBO’s review, and OBO completed its design review, but ICS failed to resubmit a set of designs that addressed and closed out each of OBO’s comments. Thus, a final set of construction documents (plans, specifications and calculations) has neither been submitted nor consequently approved by OBO. Although ICS only performed a limited amount of work without obtaining final design approvals and a permit, the scope of work for the contracts awarded to

the follow-up contractor, LLP Kaz Civil Story (TKCS), was based upon incomplete documents developed by ICS that were not approved by OBO as required.

In its design review, OBO included 83 comments to be addressed by ICS. The contractor replied to these comments, but did not submit final documents demonstrating that it had incorporated the appropriate changes into its design plans. The *Permit Info Package for Post* provides that OBO would have issued a permit once its reviewer confirmed appropriate changes had been incorporated into the final documents to be prepared and submitted by ICS. However, construction continued under the follow-on contracts with TKCS without OBO design approval or a permit.

According to OBO's program manager for the Small Projects and Transition Division, neither structure can be considered complete until the outstanding review comments are resolved. The open issues include: (1) lack of a permanent roofing system on the recreation center; (2) addition of more electric heaters to the recreation center increasing the electrical load, but without ICS-provided electrical load calculations to ensure appropriate wiring and service panels; (3) failure to install a lightning protection system in either structure, despite ICS's statement that a system would be designed and provided; (4) lack of acceptance and commissioning tests on critical building systems, including air conditioning, fire alarm and fire sprinklers, and electrical distribution; and (5) failure to meet minimum standards for handicap accessibility.

SELECTION OF CONTRACTOR TO COMPLETE UNFINISHED CONSTRUCTION

After the RPSO-awarded contract with ICS was terminated, the Embassy followed procedures outlined in the Overseas Contracting and Simplified Acquisition Handbook to select the contractor to complete the unfinished work. The sole source contract awarded by the Embassy for completion of the structural work was adequately justified. In addition, the contract for the mechanical and electrical work was awarded to the acceptable lowest price bidder.

Given the extremely short five-month construction season and the need to complete foundation work left by ICS, the Embassy issued a sole source contract to the local ICS subcontractor, TKCS, to finish the concrete foundation. Expedient awarding of this contract was critical because no other work could be performed until the foundation was completed. TKCS could mobilize quickly and was familiar with OBO's mixing standards for concrete, which are not common in Astana.

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To compress the construction schedule as much as possible, the Embassy simultaneously issued a solicitation for mechanical and electrical work. Shortening the schedule was necessary given the costs of project supervision and the upcoming transfer of the Embassy’s management counselor, facilities manager, and FMO.

Embassy Astana awarded the contract for mechanical and electrical work to DEC Ltd., a construction company with prior experience on U. S. Government projects in the region. When DEC failed to mobilize on schedule, and refused to continue without a new contract for twice the previously agreed cost, the Embassy cancelled this contract due to failure to perform, and re-issued the contract to the next lowest bidder, TKCS.

Due to its inability to complete the entire contract through a single source, the Embassy issued 18 POs to 14 vendors, including TKCS, for a total expenditure of \$345,623. All POs were below post warrant levels (limitations on transaction amounts) and none of the purchases were split to circumvent these levels. Some POs were issued to directly procure specialized items unavailable in Kazakhstan such as copper power cable and electrical panels. According to the management counselor, using these POs led to overhead and administrative cost savings and helped to stretch scarce resources.

The following two tables show contracts and POs issued by the Embassy.

Table 1: Contracts Awarded by Embassy Astana as of June 2009

Requirements	Vendor	Award Amount
SKZ100-08-C-2582 - Contract for civil, structural, architectural works, etc.	TKCS	\$249,826
SKZ100-08-C-3061 - Concrete for Heated Car Park (HCP), installation of fire suppression system in HCP & Recreational Center (RC), underground utilities, concrete for mechanical lift, raceways for HCP, labor for electrical & mechanical in RC& HCP, etc.	TKCS	\$232,100
Total		\$481,926

Source: Embassy Astana

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Table 2: Purchase Orders Issued by Embassy Astana as of June 2009

