

**STATUS OF DEPARTMENT OF STATE
ECONOMIC SUPPORT FUND
INTERAGENCY AGREEMENTS WITH
THE U.S. ARMY CORPS OF
ENGINEERS IN IRAQ**

**SIGIR 09-006
OCTOBER 28, 2008**

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SIGIR

Special Inspector General for IRAQ Reconstruction

Summary of Report: SIGIR-09-006

Why SIGIR Did This Study

SIGIR has frequently been asked why expenditure rates for the Economic Support Funds (ESF) are relatively low as compared to other appropriations being used in Iraq. SIGIR analyzed ESF obligations and expenditures for three interagency agreements to better understand why this occurs.

The ESF is an appropriation account authorized by the Foreign Assistance Act of 1961. Specific ESF dollar amounts are requested within the President's Budget to Congress and approved by Congress under the Department of State's International Affairs - Foreign Operations, Export Financing and Related Program (Foreign Operations), Other Bilateral Economic Assistance, budgetary account. The ESF is also recognized as a bilateral economic assistance account for use by U.S. allies and countries in democratic transition to promote U.S. foreign policy objectives. Since mid-2006, DoS, through the Director of Foreign Assistance, has been responsible for ESF programming decisions. The U.S. Agency for International Development and DoS bureaus have been given responsibility for implementing ESF funds for Iraq. In 2006, DoS entered into three interagency agreements with the U.S. Army Corps of Engineers (USACE) to execute programs in Iraq.

The objective of this report is to determine the status of the obligations and expenditure rates for the three interagency agreements and the practices used to obligate and expend the funds.

What SIGIR Recommends

This report is presented for information purposes only and does not contain any recommendations.

For more information, contact SIGIR Public Affairs at (703) 428-1100 or PublicAffairs@sigir.mil

October 28, 2008

STATUS OF DEPARTMENT OF STATE ECONOMIC SUPPORT FUND INTERAGENCY AGREEMENTS WITH THE U.S. ARMY CORPS OF ENGINEERS IN IRAQ

What SIGIR Found

SIGIR identified three significant and interrelated issues that affect the rate of obligation and expenditure for the ESF appropriations funding these agreements. First, although the ESF appropriation is a two year appropriation, under the authority of the Foreign Assistance Act of 1961 the funds remain available for deobligation and subsequent reobligation for a period of four years after the appropriation expires. Second, although the funds identified in the agreements are obligated at the time the agreements are signed, projects are not always associated with the agreements at that time. SIGIR's review shows that USACE has not awarded contracts for \$126 million from the Fiscal Year 2006 ESF appropriation (15%), and \$224 million from the Fiscal Year 2007 appropriation (58%). Third, the nature and purpose of the agreements—to develop the Iraqis' capabilities—also contributes to a slower expenditure rate than would typically occur.

The three agreements SIGIR reviewed were intended to fund projects supporting (1) Provincial Reconstruction Teams, and Provincial Reconstruction Development Committees; (2) infrastructure security protection for oil, water, and electricity sectors, and (3) sustainment and technical capacity development in the electricity, water, health, transportation, and communication sectors. Projects under these agreements are executed by USACE once they have been identified and approved by the Iraq Transition Assistance Office (ITAO), the successor to the Iraq Reconstruction Management Office, which selects projects after reviewing requests from other program elements in Iraq. Once ITAO approves a project and USACE awards a contract it is recorded as a subobligation of funds against those already obligated to pay for the projects. In written comments on a draft of this report, USACE stated that the purpose and nature of the ESF agreements—developing the Iraqi's capabilities—is also a key contributor to the ESF execution rate.

SIGIR's review of funds obligated under these agreements, as of September 22, 2008, shows that the current total value of the agreements is approximately \$1.25 billion. Of this amount, USACE has disbursed approximately \$587 million, or about 47% of the total value of the agreements. The low expenditure rate is due in part to the fact that only about 72% of the \$1.25 billion has been subobligated (that is USACE has awarded a contract for a specific project). USACE has not awarded contracts for \$350 million (28%) in ESF funds. These funds remain available to DoS. The table below shows the status of funds under these interagency agreements.

Status of Funding for DoS Interagency Agreements with USACE

	Agreement Amounts & Obligations	USACE Subobligations		USACE Disbursements	
		Amount	% of DoS Obligation	Amount	% of DoS Obligation
All Agreements	\$1,253,972,675	\$903,983,676	72.09%	\$586,795,954	46.79%
Remaining	\$349,988,999				

Source: SIGIR Extract of CEFMS data in USACE Fiscal Status Report for Appropriations as of September 22, 2008



SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION

Baghdad, Iraq

October 28, 2008

MEMORANDUM FOR SECRETARY OF STATE

U.S. AMBASSADOR TO IRAQ

COMMANDING GENERAL, U.S. ARMY CORPS OF ENGINEERS

COMMANDING GENERAL, GULF REGION DIVISION, U.S.

ARMY CORP OF ENGINEERS

DIRECTOR, IRAQ TRANSITION ASSISTANCE OFFICE

SUBJECT: Status of Department of State Economic Support Fund Interagency Agreements with the U.S. Army Corps of Engineers in Iraq (SIGIR 09-006)

We are providing this report for your information and use. We performed this audit under the authority of Public Law 108-106, as amended, which also incorporates the duties and responsibilities of inspectors general under the Inspectors General Act of 1978, as amended. This report provides information on obligation and expenditure rates for three interagency agreements funded by Economic Support Funds appropriated to the Department of State in Fiscal Years 2006 and 2007. This report was conducted as SIGIR Project 8021.

We considered written comments on a draft of this report from the Department of State, the U.S. Army Corps of Engineers Gulf Region Division, and the Iraq Transition Assistance Office. The comments are addressed in the report, where applicable, and are included in Appendices D-F.

We appreciate the courtesies extended to the staff. For additional information on the report, please contact Glenn Furbish, Deputy Assistant Inspector General for Audits (703) 428-1058 / glenn.furbish@sigir.mil.

A handwritten signature in black ink, reading "Stuart W. Bowen, Jr." with a stylized flourish at the end.

