PROFESSIONAL SERVICES COUNCIL

The Voice of the Government Services Industry

SUBMITTED STATEMENT

OF THE

PROFESSIONAL SERVICES COUNCIL

FOR THE

HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT

REFORM

SUBCOMMITTEE ON NATIONAL SECURITY

HEARING:

ARE CHANGES IN SECURITY POLICY JEOPARDIZING USAID

RECONSTRUCTION PROJECTS AND PERSONNEL IN

AFGHANISTAN?

MARCH 29, 2012

Chairman Chaffetz, Ranking Member Tierney
and Members of the Subcommittee:

The Professional Services Council (PSC) commends the Oversight and Government Reform Committee's National Security Subcommittee for calling this hearing and appreciates the invitation to provide a statement for the record. The question posed in the hearing title—Are Changes in Security Policy Jeopardizing USAID Reconstruction Projects and Personnel in Afghanistan?—is an important and timely one. PSC and our member companies, both development firms and security providers performing tasks vital to U.S. policy goals in Afghanistan, are working with the U.S. government to find the best ways to respect the legitimate exercise of Afghan sovereign control over armed security forces while ensuring the ability of U.S. implementing partners to do their work effectively, efficiently and safely. We welcome robust oversight by Congress and the inspectors general during this unprecedented and evolving security transition.

PSC is the nation's largest association of government services contractors and counts among our nearly 350 member companies several dozen firms that provide critical support to U.S. government activities in contingency environments. That support includes logistics, engineering, infrastructure, satellite and information technology support, international development assistance, capacity building and more. Since 2010, soon after issuance of Afghan Presidential Decree 62 calling for dissolution of all private security companies operating there, PSC has been actively encouraging the Department of State and the U.S. Agency for International Development (USAID) to take every step necessary to ensure that the Afghanistan government's mandatory and exclusive replacement security system is transparent, accountable, and that it meets recognized security standards. Presidential Decree 62 took effect for development sites on March 21, 2012,

Exclusive use of the new state-owned enterprise, the Afghan Public Protection Force (APPF), to guard development projects and personnel imposes a wholly new security paradigm in a volatile, high risk environment. The mandated transition from known security contracting regimes to the evolving and unproven APPF processes has caused understandable unease among both for-profit and non-profit implementers. They are committed to their work in support of the U.S. government's development and reconstruction mission, and implementers are working with the International Security Assistance Force (ISAF) and the NATO Training Mission Afghanistan (NTM-A) to build APPF capabilities. This reflects once again the commitment of development professionals from for-profit and non-profit entities to sustain very difficult work in challenging, often very risky, environments.

Under current U.S. federal regulations and contract provisions, U.S. contractors awarded development projects by USAID are required to obtain and maintain their own security services, subject to a plethora of U.S. government controls, conditions and constraints. Thus, in answer to the question whether the transition jeopardizes, or poses increased risks, to U.S. development spending and personnel, companies see two sets of issues. In the near term, the transfer of security responsibilities from private contractors to the use of the APPF at current projects presents more business process uncertainties (e.g. prompt payments to guards, interpretation of complex contract clauses, dispute resolution procedures) than questions about guards' protection capabilities. That is because it is expected that the trained private security guards (mostly Afghans) implementers relied on prior to the effective date of the decree will sign up to return to the same projects as APPF personnel. So far, that has been the case. However, when bidding on new work in Afghanistan, companies will need to rely for the first time on the APPF for the vetting and training of new guards. Given growing concerns about so-called "green on blue" attacks by uniformed Afghans on U.S. and coalition personnel, the use of new APPF guards complicates both the risk assessment and cost projections when deciding whether, and at what price, development projects can be successfully completed in Afghanistan.

The process is new and definitive judgments on APPF effectiveness can only be made over time. However, as this transition proceeds, the U.S. government's implementing partners will need stronger support and guidance than has been available to date.

The magnitude of the challenge should not be minimized. To say, as some USAID officials do, that 75 percent of USAID's current portfolio in Afghanistan does not require armed security seems based on a raw project inventory rather than the substantial dollar value of the many critical development efforts for which the U.S. government requires contractors to procure adequate protection of assets and personnel at considerable cost. It would be misleading to suggest that the transition to the APPF will not have a fundamental impact on how USAID, and its for-profit and non-profit partners, do business in Afghanistan.