Requirements	Vendor	Award Amount
SKZ100-08-M-2655 - Concrete testing	Kazdornii	\$3,615
SKZ100-08-M-2673 – Rebar	Steel Industrial Material	\$47,866
SKZ100-08-M-2696 - Crane rental for unloading re-bar	Irgaboayev, IE	\$746
SKZ100-08-M-2698 - Steel beams and columns	TKCS	\$24,155
SKZ100-08-M-2770 - Waterproofing for RC	TKCS	\$10,000
SKZ100-08-M-2884 - Installation of 05 SF, 04 EF and 08 exterior lights in HCP	TKCS	\$9,400
SKZ100-08-M-3087 - Spare parts for fire system	Viking SA	\$5,627
SKZ100-08-M-3140 - Power panels	TOO Electrosystems KZ	\$5,066
SKZ100-08-M-3197 - Copper Power cable	Kenclaire PA	\$89,472
SKZ100-08-M-3241 - Lighting for Garage	Teksan	\$2,253
SKZ100-08-M-3259 - Electrical wire	ATS Ltd	\$8,538
SKZ100-08-M-3259 - Rockwool and Gypsum	PromstroyKontract	\$22,750
SKZ100-08-M-3334 - Emaco S88	USTA	\$600
SKZ100-08-M-3340 - Alinex and Spackle	LLC Alina	\$2,802

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Requirements	Vendor	Award Amount
SKZ100-08-M-3377 - Alinex BT	TKCS	\$3,915
SKZ100-08-M-3426 - Miscellaneous materials	TKCS	\$99,525
SKZ100-08-M-3437 - 75 m profile	Hilti, KZ	\$775
SKZ100-08-M-3437 - Copper pipe and insulation	Proline	\$8,518
Total		\$345,623

Source: Embassy Astana

INTERNAL MANAGEMENT CONTROLS

The financial and management controls, and procurement procedures at Embassy Astana appear to adequately prevent fraud, waste, and abuse. According to the FMO and the senior GSO, the procurements for the recreation center and the heated parking garage made during their tenure (September 2008 to May 2009) followed the flow outlined in the Procurement User Manual, although the process is modified slightly when the vendor requires cash payment: (1) the PO request is approved in the Web Post Administrative Software Suite (Web.PASS) by the GSO; (2) the procurement office generates a printed copy for the FMO; (3) the FMO certifies that the funds are available and authorizes a cash pick up; (4) the vendor is paid and provides a receipt and an invoice; and (5) the documents are returned to the Embassy where the GSO stamps the receipt and the FMO certifies that payment is complete.

OTHER ITEMS FOR CONSIDERATION

In addition to aforementioned abandonment of the project site without proper notice, the contractor, ICS, did not perform several of its agreed services as specified by the terms of its contract with the U.S. Government. The contractor failed to: (1) complete design/construction documents, a safety plan, and a quality control plan

and designs; (2) pay the required performance guaranty bond and a payment bond, estimated at \$296,476, to the U.S. Government; and (3) recover the value added tax on local procurements from the Government of Kazakhstan, estimated at \$25,253. Additionally, ICS allegedly failed to pay \$328,137 in salaries to local employees, vendors, and subcontractors. OIG suggests that OBO examine ICS's performance under its contract with the Department and take appropriate action as necessary.

CONCLUSION AND RECOMMENDATIONS

In OIG's opinion, the Embassy's use of approximately \$73,100 in ICASS and DCP funds to purchase items for the recreation center and heated parking garage was inappropriate, may have violated 31 U.S.C. 1301 (a),⁶ and led to an inability to use the funds for other priorities. Furthermore, if OBO has to repay the \$73,100 using its own funds, Bureau funds may no longer be available for intended projects, which then may have to be delayed.

Embassy Astana violated the provisions of 15 FAM 645.1-2 by beginning these construction projects without OBO's design approval and building permit. This failure to follow Department policy has led to a partially completed recreation center and heated parking garage that do not meet all applicable U.S. building codes and standards. Completion and occupancy of the buildings has now been delayed for an indeterminate period. OBO will incur additional expense to hire an architectural engineer to inspect the site and determine an acceptable level of work, develop an approved set of drawings and specifications, bid and award projects, and complete the buildings to standard code.

Recommendation 1: The Bureaus of Overseas Building Operations and South and Central Asian Affairs should determine whether the use of International Cooperative Administrative Support Services and Diplomatic and Consular Program funds for purchases was an unauthorized commitment, and if so, report the use of these funds to Bureau of Administration's Office of the Procurement Executive. (Action: OBO in coordination with SCA)

⁶Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.