Stuart W. Bowen, Jr.
Inspector General

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Introduction

The Economic Support Fund (ESF) is an appropriation account authorized by the Foreign Assistance Act of 1961 to provide flexible economic assistance to countries selected for their special political and security interests to the U.S. Specific ESF dollar amounts are requested within the President's Budget to Congress and approved by Congress under the Department of State's International Affairs - Foreign Operations, Export Financing and Related Program (Foreign Operations), Other Bilateral Economic Assistance, budgetary account. Since 2003, the Congress has appropriated \$3.2 billion to the ESF for Iraq reconstruction. ESF advances U.S. foreign policy interests by:

- increasing the role of the private sector in the economy, reducing government controls over markets, enhancing job creation, and improving economic growth;
- developing an effective, accessible, independent legal system operating under the rule of law;
- assisting in the transition to transparent and accountable governance and the empowerment of citizens;
- developing and strengthening institutions necessary for sustainable democracy; and
- strengthening the capacity to manage the human dimension of the transition to democracy and a market economy and to help sustain the neediest sectors of the population during the transition.¹

Since mid-2006, DoS, through the Director of Foreign Assistance, has been responsible for ESF programming decisions. The U.S. Agency for International Development and several DoS bureaus have been given responsibility for implementing ESF funds for Iraq.² In 2006, DoS entered into three interagency agreements with USACE to execute programs in Iraq. In these agreements, ITAO and USACE were assigned roles in carrying out ESF activities, in coordination with DoS. ITAO's role is to coordinate and oversee the process for selecting and approving projects, particularly for the PRDC interagency agreement.

The Foreign Assistance Act of 1961 requires that agencies spend ESF funds for the activities, programs and projects justified to the Congress. However, changes to activities, programs, and projects are permitted as long as the appropriate congressional committees are notified.

In 2006, DoS and USACE executed three interagency agreements under funding provided by Public Law 109-234,³ The appropriation had a two-year life with the funds expiring on September 30, 2007.

¹ Department of State Congressional Budget Justification, Fiscal Year 2007.

² The DoS Bureaus include the Bureau of Democracy, Human Rights, and Labor, and the Bureau of International Narcotics and Law Enforcement Affairs.

³ Public Law 109-234 "The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery".

Objectives

SIGIR has frequently been asked why the expenditure rate for ESF funds is relatively low as compared to other appropriations being used in Iraq. In some years, ESF funds are reported as fully obligated shortly after the funds are appropriated, yet the funds are not disbursed until much later. SIGIR analyzed the status of obligations and expenditures for three ESF-funded interagency agreements valued at \$1.25 billion and the practices used to obligate and expend funds to determine why this occurs.

For a discussion of the audit scope and methodology, see Appendix A. For a listing of acronyms, see Appendix B. For a listing of the audit team members, see Appendix C. For management comments see Appendix D (USACE comments), Appendix E (DoS comments) and Appendix F (ITAO comments).

Interagency Agreements

In 2006, DoS and USACE entered into three interagency agreements for USACE to execute programs in Iraq on behalf of DoS. The three agreements were intended to fund projects supporting (1) provincial reconstruction teams, and provincial reconstruction development committee projects; (2) infrastructure security protection for oil, water, and electricity sectors, and (3) sustainment and capacity development in the electricity, water, health, transportation, and communication sectors. According to ITAO, the use of interagency agreements in accordance with article 632(b) of the Foreign Assistance Act is common among all assistance providing agencies. The agreements are summarized below.

Interagency Agreement for Provincial Reconstruction Teams (PRT) and Provincial Reconstruction Development Committee Projects (PRDC)

In November 2006, the Department of State's Bureau of Near Eastern Affairs, Office of Iraq Assistance (OIA), requested that USACE provide support for the preparation of bids and the award of projects identified by PRDCs (in coordination with Provincial Councils, and PRTs). The initial agreement was to remain in effect until September 30, 2010, but could be extended at the discretion of both parties. In August 2007, this agreement was extended to September 30, 2011.

The initial value of this agreement was \$315 million, funded by the FY 2006 Foreign Operations Supplemental Appropriation. The agreement was later amended twice to increase funding. In August 2007 an additional \$100 million was added to the contract to continue the USACE support of PRTs and PRDCs in the provinces; in January 2008, \$285 million more was added for the same purpose. These two amendments brought the total value of the interagency agreement for PRDC support to \$700 million.

The interagency agreement statement of work required USACE to:

- Assist in implementing projects recommended by the PRT/PRDCs and approved by the Embassy by providing program and project oversight to include awarding of contracts, Quality Assurance/Quality Control, and project milestones.
- Assist the PRT/PRDCs by teaching, mentoring, guiding and supporting them in preparing project scopes of work, bills of quantities, estimates and project nomination forms.
- Develop, solicit, contract, implement, oversee and deliver approved projects and provide technical assistance to the PRDCs.

Specific projects that USACE was to support were not identified in the agreement. Instead, consistent with the PRDC agreement's capacity building purpose, a detailed process for working with provincial councils and the PRTs to develop projects is included as an attachment, along with specific allocations to the provinces.

Interagency Agreement for Infrastructure Security Protection (ISP) for Oil, Water, and Electricity

In November 2006, OIA entered into a second agreement with USACE to provide technical support for infrastructure security projects to be identified by the Iraq Reconstruction Management Office (IRMO)—now the Iraq Transition Assistance office (ITAO). The agreement was to remain in effect until September 30, 2010, but could be terminated or extended.

The agreement was amended three times to reduce the funding, but the statement of work was not changed, nor was the length of the agreement. The initial value was \$277 million, but the amendments reduced the available funding by \$30 million in August 2007, \$20 million in January 2008, and \$10 million in March 2008. The total current value of the agreement is \$217 million.

This agreement was undertaken to obtain USACE support in strengthening the security of Iraq's oil, electricity and water infrastructure. IRMO and the Multi-National Force-Iraq identified urgent needs to harden key infrastructure elements and improve security. These projects included about 26 projects in the oil sector, about 6 projects in the water sector, and about 35 projects in the electricity sector. In general, the projects in all sectors included the construction of security barriers, observation facilities, and exclusion zones; hardening selected structures, and implementing controlled access to critical facilities.

The statement of work stated that IRMO would set program priorities and approve all projects and activities. USACE would provide the personnel and services to accomplish the activities outlined in the agreement, to include;

- implementing and delivering infrastructure security improvements; and
- developing, awarding, managing, implementing, overseeing, and delivering projects and technical training in coordination with IRMO.