On February 6, 2012, PSC wrote to USAID Administrator Rajiv Shah [**Exhibit 1**] asking the agency to do more to facilitate the transition and reduce easily addressed uncertainties in the accelerated process of contracting with the APPF. The USAID Mission in Kabul had issued a blanket waiver to allow sole-source subcontracts between U.S. companies and the APPF. But the agency has not issued a parallel waiver for other than full and open competition for subcontracts between current implementers and their Risk Management Companies (RMCs), the licensed successors to private security providers who advise implementers on security requirements and help supervise and train APPF guards. To minimize costs and risks during this initial phase of the transition, companies should be able to acquire the known, trusted services of their preferred RMC. The exigent circumstances and hurried pace of the mandated transition meet the criteria for a waiver. Asking companies and contracting officers to justify the need for a waiver on a case-by-case basis adds needless and avoidable uncertainty to an already complex and challenging contracting process. In a written response to PSC, USAID declined that request.[1]

In addition, PSC requested a policy determination that the fully loaded fixed daily compensation rate for APPF guards, which includes a martyr fee and a 20 percent profit, be deemed *de facto* fair and reasonable inasmuch as the non-negotiable rate was set by the directed source of the procurement—the monopoly provider—the APPF. Resolving that question now would eliminate the need for retrospective justification during project audits that can take place months or years after contract performance. USAID has taken that question under advisement.

We also asked USAID to provide consistent, written guidance for implementers to follow as they endeavor to meet USAID and State Department directives to exert every good faith effort to conclude complex contract negotiations with the APPF. Information provided during U.S. government events with implementers in Kabul and Washington was often general in nature and did not address key questions (e.g. the availability of Defense Base Act insurance coverage for APPF guards) arising in a quickly changing environment. We concur with the Special Inspector General for Afghanistan Reconstruction (SIGAR) that USAID's communication with implementing partners, while frequent, "often left important questions unanswered."[2] On February 21, 2012, PSC wrote to the SIGAR and the inspectors general for the Department of State and USAID [**Exhibit 2**] seeking their help identifying and mitigating business risks facing development companies as the APPF process unfolds.

In a related matter, the Subcommittee should be aware of on-going concerns PSC and our member companies have with the arbitrary taxes and fees being imposed by Afghanistan on U.S.-provided contracts. While the USAID has a bilateral agreement with the Islamic Republic of Afghanistan that ensures that no taxes or other charges are imposed on USAID contractors

[1] Letter from USAID to PSC (March 2, 2012) retrieved from http://www.pscouncil.org/i/c/International_Development_Task_Force/c/c/InternationalDevelopmentTaskForce/International_Development_Task_Force.aspx?hkey=e1ad1618-bf9b-48fe-8a2c-7562bf8dbc8d
[2] SIGAR management alert, retrieved from http://www.sigar.mil/pdf/alerts/2012-03-15-appf-alert.pdf, Enclosure 3, p. 3.

while performing work under U.S. government contracts in Afghanistan, the same does not hold true for contracts awarded by other federal agencies. Over the past two years, we have seen a significant increase in customs and border crossing fees, licensing fees, taxes not related to local Afghanistan expenses and other charges imposed on contractors. Congress shared our concerns with this troubling situation. The fiscal year 2012 Foreign Operations Appropriations Act contained a provision prohibiting payment of taxes on assistance and directing the State Department to clarify and strengthen bilateral agreements on the tax exemption. Other legislation passed the House as part of the fiscal year 2012 Defense Appropriations Act that would prohibit the government of Afghanistan from imposing taxes or fees on the performance of U.S. government contracts, but that provision was dropped from the final conference version of the DoD bill. In addition, PSC has raised this issue extensively with State and Treasury officials with little success. Uncertainty about foreign taxes presents a potentially significant cost burden that also affects the ability of U.S. firms to perform work in Afghanistan.

Finally, we want to convey to the Subcommittee our members' strong belief in the "soft power" of development and their enduring support for the development and reconstruction mission in Afghanistan. Despite setbacks and risks, the current delivery model remains the most effective and efficient. As PSC highlighted to Secretary of State Clinton in 2010 [**Exhibit 3**], shifting to a policy that is overly reliant on direct assistance to technically weak government ministries will create a significant risk of waste and abuse in an environment that is already highly vulnerable to mismanagement and corruption. We support the progress being made in Afghanistan and recognize the nature of the U.S. government/Afghanistan diplomatic relationships in the transition to full Afghanistan sovereignty. However, we remain concerned about the impact on security and business impacts of Afghan Presidential Decree 62 on U.S. citizens, contractors and all of their employees. We know the U.S. government shares our concerns for their safety and ability to fully execute their important work. In our view, more can and should be done to ensure a safe and secure performance relationship. U.S development firms stand ready to work with their federal agency partners to craft a security policy that fully honors Afghan sovereignty while protecting U.S. personnel and taxpayer funds.