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Recommendation 2: The Bureau of Overseas Building Operations should issue a Management Notice reminding posts worldwide to obtain all applicable approvals and permits before proceeding with work under design/build contracts. (Action: OBO)

Recommendation 3: The Bureau of Overseas Building Operations and the Bureau of Resource Management should issue a Management Notice to remind posts worldwide that OBO is the lead bureau for construction and renovation of the Department of State's overseas facilities, and to ensure that posts are using appropriate funds to pay for any construction and renovation. (Action: OBO and RM)

Recommendation 4: Embassy Astana, in coordination with the Bureau of Overseas Buildings Operations, should correct the funding for the recreation center items purchased with Diplomatic and Consular Program and International Cooperative Administrative Support Services funds. (Action: Embassy Astana in coordination with OBO)

MANAGEMENT COMMENTS AND OIG RESPONSE

EMBASSY ASTANA COMMENTS AND OIG RESPONSE

In the case of contracts issued by RPSO or other non-OBO contracting officers, it would be helpful if OBO made an issuance of notice to proceed contingent on an OBO permit. When the contracting officer issues a notice to proceed, it could be construed by a post and/or the vendor as an indication that OBO permitting requirements were met. Moreover, since the contracting officer issues a “notice to proceed” directly to the contractor with a copy to post, if post then tells the contractor not to proceed until an OBO permit is issued, a conflict is created. This could result in a claim against the U.S. Government for delaying the contractor.

In the case of a design-build contract, construction begins before the design is completed. Normally, OBO permits are issued after design completion, so the permitting process for design-build contracts is unclear. It would be helpful for posts, contracting officers, and contractors to have specific guidance from OBO regarding permitting prior to contract award for design-build contracts.

Post will work with OBO and the Bureau to make any funding corrections related to inappropriate use of DCP and ICASS funds related to the recreation center.

In response, OIG notes that the initial design-build contract clearly outlined a design level (percentage) schedule. Embassy Astana was responsible for ensuring that ICS amended the designs according to OBO’s comments and for resubmitting the amended designs for OBO’s review, possible approval, and permit issuance. OBO provided Embassy Astana detailed guidance on the design review and approval process via an April 2007 cable. In addition, when Embassy Astana decided to proceed with the projects, the senior GSO could have attempted to award a contract to an engineering/architectural firm to review ICS’s designs and OBO’s comments, and to amend and resubmit the designs accordingly. The engineering/architectural firm could have also developed any additional designs/drawings required to complete the project. OIG still concludes that neither the mechanical or structural follow-on contracts should have been awarded until OBO approved the designs and issued a permit.

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BUREAU OF OVERSEAS BUILDING OPERATIONS COMMENTS AND
OIG RESPONSE

OBO provided written comments on a draft of this report, which appear in their entirety in Appendix I. Technical comments from OBO have been incorporated in the report as appropriate. However, many of the comments related to issues beyond the agreed upon scope of this limited review and exceeded its timeline. The MERO Assistant Inspector General contacted OBO representatives to relay this information and discuss these comments. (b) (7)(A)(b) (7)(A)(b) (7)(A)(b) (7)(A)
(b) (7)(A)(b) (7)(A)(b) (7)(A)(b) (7)(A)

ABBREVIATIONS

DCP	Diplomatic and Consular Program
Department	Department of State
FMO	financial management officer
GSO	general services officer
ICASS	International Cooperative Administrative Support Services
ICS	International Construction Services, LLC
MERO	Middle East Regional Office
NEC	new embassy compound
OBO	Bureau of Overseas Building Operations
OIG	Office of Inspector General
PO	purchase order
RM	Bureau of Resource Management
RPSO	Regional Procurement Support Office
SCA	Bureau of South and Central Asian Affairs
TKCS	LLP Kaz Civil Story

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APPENDIX I: BUREAU OF OVERSEAS
BUILDING OPERATIONS COMMENTS

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MEMORANDUM

TO: OIG/MERO – Mr. Richard G. Arntson

FROM: OBO/RM – Jurg Hochuli

SUBJECT: Limited Scope Review of Management and Internal
 Controls over Construction of a Heated Parking Garage
 and a Recreational Center at the U.S. Embassy in Astana,
 Kazakhstan, Draft Report Number MERO-I-09-11

OBO appreciates the opportunity to review and comment the subject draft report. We appreciate the OIG's prompt response to our request to conduct this review.