Interagency Agreement for Operations and Maintenance (O&M) Sustainment and Technical Capacity Development (CD) for Electricity, Water, Health, Transportation, and Communication

In November 2006, OIA entered into a third agreement with USACE to provide support in awarding projects to increase the Iraqi ministries' capacity to operate key infrastructure and to plan for infrastructure sustainment. The agreement was to remain in effect until September 30, 2010, but could be terminated or extended.

The initial value of this agreement was \$345 million, but a March 2008 amendment reduced the agreement by approximately \$8 million to a current total of \$336.97 million. This agreement was undertaken to obtain USACE support in developing the capacity of the Iraqi ministries to sustain and operate key infrastructure. The intent of the project was to allow IRMO to respond to immediate and changing needs of the Iraqi essential service ministries; the project would also USACE to undertake a wide array of beneficial projects and training activities. The statement of work requires USACE to:

- Implement and deliver an Essential Service Sustainment and Technical Capacity Development Program in support of Iraq’s essential service sectors including electricity, water and waste water, health, transportation and communication. The program budget provides \$285 million for operations and maintenance in support of essential services and \$60 million for plant-level technical capacity development training.
- Develop, award, manage, implement, oversee and deliver projects and technical training in coordination with the IRMO Senior Consultants for electricity, water and waste water, health, transportation and communication.

Financial Status of Agreements

SIGIR identified three significant and interrelated issues that affect the rate of obligation and expenditure for the ESF funds in these agreements. First, although the ESF appropriation is a two year appropriation, obligations recorded based on interagency agreements under the authority of the Foreign Assistance Act of 1961 do not automatically deobligate after the period of availability. Instead, once obligated, the funds remain available for deobligation and subsequent reobligation for a period of four years after the appropriation that authorized the initial funds expires. Second, although the funds identified in the agreements are obligated at the time the agreements are signed, specific projects are not always identified in the agreements or actually contracted for under the agreements at that time. For example, SIGIR’s review shows that contracts have not been awarded for all of the funds associated with the FY 2006 and 2007 appropriations. USACE has not awarded contracts for \$126 million from the FY 2006 Supplemental ESF appropriation (15%), and \$224 million from the FY 2007 appropriation (58%). Third, the purpose and nature of the ESF agreements—developing the Iraqi’s capabilities—is also a key contributor to the execution rate.

Expenditure Rates

In written comments on a draft of this report, DoS, USACE, and ITAO questioned SIGIR’s statement that ESF expenditures occur at a slower rate than other Iraq appropriations. For example, DoS stated in its written comments that the expenditure rates are consistent with the period of performance of the agreements. SIGIR has added this table to the final report to address this question. Table 1 shows the FY 2006 and 2007 appropriations and expenditures for ESF and two other Iraq appropriation accounts; the Iraq Security Forces Fund (ISFF), and the Commander’s Emergency Response Program (CERP). As shown in the table, ESF expenditure rates for both FY 2006 and FY 2007 are lower than the expenditure rates for the other two appropriations. For FY 2006, the ESF expenditure rates are 16 to 21 percent lower than the other two funds (after two years), and for FY 2007 the ESF expenditure rates are 12 to 56 percent lower than the other two funds (after one year). Additionally, SIGIR’s October 2008 Quarterly Report to the Congress shows that \$440 million in ESF funding was appropriated in FY 2008. Although fully obligated, none of these funds had been expended by the end of the fiscal year.

Table 1—U.S. Support for Iraq Reconstruction as of July 2008 (\$ Billions)

U.S. Fund	Appropriated	Expended	Percent expended
ESF FY 2006	1.55	1.01	65
ESF FY 2007	1.60	.47	29
ISFF FY 2006	3.01	2.43	81
ISFF FY 2007	5.54	2.28	41
CERP FY 2006	.71	.61	86
CERP FY 2007	.75	.64	85

Source: SIGIR Quarterly Report and Annual Report to the Congress, July 2008.

The above comparison is not intended to be used as a performance measure. Expenditure rates are affected by many factors such as the date funds are appropriated by Congress, the nature of the funds and projects they support, and type of appropriation (one year or multi-year). For example, USACE reported that it not receive the FY 2006 funds until November 2006, and did not receive the first portion of the FY 2007 Supplemental funds (\$100 million) until August 2007, and the second portion of the FY 2007 Supplemental funds (\$285 million) until February 2008. SIGIR’s purpose for including this information in our report is only to answer the concerns expressed in the agencies’ responses to our draft report.

Foreign Assistance Act of 1961

The interagency agreements that DoS has negotiated with USACE are issued under the authority of section 632(b) of the Foreign Assistance Act of 1961 (Public Law 87-195) as amended. The act gives specific authority for agencies operating under the act to “utilize the services (including defense services) and facilities of, or procure commodities, defense articles, or military education and training, from any agency of the United States Government...” Unlike interagency agreements such as those entered into under the authority of the Economy Act (31 U.S.C. 1535(d)), which permits agencies to record contingent liabilities that are subject to deobligation if the funds are not obligated to award contracts within the period of availability; obligations recorded based on interagency agreements issued under the authority of the Foreign Assistance Act are full obligations which do not automatically deobligate after the period of availability if not subobligated.

DoS Obligations

Because these obligations were incurred under the Foreign Assistance Act, the funds identified in the agreements are obligated at the time the agreements are signed.⁴ However, SIGIR’s review shows that the appropriation obligations are not always supported by signed contracts at the time DoS records the obligation. Instead, after the agreements are signed, ITAO, in its programming

⁴ The agreements identify amounts to be obligated upon signing of the agreements and amounts to be obligated latter. However, in its response to our draft report DoS asserted that all of the funds are obligated at the time the agreements are signed.

role, solicits project requests from other program elements in Iraq, and then reviews and approves projects from among those submitted. Once ITAO approves a project, it is then forwarded to USACE who prepares the statement of work and, in coordination with the Joint Contracting Command-Iraq/Afghanistan solicits and awards a contract to implement it. After a contract is awarded, USACE enters the contract award amount in its official financial management system (Corps of Engineers Financial Management System or CEFMS). However, because DoS has already obligated most of the funds associated with the agreements upon the signing of the agreements, USACE and DoS refer to these as sub-obligations.