PSC PROFESSIONAL SERVICES COUNCIL

The Voice of the Government Services Industry

February 6, 2012

The Hon. Rajiv Shah
Administrator
U.S. Agency for International Development
Ronald Reagan Building
1300 Pennsylvania Avenue, NW
Washington, DC 20523-1000

Dear Dr. Shah:

On behalf of the PSC member companies serving as implementing partners with the U.S. government on vital development projects in Afghanistan, this is to request immediate action by USAID to help U.S. companies meet the many challenges presented by the mandated transition from the use of private security to the exclusive use of forces provided by the Afghan Private Protection Force (APPF). With the March 21, 2012 deadline set by President Karzai so close, and with APPF capabilities and business systems still wholly untested, I hope you agree that everything possible should be done to reduce uncertainty and risks to life and property of those implementing USAID programs.

It is estimated that 75 complex contracts between the APPF, current implementers (for-profits and non-profits), and their new Risk Management Companies (RMCs) must be negotiated and implemented before the deadline. RMCs replace current private security providers and act as supervisors and trainers of APPF personnel. Not one contract has been completed to date because, among other reasons, so few RMCs have been licensed to operate by the Afghan government. We understand that at least 27 RMC applications are pending and, as of February 2, only one has been approved. Many of those RMC applications were filed by current private security providers who, if permitted, would provide continuity of security operations during this uncertain and risky transition.

To facilitate the transition to the APPF, the USAID Mission in Kabul recently issued a blanket waiver to allow sole-source subcontracts between U.S. implementers and the APPF. However, no similar waiver for other than full an open competition has been issued with regard to subcontracts between current implementers and RMCs. The lack of a parallel waiver increases uncertainly and risk for both USAID and its implementing partners. The transition to the use of APPF forces will only be made more costly and risky if companies are not allowed to quickly acquire the known, trusted services of the RMC successor to their current security provider. Under these unprecedented and exigent circumstances, with the security of American and Afghan personnel at stake, and many millions of U.S. dollars being invested in development projects in Afghanistan, usual business practices must give way, at least temporarily, to the extraordinary challenges posed by the March 21 deadline and the volatile Afghan security environment. We request that USAID immediately issue such a waiver for initial RMC contracts, with the need for an extended waiver period examined based on evidence of the maturation of APPF capabilities and business systems and the progress in licensing RMCs.

We appreciate that USAID officials in Washington and Kabul appear to be taking a pragmatic approach to implementing the Karzai government's security mandate. That is the right posture, but USAID has tasked the agency's implementing partners with the bulk of the burden to make the APPF work and shifted all the risk of failure to them as well. Yet many of our member companies and other implementing partners do not believe the APPF process can be operationalized in less than two months and perform at a level that will adequately protect U.S. lives and property. We hope the agency's pragmatic approach will include a realistic appraisal of the need for a temporary waiver for initial RMC contracts, reducing at least one element of uncertainty in an extremely uncertain security and business environment.

The APPF transition raises other serious issues of contracting policy and compliance that USAID can and should help address. The current USAID waiver directs U.S. implementers to contract with the APPF. That Afghan agency, in turn, has established a fully loaded fixed daily compensation rate that implementers must pay for guards. That rate includes a 20% fee, or profit, for the APPF on top of a processing fee and other charges. Given the directed source of this procurement, USAID should establish as a matter of contract administration and audit policy that the mandated rate is *de facto* fair and reasonable because of the inability of the implementing partners to provide any additional justification.

There is also a need for consistent, written guidance for USAID and its implementers to follow as they meet the USAID and State Department mandate to exert every good faith effort to conclude complex procurements quickly and make the APPF transition work. While implementers appreciate oral presentations at industry day events in Kabul and Washington, this difficult transition would be greatly facilitated if USAID's contracting officers and implementing partners had clear, reliable, written policies to inform and guide their decisions. In this unique, changing environment, some uncertainty is inevitable and your implementing partners are working tirelessly to meet the demands of this situation. But time is short and implementers need more than briefings, one-off conversations, and rumors if the APPF transition is going to be accomplished in an orderly, cost efficient manner.