We have reviewed the draft report with great interest and have a number of comments and concerns. They are expressed in the attachment. We would be pleased to discuss these comments further at your convenience.

OBO COMMENTS
OIG DRAFT REPORT: NUMBER MERO – I-09-11

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Limited Scope Review of Management and Internal Controls over Construction of a Heated Parking Garage and a Recreational Center at the U.S. Embassy in Astana, Kazakhstan

General questions/comments:

Why did the scope of the OIG audit exclude the ICS contract? A section of the OBO report discusses concerns about payments to ICS. This is confusing because the OIG report discusses the permitting process which starts with the ICS contract award and also states that all of the expenditures associated with the ICS contract were made on the basis of completed work, which is not correct.

The OIG references several instances where post did not follow the FAM or FAH but the report does not make any recommendations for post.

Specific Comments on OIG report:

Statement: *“OBO determined the projects would be post-managed with technical oversight by a third-country national OBO employee who had earlier supported the NEC project.”* (page 1)

Comment: The TCN was not an OBO employee. According to his contract he was post-employed and chosen by post to assist the post Facility Manager/COR in technical oversight of the project.

Statement: *Embassy officials reviewed the construction as it proceeded, and made progress payments to the contractor on the basis of completed work.* (pages 1-2)

Comment: OBO does not understand how OIG can make this statement if they did not include the ICS contract in their scope of audit. OBO found instances where progress payments were made to ICS for work that was not completed. Did OIG verify that the ICS progress payments were made on the basis of completed work or did they just verify COR signature approving the payment? In addition, OBO found that invoices were paid for bonds but there was no evidence that ICS actually held bonds for this contract. The contractor received payments for the enclosed tennis court which apparently was not pursued and was never deleted from the contract by a modification.

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The following excerpts are from the OBO report:

Payment Bond submitted to CO with 100% Construction Documents - *ICS (D/B Contractor) received full payment in advance of completion of the 100% Construction Documents.*

Performance Bond submitted to CO with 100% Construction Documents - *ICS (D/B Contractor) received full payment in advance of completion of the 100% Construction Documents.*

Insurance submitted to CO with 100% Construction Documents - *ICS (D/B Contractor) received full payment in advance of completion of the 100% Construction Documents.*

“No costs were associated with project mobilization/demobilization - ICS approved Application for Payment No.1 submitted on October 25, 2007 that included costs for labor and materials not yet provided based on the Limited Notice to Proceed (LNTP) dates of November 7, 2007 and November 8, 2007.”

Did the OIG determine whether the “progress payments” were, in fact, “advance payments”?

Statement: *“The OBO team identified many potential irregularities including a lack of design documents and permits, use of proceeds of sale to pay a subcontractor, and a high volume of cash payments.”* (page 2)

Comment: Did the OIG confirm the OBO team’s findings?

Statement: *The Embassy’s request to waive the policy that prohibits cash payments exceeding \$500⁷ was granted by the Bureau of Resource Management’s Office of Financial Policy and Management Controls and remains in effect.* (page 3)

Comment: While it is true that post has a cash waiver, according to RM, that waiver did not include construction. Post made cash payments in excess of \$300k to a US contractor (ICS) who has EFT capability. In reading Department guidance, this does not appear to be the intent of the cash waiver. Reftel. State 093949 granted post a renewal of the waiver to 4 FAH-3 H-394.2-1 cash payment limitation. This waiver was in effect through September 8, 2009. Reftel Astana 1261, dated July 11, 2008 requested an extension of the cash payment waiver because Kazakhstan is still predominately a cash economy and the vendors are reluctant to modernize and trust electronic banking and included the following: rent payments, residential utilities, travel advances, invitational travel, appliances, and maintenance and repair services.

⁷ Per 4 FAH-3 H-394.2-6

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The cash waiver did not include the construction of a heated garage and recreation center and the approving office responsible for cash waiver did not receive such a request. Further, the intent of the cash waiver is to pay local vendors who cannot accept EFT. TKCS stated to the TDY team that they did not want EFT because it took too long. That would not appear to meet the intent of the cash waiver.