SIGIR's review of funds obligated under these agreements, as of September 22, 2008, shows that the current total value of the agreements is approximately \$1.25 billion. Of this amount, USACE has disbursed approximately \$587 million, or about 47% of the total value of the agreements. The low expenditure rate is due in part to the fact that only about 72% of the \$1.25 billion has been subobligated (that is USACE has awarded a contract for a specific project). USACE has not awarded contracts for \$350 million (28%) in ESF funds. These funds remain available to DoS. Table 2 below shows the status of funds under these interagency agreements.

Table 2—Status of Funds Under DoS Interagency Agreements with USACE

	Agreement Amounts & Obligations	USACE Subobligations		USACE Disbursements	
		Amount	% of DoS Obligation	Amount	% of DoS Obligation
All Agreements	\$1,253,972,675	\$903,983,676	72.09%	\$586,795,954	46.79%
Remaining	\$349,988,999				

Source: SIGIR Extract of CEFMS data in USACE Fiscal Status Report for Appropriations as of September 22, 2008

In written comments on the report draft, ITAO questioned SIGIR's statement that the funds that are not subobligated by USACE remain available to DoS. According to ITAO, only if USACE consents to deobligating the funding would it become available to DoS. SIGIR does not agree. According to each of the interagency agreements, "either party may terminate the agreement before completion of the project by providing 30 days written notice to the other party. Upon termination or expiration of this interagency agreement, any funds not expended or subobligated for allowable expenses shall be returned to the Department of State."

Fund Use Contributes to Rate of Expenditure

In written comments on a draft of this report, USACE stated that the purpose and nature of the ESF agreements is a key contributor to the ESF execution rate. For example, a purpose of the PRT program is to develop the capacity of the PRDCs by teaching, mentoring, guiding, and supporting them in preparing project scopes of work, bills of quantities, estimates, and project nomination forms. Specific projects are not identified in the agreement because the purpose of the program is to empower the Iraqi PRDCs to identify projects, prioritize them, identify funding streams, and work with the assistance of the PRT and USACE to get the project ready for award. This goal makes the development of projects and their execution lengthier than might otherwise

be the case. SIGIR added this point to this report as a contributing reason for the pace of expenditures.

In the case of the Infrastructure Security Program, USACE responded in its written comments that a key component of this program is the coordination with the Government of Iraq. The program, and project requirements stem from the Government of Iraq's plans and schedules for infrastructure system repairs and guard force hiring, training and equipping. In some instances, USACE must wait for the Government of Iraq to execute their portion of the project, whether it is infrastructure repairs or improvements or placing Iraqi Security Forces to guard ISP projects, before USACE can begin awarding and executing infrastructure security protection work.

In its written comments, ITAO said that the fact that precise projects to be implemented are not known at the time of execution of the interagency agreement is routine. At the time funds are obligated, the general nature and purpose of the individual projects that will eventually be selected are known, but the discrete projects are not. According to ITAO, this model is common among grant making agencies.

Status of Funds

FY2006—Table 3 shows the value of the three interagency agreements funded by the FY 2006 appropriation. As of September 22, 2008, the three agreements had a total value of about \$869 million, and disbursements of about \$554 million, or about 64% of the obligation. The table also shows that USACE has awarded contracts (subobligations) for about \$743 million, and that specific contracts have not been awarded for approximately \$126 million, or about 15% of the funds obligated by the agreements. USACE reported that it is holding \$30.6 million for contingencies.

Table 3—Status of Fiscal Year 2006 ESF Funds Used for DoS/USACE Interagency Agreements

Agreement Description	Agreement Amount/ Obligation	USACE Sub-Obligation		USACE Disbursements	
		Amount	% of DoS Obligation	Amount	% of DoS Obligation
PRT/PRDC	\$315,000,000	\$245,324,517	77.88%	\$151,274,814	48.02%
ISP	\$217,000,000 ⁵	\$174,701,783	80.51%	\$122,917,154	56.64%
O&M Sustainment & CD	\$336,972,675	\$322,859,948	95.81%	\$279,430,452	82.92%
Total	\$868,972,675	\$742,886,248	85.49%	\$553,622,420	63.71%

Source: SIGIR extract of CEFMS data in Gulf Region Division Fiscal Status Report for Appropriations as of September 22, 2008

FY 2007—Table 4 shows the status of the FY 2007 ESF appropriation. These funds were used to amend the agreement that funds PRDC/PRT activities. As of September 22, 2008, \$385 million

⁵ CEFMS actually shows \$227 million available because a March 2008 amendment to the agreement, which reduced funding by \$10 million, was not posted. The Table shows the corrected amount.

had been obligated, but disbursements were only \$33 million, or about 9% of the obligations. The table also shows that USACE has awarded contracts (subobligations) for about \$161 million. Specific contracts have not been awarded for approximately \$224 million, or about 58% of the FY 2007 funds obligated by the agreements. USACE reported that it is holding \$16.5 million for contingencies.

Table 4—Status of Fiscal Year 2007 ESF Funds Used for DoS/USACE Interagency Agreements

Agreement Description	Agreement Amount/Obligation	USACE Sub-Obligation		USACE Disbursements	
		Amount	% of DoS Obligation	Amount	% of DoS Obligation
PRT/PRDC	\$385,000,000	\$161,097,428	41.84%	\$33,173,534	8.62%

Source: SIGIR extract of CEFMS data in Gulf Region Division Fiscal Status Report for Appropriations as of September 22, 2008

Obligating funds when an interagency agreement is signed provides DoS with significant flexibility that it would otherwise not have under the ESF appropriation. For example, on March 31, 2008, six months after the appropriation expired, DoS modified one of the interagency agreements and deobligated approximately \$8 million in Fiscal Year 2006 ESF so that it could use the funds for a new interagency agreement with the Centers for Disease Control and Prevention to conduct a health training project in Iraq. As of September 2008, DoS is still negotiating the agreement with the Centers.

Conclusion

DoS's ESF funds are obligated at the time it enters into an interagency agreement—without identifying specific projects. This gives DoS greater flexibility and time for using such funds than it would have without an interagency agreement. The window for obligating, deobligating, and reobligating the funds under the Foreign Assistance Act, and the purpose and nature of the ESF agreements—developing the Iraqi's capacity—are also factors in the execution rate. The current status is that only 64 percent of the FY 2006 funds and 9 percent of the FY 2007 funds have been disbursed as of September 22, 2008.