Given how much remains to be accomplished – licensure of RMCs, complex and numerous contract negotiations, training of APPF guards – in less than two months, we request that the U.S. government not accept security standards for U.S. aid implementers that are inferior to those required for its own personnel. If in the weeks ahead it becomes clear the APPF will not be in a position to provide adequate security for U.S. development projects, we request that you support your implementing partners in urging the Department of State to reach an agreement with the government of Afghanistan for an extension of the March 21 deadline.

Thank you for your immediate attention to these urgent matters. If you have any questions or need additional information please do not hesitate to contact me or Lawrence Halloran (Halloran@pscouncil.org) on the PSC staff.

Sincerely,

Stan Soloway
President and CEO

cc: Alex Thier
Larry Sampler

PROFESSIONAL SERVICES COUNCIL

The Voice of the Government Services Industry

February 21, 2012

Steven J. Trent
Acting Inspector General
Office of the Special Inspector General for Afghanistan Reconstruction
2530 Crystal Dr
Arlington, VA 22202

Michael G. Carroll
Acting Inspector General
U.S. Agency for International Development
USAID/OIG
Washington, DC 20523

Harold W. Geisel
Deputy Inspector General
U.S. Department of State
Office of Inspector General
2201 C Street, N.W.
Washington, DC 20520

Dear Inspectors General:

The Professional Services Council (PSC) is the primary national association of companies providing professional and technical services to every agency of the federal government, prominently including the Department of State and USAID. PSC's membership includes most of the private sector implementing partners supporting USAID development assistance missions around the world, including Afghanistan, and our members are greatly affected by security contracting policies there. We are aware of ongoing work by your offices regarding the transition from the use of private security contractors to the exclusive use of the newly created Afghan Private Protection Force (APPF) by U.S. government agencies and U.S. development contractors by March 20, 2012. We share your concerns about the potential impact of the mandatory use of the APPF on the security of our workforce and on U.S. government officials and the fiscal implications of the transition to companies and the U.S. government. We therefore welcome and request your proactive, contemporaneous oversight of this unprecedented and time-constrained process.

As noted in the January 30, 2012 SIGAR Quarterly Report to Congress, the APPF was "unable to negotiate and establish legal and enforceable contracts with customers for security services." In addition, the report points to serious doubts about the capacity of the new state-owned APPF entity "to support the business operations that are essential to manage and execute contracted security services." Little additional progress has been made on either of these critical components. Nevertheless, USAID has told its contracting partners that the APPF is "open for business" and instructed development contractors to undertake every good faith effort to conclude sole-source subcontracts for complex security services with them.

As this novel process unfolds and contractors attempt to meet that mandate, we invite your audit and oversight staff to engage with us now in appropriate consultations to identify business process and compliance issues so we all have contemporaneous knowledge of the evolving situation and can anticipate and evaluate the true scope of the issues presented to the U.S. government and its implementing partners by contracts with the APPF. Among the issues we hope your early attention might help us address are how contractual requirements for the determinations of fair and reasonable pricing for these subcontractors will be evaluated, given the fact that the directed source for these security services, the APPF, requires payment of a fully loaded fixed daily compensation rate for APPF-provided guards that includes a 20 percent fee, or profit, for the APPF. Demonstrating the uncertainty and volatility of APPF pricing, companies attempting to negotiate security subcontracts were recently informed that the base rate for APPF uniforms had increased from $506 to $600 to reflect shipping costs and a 20 percent profit on those items as well. The APPF has also refused to accept standard flow-down clauses required by the Federal Acquisition Regulation (FAR) for subcontractors, including prohibitions on trafficking in persons.

We anticipate additional contractual issues because of the void left by the lack of any consistent, written guidance from USAID to implementers regarding standards for contracts with APPF. For example, it remains unclear how contractors are to comply with the vetting and training requirements of FAR 52.225-19 when applied to APPF guards over whom they have little control or recourse for non-performance. To date, implementers have only received oral presentations at industry day events in Kabul and Washington and one-off conversations with assigned contracting officers.

We appreciate and would value thorough contract oversight and your continuing attention to the security and compliance risks presented by the mandate to do business with the APPF. We request an opportunity to begin working with you now to identify and mitigate any of these risks as early in this process as possible. Thank you for your attention to this important matter. If you have any questions, please do not hesitate to contact me or Lawrence Halloran (at Halloran@pscouncil.org) of the PSC staff.