Statement: *“The OIG found that funds were appropriated and obligated, in accordance with applicable procedures.”* (page 4)

Comment: It is inconsistent for the OIG to state that funds were obligated in accordance with applicable procedures, then state that post violated 14 FAM 417.2-3 and 7 FAH-1 H-434.4. Is this not also an augmentation of appropriations?

Statement: *“In the initial design/build phase, the contractor, ICS, failed to pay a subcontractor for concrete testing results. Therefore, after the ICS contract was terminated, the Embassy used the proceeds from the sale of five U.S. Government-owned shipping containers (for the garage and recreation center prefabricated shells) to pay \$3,438 to the subcontractor for concrete testing. The embassy Management Counselor stated to OIG that this subcontractor is the only source for concrete testing in Kazakhstan and was not likely to enter into another agreement to perform testing with an outstanding debt for the first test. OIG concludes the Embassy should have followed guidance in 14 FAM 417.2-3, which states, “proceeds from the sale of personal property . . . originally purchased by the Bureau of Overseas Building Operations (OBO) will be deposited to the Embassy, Security, Construction, and Maintenance Appropriation.” Such action was not taken in this case.”* (page 4)

Comment: Post may have paid twice for the same service . Per the FAR 52-232.5,

(b) *Progress payments.* The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.

(1) The Contractor’s request for progress payments shall include the following substantiation:

(i) *An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.*

(ii) *A listing of the amount included for work performed by each subcontractor under the contract. (emphasis added)*

(iii) *A listing of the total amount of each subcontract under the contract. (emphasis added)*

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(iv) A listing of the amounts previously paid to each such subcontractor under the contract.

(v) Additional supporting data in a form and detail required by the Contracting Officer.

Did we pay ICS for subcontracted work for which they did not pay their subcontractors? It is the CORs responsibility to ensure that the bills are itemized as such. If not, was the expenditure properly authorized? Further, if ICS actually had the payment bonds for which they were paid – the Department could go after the bonds to pay the unpaid subcontractors. The OIG also did not comment on the improper procedures of posting the proceeds to another vendor as an expenditure refund. In the financial system, it now appears that DOS paid the vendor less than DOS actually did.

Statement: *“Due to its inability to complete the entire contract through a single source, the Embassy issued 18 POs to 14 vendors, including TKCS, for a total expenditure of \$345,623. All POs were below post warrant levels (limitations on transaction amounts) and none of the purchases were split to circumvent these levels. Some POs were issued to directly procure specialized items unavailable in Kazakhstan such as copper power cable and electrical panels.”* (page 6)

Comment: If the purchases were not split to circumvent the warrant, why were separate POs issued to TKCS for waterproofing, installation of exterior lights, concrete and fit-out materials? Why weren't the two contracts with TKCS modified to include the additional work if not to avoid post procurement limitations? For example, SKZE100-08-C-3061 included labor for electrical, but SKZ100-08-M-2884 was for the installation of exterior lighting. Also, SKZ100-08-M-3377 was for Alinex, which is a type of concrete. SKZ100-08-C-3061 was for concrete as well. It is not clear that what the differences are between these transactions, but normally materials and labor are acquired together and not separately from the same contractor. TKCS was awarded two contracts for \$481,926 and received 5 additional PO's for \$146,995 (42.5% of the issued PO's for the project) for a total of \$628,921.

Statement: *“According to the FMO and the Senior General Services Officer, the procurements for the recreation center and the heated parking garage made during their tenure (September 2008 to May 2009) followed the flow outlined in the Procurement User Manual, although the process is modified slightly when the vendor requires cash payment: (1) the PO request is approved in the Web Post Administrative Software Suite (Web.PASS) by the GSO; (2) the procurement office generates a printed copy for the FMO; (3) the FMO certifies that the funds*

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are available and authorizes a cash pick up; (4) the vendor is paid and provides a receipt and an invoice; and (5) the documents are returned to the Embassy where the GSO stamps the receipt and the FMO certifies that payment is complete.” (page 7)

Comment: There is no evidence in this process that receipt of goods and service was verified prior to payment. Did OIG verify this process?