Management Comments and Audit Response

In written comments on a draft of this report, USACE, DoS, and ITAO questioned SIGIR's statement that funds under these agreements are being expended at a slower rate than would typically occur. SIGIR has added a section to the draft that discusses expenditure rates. USACE also provided additional detail on the projects funded by these agreements to show how the funds are being used. SIGIR agrees with the information provided and believes it adds to the explanation for the pace of expenditure.

DoS expressed concern that the draft report contained inaccurate information and misleading conclusions about the Department's legal authorities and the nature of the agreement. SIGIR is not questioning the Department's authority to enter into these agreements, nor do we believe that

DoS' management of these agreements is improper. DoS offered suggested wording changes, and where applicable we have included these suggestions in this report. However, the audit's objective was to determine the status of and reasons for the pace of ESF expenditures. SIGIR identified two reasons for the low expenditure rate in our original draft and, based on the written comments we received, added a third reason—the nature of the agreements. We believe that these reasons explain the expenditure rates for these three agreements.

A copy of USACE's comments is in Appendix D. A copy of DoS's comments is in Appendix E. ITAO's comments are in Appendix F.

Appendix A—Scope and Methodology

This audit was performed under the authority of Public Law 108-106, as amended, which incorporates the duties and responsibilities of inspectors general under the Inspector General Act of 1978, as amended. The purpose of the review was to determine why the expenditure rate for ESF funds is relatively low as compared to other appropriations being used in Iraq.

We conducted this review during May through September 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In conducting this audit we interviewed management officials at the U.S. Embassy in Iraq, to include financial and budget officials of the Iraq Transition Assistance Office, officials of the United States Agency for International Development and officials of the Gulf Region Division of the United States Army Corps of Engineers.

We looked at allotment information, obligation data, commitment data, and expenditure data contained in various databases and financial systems used in Iraq, to include direct queries from the Iraq Reconstruction Management System (IRMS) and the U.S. Army Corps of Engineers Financial Management System (CEFMS). We obtained financial reports directly from U.S. Agency for International Development personnel and Department of State personnel in Iraq and Washington, DC, but we did not directly work with either the Department of State's or the U.S. Agency for International Development's financial databases and systems for this report.

Use of Computer-processed Data

While we relied upon computer generated data for information contained in this report, we performed limited verification of the data. We did verify information contained in CEFMS back to hard copies of the Interagency Agreements discussed in the report and found that customer authorization dollar amounts were not in agreement with information contained in CEFMS (a \$10 million error was identified). We compared financial system information obtained from the Gulf Regional Division, ITAO, and the U.S. Agency for International Development to other reports produced, such as the Section 2207 Report to Congress, but could not match up much of the detailed data we received to other reports. We were advised that differences in the timing of reporting of information from each of the systems and reports probably accounted for differences we noted in the data. Overall we do not have a reasonable assurance that the financial data we received from the various systems and reports is totally accurate; nevertheless we feel that for the purposes of this report the data we obtained was sufficiently accurate to support our conclusions.

Internal Controls

SIGIR reviewed the management controls related to the practices and procedures for obligating and expending funds under the interagency agreement process.

Prior Coverage

SIGIR issued a Fact Sheet on Sources and Uses of U.S. Funding Provided in Fiscal Year 2006 for Iraq Relief and Reconstruction (SIGIR-07-005; July 27, 2007). This fact sheet summarized the legislative authority for ESF, discussed the ESF reports produced, and provided a flow chart and time-line for the ESF funding process.

Appendix B—Acronyms

Acronym	Description
CD	Capacity Development
DoS	Department of State
ESF	Economic Support Fund
IRMO	Iraq Reconstruction Management Office
ISP	Infrastructure Security Protection
ITAO	Iraq Transition Assistance Office
OIA	Office of Iraq Affairs
O&M	Operations and Maintenance
PRDC	Provincial Reconstruction Development Committee
PRT	Provincial Reconstruction Team
USACE	U.S. Army Corps of Engineers

Appendix C—Review Team Members

This report was prepared and the audit was conducted under the direction of David R. Warren, Assistant Inspector General for Audit, Office of the Special Inspector General for Iraq Reconstruction.

The staff members who conducted the review and contributed to the report include:

Robert Gabriel

Dorian L. Herring

Frank W. Slayton

Appendix D—USACE Management Comments



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
GULF REGION DIVISION
BAGHDAD, IRAQ
APO AE 09348

CEGRD-CG

14 October 2008

MEMORANDUM FOR Special Inspector General for Iraq Reconstruction, US Embassy Annex,
M-202, Old Presidential Palace, APO AE 09316

SUBJECT: Draft SIGIR Audit Report – Status of Department of State Economic Support Fund
Interagency Agreements with the U.S. Army Corps of Engineers in Iraq (SIGIR- 09-006)

1. This memorandum provides the U.S. Army Corps of Engineers, Gulf Region Division response to the subject draft audit report.
2. The Gulf Region Division reviewed the subject draft report and provides additional comments for clarity and accuracy in the enclosure.
3. Thank you for the opportunity to review the draft report and provide our written comments for incorporation in the final report.
4. If you have any questions, please contact Mr. Robert Donner at (540) 665-5022 or via email Robert.L.Donner@usace.army.mil.

Encl
as

Michael R. Eyre
MICHAEL R. EYRE
Major General, USA
Commanding

COMMAND REPLY
to
SIGIR Draft Audit Report – Status of Department of State Economic Support Fund
Interagency Agreements with the U.S. Army Corps of Engineers in Iraq
SIGIR Report Number 09-006
(Project 8021)

Overall Comment. GRD reviewed the draft report and provides the following comments.

Additional Comments:

1. **Draft Report, Summary, first paragraph.** SIGIR's review shows that USACE has not awarded contracts for \$126 million from the Fiscal Year 2006 ESF appropriation (15%), and \$224 million from the Fiscal Year 2007 appropriation (58%). As a result, ESF expenditures are occurring at a slower rate than would typically occur.

Command Comment. The report does define a typical rate of expenditures or even if there are typical expenditure, rates for other Iraq related appropriations.

2. **Draft Report, Summary, first paragraph.** SIGIR's review shows that USACE has not awarded contracts for \$126 million from the Fiscal Year 2006 ESF appropriation (15%), and \$224 million from the Fiscal Year 2007 appropriation (58%).