Sincerely,

Stan Soloway
President and CEO

PSC PROFESSIONAL SERVICES COUNCIL

The Voice of the Government Services Industry

November 8, 2010

The Honorable Hillary R. Clinton
Secretary of State
U.S. Department of State
2201 C Street, N.W.
Washington, D.C. 20500

Dear Madame Secretary:

I am writing today on behalf of the more than 330 member companies of the Professional Services Council (PSC), the primary national association of companies providing professional and technical services to every agency of the federal government, prominently including the Department of State and USAID. Included in our membership is most of the private sector implementing partners supporting USAID development assistance missions around the world, including Afghanistan. As an organization, PSC has been deeply involved in and works closely with both State and USAID on the full range of issues and challenges associated with the work of these firms, particularly as it relates to both Iraq and Afghanistan. Most recently, we and our member firms have become increasingly concerned about the Afghan government's proposed ban on the use of private security personnel to protect development projects and those working on them.

As you know, President Karzai's original decree imposed a complete prohibition on the use of private security personnel after December 17. Soon thereafter, the U.S. government negotiated an exemption for the protection of U.S. diplomatic and military personnel but failed to include its implementing partners among those authorized to use private security when necessary. As of now, the decree would force development firms to cease using private security approximately 90 days after November 15, when the newly-formed commission's recommendation will be made to President Karzai regarding a transition of security responsibilities to Afghan police and armed forces.

U.S. development firms are vital extensions of USAID, operating in the most dangerous regions of Afghanistan. They depend on highly trained and vetted private security personnel (large numbers of whom are Afghan nationals) to provide essential security for compounds and staff movements. The use of private security by these firms is based on security policies and risk mitigation standards. Implementation of the decree would force development firms to adopt far less efficient implementation methods or close down projects altogether. The consequences of this would be significant and would include both the halting or delaying of vital programs designed to support the Afghan people, a diminution of the effectiveness of U.S. stabilization and counterinsurgency strategies, and the immediate unemployment of thousands of Afghan nationals currently working on development and reconstruction projects, a result that itself would carry clear and disturbing implications. Indeed, the vast majority of employees working on development projects today are Afghan nationals. In some cases, the ratio of Afghan citizens to U.S. citizens or ex-patriots working on these projects is as high as 10:1.

While implementing partners are committed to working with USAID on a reliable and effective long-term solution to this problem, development contractors remain unconvinced that the Afghan National Security Forces (ANSF) as currently constituted present a viable current option for ensuring the safety of their personnel. Indeed, the State Department as recently as October 26 adopted the same position. The Special Inspector General for Afghanistan Reconstruction reached the same conclusion in his June 2010 report.

Some have also suggested that because non-governmental organizations (NGOs) do not use private security, development firms do not need to either. However, such a comparison is entirely inapt and ignores substantial differences in mission, location and status. Some NGOs do, in fact, use private security. Some, under their humanitarian charter, refuse to support the U.S. military in its implementation of the counterinsurgency strategy in Afghanistan. Many do not work in key conflict-ridden districts or other high-risk areas where U.S. development firms routinely work. Nor are most NGOs performing the kinds of high visibility project being executed by development firms, such as programs to strengthen the Afghan government; building roads, schools, and other infrastructure; and supporting the Afghan private sector through lending programs and more.

With all this in mind, we believe it is vital that the State Department:

- Negotiate a specific exemption for all USAID implementing partners engaged on projects in Afghanistan similar to that negotiated for diplomatic and military personnel;

- Direct USAID to issue authoritative, written instructions providing consistent guidance for all implementing partners on near-term actions required to respond to Afghan Presidential Decree 62. Currently, firms are being given contradictory and inconsistent guidance by State and USAID officials, such as requests to submit "minimum security" plans that are premised on reducing or eliminating the use of private security firms; and

- Direct the U.S. Embassy in Kabul to continue to support responsible efforts by the Afghan government to properly regulate private security contractors to ensure their greater control of security functions while ensuring that the objectives of U.S. funded development projects can be achieved.

Furthermore, PSC believes that USAID's current approach to development and stabilization assistance in Afghanistan is the appropriate delivery model. Shifting to a policy that is overly reliant on direct assistance to technically weak government ministries and local organizations will create a significant risk of waste and abuse in an environment that is already highly vulnerable to mismanagement and corruption. In such an environment, an appropriate security policy, which fully honors both Afghan sovereignty and the real security needs of development projects and personnel, is essential.

We look forward to working with your office and other federal agencies to chart the correct course forward.

Thank you for your time and consideration.

Sincerely,

Stan Soloway
President and CEO

cc: Amb. Richard Holbrooke
Amb. Karl Eikenberry
Amb. William Todd
Administrator Rajiv Shah
Mr. Earl W. Gast