Statement: *“In addition to aforementioned abandonment of the project site without proper notice, the contractor, ICS, did not perform several of its agreed services as specified by the terms of its contract with the U.S. Government. The contractor failed to: (1) complete design/construction documents, a safety plan, and a quality control plan and designs; (2) pay the required performance guaranty bond and a payment bond, estimated at \$296,476, to the U.S. Government; and (3) recover the value added tax on local procurements from the Government of Kazakhstan, estimated at \$25,253. Additionally, ICS allegedly failed to pay \$328,137 in salaries to local employees, vendors, and subcontractors.” (page 8)*

Comment: It appears inconsistent for the OIG to state that progress payments were made based on work completed and then later state that the contractor did not complete items. For example, ICS was paid for bonds they did not have. Post paid for completed design documents that were not actually completed by ICS.

Statement: *“OIG suggests that OBO examine ICS’s performance under its contract with the Department and take appropriate action as necessary.” (page 8)*

Comment: RPSO Frankfurt served as the contracting officer for the project and found cause to terminate the contract based upon available documentation. The post FM/COR provided a DS-1771 Contractor Past Performance Evaluation to the CO which gave ICS a satisfactory rating for their work despite a series of issues with contractor’s performance onsite and delinquent bills.

Statement: *“In OIG’s opinion, the embassy’s use of approximately \$73,100 in ICASS and Diplomatic and Consular Program funds to purchase items for the recreation center and heated parking garage was inappropriate, may have violated 31 U.S.C. 1301 (a),⁸ and led to an inability to use the funds for other priorities. Furthermore, if OBO has to repay the \$73,100 using its own funds, bureau funds may no longer be available for intended projects, which then may have to be delayed.” (page 8)*

⁸ Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.

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Comment: It is unclear why the OIG feels the inappropriate use of ICASS and D&CP funds “may” have violated 31 U.S.C. 1301 (a). It seems evident that using appropriations for a purpose other than for which the appropriation was made is a clear violation of that provision of law. If the OIG cannot determine whether or not it was a violation, who should? The OIG should provide a definitive judgment.

Recommendation 1: The Bureaus of Overseas Building Operations and South and Central Asian Affairs should determine whether the use of International Cooperative Administrative Support Services and Diplomatic and Consular Program funds for purchases was an unauthorized commitment, and if so, report the use of these funds to Bureau of Administration’s Office of the Procurement Executive. (Action: OBO in coordination with SCA)

Comment: It does not appear that any of these transactions were unauthorized commitments, but rather an inappropriate use of those funds, as stated in the previous comment. The Federal Acquisition Regulation, in section 1.602, defines an unauthorized commitment as an agreement that is not binding solely because the Government Representative who made it lacked the authority to enter into that agreement on behalf of the U.S. Government. To OBO’s knowledge, all ICASS and D&CP purchase orders were signed by a contracting authority within their warrant, and therefore not unauthorized commitments.

Determining whether or not ICASS or D&CP funds were used correctly is not OBO’s responsibility. OBO does not allot those funds to post, has no management responsibility for them, and has no jurisdiction over determining whether they were used properly.

We requested the OIG to look into these matters so that the OIG could make these determinations.

Recommendation 2: The Bureau of Overseas Building (sic) Operations should issue a Management Notice reminding posts worldwide to obtain all applicable approvals and permits before proceeding with work under design/build contracts. (Action: OBO)

Comment: This is already done routinely. ALDAC State cable 45506 of May 5, 2009 incorporated this reminder. The ALDAC was the annual consolidated budget call for repair, rehab, improvement, and fit-out requests and annual inspection survey guidance.

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Recommendation 3: The Bureau of Overseas Building (sic) Operations and the Bureau of Resource Management should issue a Management Notice to remind posts worldwide that OBO is the lead bureau for construction and renovation of the Department's facilities, to ensure that posts are using appropriate funds to pay for any construction and renovation/ (action OBO and RM)

Comment: We believe it is inappropriate to have joint action. RM is the lead bureau and financial authority for the Department. RM is ultimately responsible for the Department's audited financial statements and as such should take the lead in issuing a Management Notice.

In light of the above comments and the discussion on page 8 of the draft report that OBO will incur added costs in order to get the project to meet code and standards, OBO is confused as to how the OIG under internal management controls could state that "the financial and management controls, and procurement procedures at Embassy Astana appear to adequately prevent waste, fraud, and abuse."

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