Command Comment. Of the \$126M in FY2006, \$30.6M is for contingency funds and of the \$224M in FY2007, \$16.5M is for contingency funds.

3. **Draft Report, Summary, third paragraph.** SIGIR's review of funds obligated under these agreements, as of September 22, 2008, shows that the current total value of the agreements is approximately \$1.25 billion. Of this amount, USACE has disbursed approximately \$587 million, or about 47% of the total value of the agreements. The low expenditure rate is due in part to the fact that only about 72% of the \$1.25 billion has been subobligated (that is USACE has awarded a contract for a specific project). USACE has not awarded contracts for \$350 million (28%) in ESF funds.

Command Comment. Reviewing total disbursements and expenditures for both the FY2006 and FY2007 Supplemental does not provide an accurate picture. USACE did not receive FY2006 Supp funds until November 2006. USACE did not receive the first portion of FY2007 Supplemental funds (\$100M) until August 2007 and the second portion of FY2007 Supplemental funds (\$285M) until February 2008. Given the wide range of the receipt of funds, USACE, SIGIR cannot expect USACE to have disbursed all these funds on an equal basis. Furthermore, each program funded by ESF is different in nature, scope, and focus – which affects the overall expenditure and disbursement rates.

Enclosure

COMMAND REPLY
to
SIGIR Draft Audit Report – Status of Department of State Economic Support Fund
Interagency Agreements with the U.S. Army Corps of Engineers in Iraq
SIGIR Report Number 09-006
(Project 8021)

4. **Page 2, Objectives.** SIGIR has frequently been asked why the expenditure rate for ESF funds is relatively low as compared to other appropriations being used in Iraq. SIGIR analyzed the status of obligations and expenditures for three ESF-funded interagency agreements valued at \$1.25 billion and the practices used to obligate and expend funds to determine why this occurs.

Command Comment. SIGIR does not answer the basic question of why expenditure rates for ESF is low compared to other appropriations in Iraq. SIGIR also does not show any data for expenditure rates for other appropriations used in Iraq or perform any comparisons with these other appropriations to identify likenesses in scope, scale, and focus of the programs and projects being implemented. SIGIR does not include any discussion of why the ESF funds within each of the programs (PRDC, ISP, OMS) either does or does not meet typical expenditure rates.

5. **Page 4, first sentence.**

Command Comment. The main purpose of the PRT/PRDC program was to develop the capacity of the PRDC's by as SIGIR states, "teaching, mentoring, training, guiding and supporting them in preparing project scopes of work, bills of quantities, estimates and project nomination forms." Specific projects for the PRDC program were not identified because that would have defeated the entire purpose of the program. This program empowered the Iraqi PRDC to identify project requirements, prioritize them, identify funding streams, and work with the assistance of the PRT and GRD to get the project ready for award (i.e. perform all the project planning and development functions). Unlike IRRF, the ESF program is not meant to be a large reconstruction program and is clearly stated in the 632B agreement. As such, the majority of projects are valued at \$1M or less.

6. **Page 4, third paragraph.** This agreement was undertaken to obtain USACE support in strengthening the security of Iraq's oil, electricity and water infrastructure. IRMO and the Multi-National Force-Iraq identified urgent needs to harden key infrastructure elements and improve security. These projects included about 26 projects in the oil sector, about 6 projects in the water sector, and about 35 projects in the electricity sector. In general, the projects in all sectors included the construction of security barriers, observation facilities, and exclusion zones, constructing additional storage capacity, hardening selected structures, and implementing controlled access to critical facilities.

COMMAND REPLY

to

**SIGIR Draft Audit Report – Status of Department of State Economic Support Fund
Interagency Agreements with the U.S. Army Corps of Engineers in Iraq
SIGIR Report Number 09-006
(Project 8021)**

Command Comment. A key component of this program is the coordination that must take place with the Government of Iraq. The program, and project requirements, very much stems from the GOI plans and schedules for infrastructure system repairs and guard force hiring, training, and equipping. Many of the ISP projects funded by ESF are portions of larger efforts undertaken by the GOI. In some instances, GRD must wait for the GOI to execute their portion of the project, whether it is infrastructure repairs or improvements or placing Iraqi Security Forces to guard ISP projects, before GRD can begin awarding and executing ISP work. Again, a key focus of this program is to reinforce and support GOI infrastructure/security planning.

Appendix E—DoS Management Comments

**State Department Comments Regarding
“Status of Department of State Economic Support Fund Interagency Agreements
with the U.S. Army Corps of Engineers in Iraq”
SIGIR Draft Report SIGIR-09-006, dated October 3, 2008**

We appreciate SIGIR’s efforts to review the State Department’s inter-agency agreements with the U.S. Army Corps of Engineers and the useful work done to date that is reflected in the draft report. However, Department has strong concerns about some parts of the draft report that contain inaccurate or incomplete information in the draft report that has led to some misleading conclusions about the Department’s legal authorities and the nature of the agreements. Specific comments are listed below, and the Department is ready to discuss them in detail with SIGIR’s representatives.

1. Summary of Report and Page 5:

“SIGIR identified two significant and interrelated issues that affect the rate of obligation and expenditure for the ESF appropriations funding these agreements. First, although the ESF appropriation is a two year appropriation, obligations recorded based on interagency agreements under the authority of the Foreign Assistance Act of 1961 do not automatically deobligate after the period of availability. Instead, the funds remain available for deobligation and subsequent reobligation for a period of four years after the obligation expires. Second, although the funds identified in the agreements are obligated at the time the agreements are signed, projects are not always associated with the agreements at that time. SIGIR’s review shows that USACE has not awarded contracts for \$126 million from the Fiscal Year 2006 ESF appropriation (15%), and \$224 million from the Fiscal Year 2007 appropriation (58%). As a result, ESF expenditures are occurring at a slower rate than would typically occur. Further, the use of interagency agreements allows these funds to be available for expenditure well past the time the funds would have expired under the ESF appropriation.”

Comments:

- a. SIGIR curiously describes legal authorities as “issues,” which is an inaccurate description of settled law. Please replace “issues” with “legal authorities.”
- b. The legal authorities of ESF do not determine the rate of expenditure. Rather, the program objectives, structure, and execution determine the rate of expenditure.
- c. This section does not correctly describe the legal effect of obligations made in inter-agency agreements pursuant to section 632(b) of the Foreign Assistance Act (FAA). Appropriations law permits up to five years for expenditure (liquidation of the obligation) pursuant to 31 USC 1552(a), taking into consideration the bona fide needs rule as reflected in 31 USC 1502(a). This section of the report should be clarified by adding, after the second sentence:

“Instead, these obligated funds remain available for liquidation during the period of performance agreed to in the interagency agreements, consistent with the bona fide needs of the obligating agency. In addition,” In the next sentence, “Instead,” should be deleted, and “period of availability for” should be inserted before “obligation.”

- d. SIGIR does not describe what rates of expenditure of ESF funds are “typical,” so there is no basis for the stated opinion that ESF expenditures are “occurring at a slower rate than would typically occur.” [See also Page 8.] In addition, comparisons of ESF to other foreign assistance or to military assistance are not necessarily valid, since the purposes, availability, authorities and programs are vastly different. SIGIR’s conclusion is therefore not substantiated.

Second, the expenditures are consistent with the period of performance of the agreements. For example, the original PRDC program had a period of performance of approximately four years (Nov. 7, 2006 to Sept. 30, 2010). Halfway through this period, expenditures are half of the total obligated on the original agreement, as one would typically expect. Similarly, the other two programs have rates of expenditure that are consistent with their periods of performance. The flexibilities as well as the time periods of these programs are all consistent with statutory authorities and provisions that are typical in the foreign assistance area.

- e. The fourth sentence is unclear. Please revise as follows: “Second, although the funds identified in the agreements are obligated at the time the agreements are signed, specific projects are not always identified in the agreements or actually contracted for under the agreements at that time.”
 - f. The final sentence is inaccurate. Please revise as follows: “Further, the use of interagency agreements allows these funds to be available for expenditure well past the time the funds would have expired for obligation under the ESF appropriation; however, this period of availability for expenditure is appropriate due to the expenditure period statutorily available for these funds, and the Department of State’s bona fide need to engage the expertise of USACE at the time the interagency agreements were entered into to implement these large programs in Iraq.”
2. Summary of Report: “USACE has not awarded contracts for \$350 million (28%) in ESF funds. These funds remain available to DoS.”

Comment: These sentences are unclear. The “availability” of funding pertains to its availability for obligation. Since the funds have already been obligated, they are not “available.” This sentence should read “These funds may still be used to liquidate the obligations in the interagency agreements pursuant to contracts awarded for specific projects by USACE.” The funds may be used for

expenditure under the interagency agreement, or, because of the special authority in section 511 of the annual appropriations act, there is special authority allowing de-obligation and re-obligation.

3. Page 1: “The Economic Support Fund (ESF) is an appropriation account authorized by the Foreign Assistance Act of 1961 to provide flexible economic grant assistance to countries selected for their special political and security interests to the U.S.”

Comment: Please delete “grant” in this sentence. ESF assistance may be provided under the ESF authority in a variety of ways, including a.) grants to foreign countries, NGOs, international organizations, or other entities, b.) contracts, and c.) cooperative agreements. See section 531(a) of the Foreign Assistance Act: “The President is authorized to furnish assistance to countries and organizations, on such terms and conditions as he may determine, in order to promote economic or political stability.”

4. Page 1: “The Department of State (DoS) is responsible for identifying projects, setting priorities, and managing ESF project funding. Under policy guidance from DoS, and through an interagency agreement process, the U.S. Army Corps of Engineers (USACE) Gulf Region Division implements ESF projects for DoS. Management of the ESF in Iraq is the responsibility of the Iraq Transition Assistance Office (ITAO) on behalf of DoS. ITAO provides a programming and oversight role to executive departments and agencies in concluding the remaining large infrastructure projects in Iraq. In its programming role, ITAO solicits and reviews project requests from other program elements in Iraq. Approved projects are then given to USACE for execution. ITAO is the successor agency to the Iraq Reconstruction Management Office who previously performed this function, and served as the programming office at the time these agreements were made.”

Comments: This paragraph does not accurately describe roles and responsibilities of agencies and offices that participate in the implementation of the foreign assistance program in Iraq. Suggest replacing this paragraph with the following:

“Since mid-2006, the Department of State, through the Director of Foreign Assistance, is responsible for programming decisions for ESF. USAID and Department bureaus have been each given responsibility for implementing ESF funds for Iraq. DOS entered into three interagency agreements with USACE, beginning in 2006, to implement ESF funds for three major programs in Iraq. In these agreements, ITAO and USACE/GRD were provided specific roles to carry out ESF funding, in coordination with NEA and USACE/headquarters, respectively. ITAO carries out a role in the procedure of coordinating and overseeing the selection process for specific projects to be funded out of the USACE interagency agreements, particularly for the PRDC interagency agreement, due to the dual purposes of the interagency agreement: to build Iraqi capacity at the provincial and local level, as well as to provide needed projects in those areas in Iraq.”

5. Page 1: "The Foreign Assistance Act of 1961 requires agencies to spend ESF funds for the activities, programs, and projects justified to the Congress."

Comment: This sentence is unclear, please revise as follows: "The Foreign Assistance Act of 1961 requires that agencies spend ESF funds for the activities, programs and projects justified to the Congress."

6. Page 2: "In 2006, DoS and USACE executed three interagency agreements under the authority and funding provided by Public Law 109-234, which provided funding to carry out the purposes of the Foreign Assistance Act of 1961."

Comment: This sentence is inaccurate. The authority for the interagency agreements is provided in the FAA, section 632(b). The funding was appropriated in P.L. 109-234.

7. Page 3: "The initial value of this agreement was \$315 million and it was funded by the State Department's Fiscal Year 2006 Supplemental Appropriation."

Comment: The funding was provided in the Foreign Operations supplemental FY06 appropriation, not in the Department of State supplemental appropriation.

8. Page 3: "Specific projects that USACE was to support were not identified in the agreement."

Comment: This sentence does not sufficiently describe the agreement. Please add the following sentence: "Instead, consistent with the PRDC agreement's capacity building purpose, a detailed process of working with provincial councils and the PRTs to develop projects is included as an attachment to the agreement, along with specific allocations among provinces in the agreement, in order to identify the specific projects to be built using the funding obligated in the agreement."

9. Page 6: "For these agreements, 70% of the funds in these agreements were obligated when the agreements were signed; 15% were obligated two months later, and the remaining 15% was obligated when USACE submitted, and IRMO approved, management plans."

Comment: SIGIR incorrectly states the timing of obligation of the funds for the inter-agency 632b agreements with USACE. All funds are obligated at the time of signature of the inter-agency agreement. The percentages stated above apply only to when the funds were provided to USACE under the terms for one of the three agreements.

10. Page 6: "However, SIGIR's review shows that the appropriation obligations are not always supported by signed contracts at the time DoS records the obligation."

Comment: This sentence is inaccurate. The ESF funds associated with these inter-agency agreements are obligated at the time of signature on the agreements. There is no legal requirement for USACE to have signed contracts with individual firms at the time of the State Department's recording of obligation of the funds. The sentence should be revised as follows:

"However, SIGIR's review shows that the appropriation obligations do not require signed contracts between USACE and individual firms at the time DoS records the obligation."

11. Page 6: "Instead, after the agreements are signed, ITAO, in its programming role, solicits project requests from other program elements in Iraq, and then reviews and approves projects from among those submitted."

Comment: This sentence does not properly reflect ITAO's role. "Programming" describes the decisions about funding allocations, which are made by the Director of Foreign Assistance. Please revise: "Instead, after the agreements were signed, ITAO, in its role under the agreements to approve project decisions, solicits project requests from other implementing elements in Iraq, and then reviews and approves projects from those submitted."

12. Page 7: "...obligating funds when an inter-agency agreement is signed provides DoS with significant flexibility that it would not otherwise have under the ESF appropriation."

Comment: This sentence is inaccurate. ESF authorities apply to all ESF obligations of any kind, whether by inter-agency agreement, grant, contract, or cooperative agreement. This flexibility is provided as a result of a specific statutory authority in the annual foreign operations appropriations act (Section 611 in the FY08 act), which allows deobligation of funds as long as these funds were initially obligated before the end of the original date of availability.

At the time of obligation, the Department of State had a bona fide need to use the ESF funds to support the extensive PRDC, Operations and Maintenance, and the Infrastructure Security Programs at the time of obligation, all of which were clearly expected to be carried out over a period of years, as indicated by the several-year periods of performance reflected in the original agreements. The Department of State also had no capacity to carry out these programs itself, or through a private contractor or grantee, and thus signed IAAs with USACE/GRD to start these programs as soon as possible.

As competing and urgent requirements for funding arose in other areas, the Department used the authority specifically provided by statute to move funds to higher priorities. For example, on August 10, 2007, the Department notified Congress of a \$30 million re-allocation for a grant to UNHCR and UNICEF for assistance for Iraqi refugee schoolchildren in Jordan, Egypt, Lebanon and Syria, including school construction, teacher recruitment and training, remedial

education and community outreach programs. In addition, on December 31, 2007, the Department notified Congress of a \$20 million re-allocation to the United Nations to expand health services for Iraqi refugees in Jordan, Egypt, and Syria, including rehabilitation of clinic infrastructure, hiring of medical personnel, purchase of medicines, medical equipment and supplies, implementing health education activities, and improving disease surveillance and monitoring.

Appendix F—ITAO Management Comments



Embassy of the United States of America
Baghdad, Iraq

October 19, 2008

Mr. Glenn D. Furbish
Deputy Assistant Inspector General for Audit
Special Inspector General for Iraq Reconstruction

Dear Mr. Furbish:

Thank you for providing ITAO with an opportunity to comment on SIGIR's draft audit on the status of Department of State Economic Support Fund Interagency Agreements with the U.S. Army Corps of Engineers (USACE) in Iraq. Although this report is an informational report that offers no recommendations nor raises any issues that require a response from management, we nevertheless feel we have a responsibility to bring any inaccuracies or flawed analysis to your attention. There are a few elements contained in the report that we believe should be clarified to avoid any possibility of misleading the reader.

The report states that "SIGIR has frequently been asked why the expenditure rate for ESF funds is relatively low as compared to other appropriations being used in Iraq." The report goes on to assert that "ESF expenditures are occurring at a slower rate than would typically occur." Nowhere in the report, however, is there a baseline for typical expenditures or any comparative data to support the implication that other appropriations are being used at a faster rate.

This report reviews only the ITAO ESF programs that are implemented through the use of 632(b) agreements, suggesting that this is an unusual obligating instrument that slows the rate of expenditure of funds. In fact, the use of the Interagency Agreement in accordance with article 632(b) of the Foreign Assistance Act is common among all assistance providing agencies. There is nothing irregular about the fact that the precise projects to be implemented are not known at the time of execution of the 632(b). At the time funds are obligated, the general nature and purpose of the individual projects

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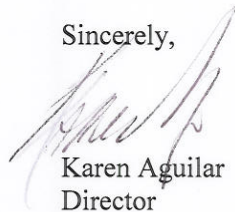
that will eventually be selected are known, but the discrete projects are not. This model is common among almost every competitive grant making agency. USAID follows a very similar approach with several of its programs in Iraq, the Community Stabilization Program among others.

This report also states that "Management of the ESF in Iraq is the responsibility of the Iraq Transition Assistance Office (ITAO) on behalf of DoS." This is only partly accurate. Other agencies such as USAID and the Bureaus of Democracy, Human Rights & Labor (DRL), and International Narcotics & Law Enforcement (INL) are also responsible for managing ESF funds in Iraq.

Finally, the report states that funds not currently awarded by USACE "remain available to DoS." In fact, funds not yet awarded on contract by USACE, or 'sub-obligated,' remain obligated to USACE and are not available for use by DoS. Only if USACE consents to de-obligating such funding, as with any other form of obligation, would it again become available to DoS.

SIGIR may wish to consider whether these errors and inconsistencies merit issuing a corrected version of this report.

Sincerely,



Karen Aguilar
Director
Iraq Transition Assistance Office

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Congressional Affairs	Hillel Weinberg Assistant Inspector General for Congressional Affairs Mail: Office of the Special Inspector General for Iraq Reconstruction 400 Army Navy Drive Arlington, VA 22202-4704 Phone: 703-428-1059 Email: hillel.weinberg@sigir.mil
Public Affairs	Kristine R. Belisle Director for Public Affairs Mail: Office of the Special Inspector General for Iraq Reconstruction 400 Army Navy Drive Arlington, VA 22202-4704 Phone: 703-428-1217 Fax: 703-428-0818 Email: PublicAffairs@sigir.mil