

**FY2008 Interagency Agreement  
Between  
The Department of State  
Bureau for International Narcotics and Law Enforcement  
and  
The U.S. Army Corps of Engineers,  
Gulf Region Division**

**Court Security Upgrades**

This Interagency Agreement (Agreement) is entered into by the Department of State, Bureau for International Narcotics and Law Enforcement Affairs (INL) (requesting agency) and the U.S. Army Corps of Engineers, Gulf Region Division (USACE/GRD) (performing agency).

**I. Purpose of Agreement**

The purpose of this agreement is to provide up to \$9,000,000.00 of International Narcotics Control and Law Enforcement (INCLE) funds appropriated by the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, P.L. 110-28. These funds will support the installation of security upgrades at up to seventeen courthouses throughout Iraq, as further described in the Proposal for Iraq Court Security Upgrades – Phase III, appended as Attachment A.

INL will submit individual Statements of Work (SOW) to USACE/GRD for execution under the terms of this Agreement. USACE/GRD will provide oversight and expert guidance on the project, ensuring that infrastructure being provided meets the intended use under this Agreement and are of a standard of materiel and quality that meets guidelines provided in the individual SOW. Any subsequent changes in the SOW prior to solicitation will require INL approval.

**II. Authorities**

The purpose of the activities under this Agreement is to provide assistance to the Government of Iraq to enhance the ability of its law enforcement personnel to address international criminal activities as authorized by Chapter 8 of Part I of the Foreign Assistance Act of 1961, as amended (22 U.S.C. § 2291, et seq.), (“the Act”). Funds are provided by the requesting agency to the performing agency thereunder by authority of section 632(b) of the Act (22 U.S.C. § 2392(b)). In carrying out its functions thereunder, the performing agency may utilize and rely upon the administrative authorities available to agencies carrying out activities under the Act, including but not limited to those in Sections 635 and 636 of the Act (22 U.S.C. §§ 2395, 2396).

### **III. Fiscal Terms**

A. This Agreement represents an obligation of funds in the amount of \$9,000,000.00. Attachment A of this Agreement contains the approved program proposal. Adjustments to the Independent Government Estimates (IGEs) that will be prepared by GRD for approval of INL or to the cost of individual budget line items within those IGEs that are greater than 10% must be agreed to in advance in writing by INL. In the event excess funding remains on completion of the activities described herein but prior to the expiration of the Agreement, the unliquidated balance of funds shall be expended by the performing agency as directed by INL or de-obligated.

B. The performing agency shall maintain accountability and controls in accordance with its agency's rules and regulations, and shall be accountable to the requesting agency for all funds made available to it in this Agreement. Funds shall be expended only on activities, services, or materials that contribute to meeting program objectives. The performing agency shall immediately notify the requesting agency of any actual or anticipated project cost overruns.

C. The performing agency shall not realign any funds to meet additional security needs, security related costs or additional administrative fees without prior authorization of the requesting agency.

D. Within ninety (90) days of completing the work under this Agreement, the performing agency shall conduct a final accounting to determine the actual costs of the work. Within thirty (30) days of completion of this accounting, the performing agency shall return to the requesting agency any funds advanced in excess of the actual costs as then known, or the requesting agency shall provide any additional funds necessary to cover the actual costs subject to the terms and conditions of this Agreement. Such an accounting shall in no way limit the requesting agency's responsibility to pay for any costs or other liabilities, such as contract claims or other liability, which may become known after the final accounting.

E. If the USACE forecasts its actual costs to exceed the amount of funds available under this Agreement, it shall within 5 working days notify INL of the amount of additional funds necessary to complete the work under this Agreement. INL shall either provide the additional funds to USACE, or require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work.

### **IV. Administrative Procedures**

USACE/GRD shall advise INL Baghdad at least two weeks in advance regarding the timing of significant activities implemented under this agreement, as further described in Attachment A.

### **V. Contacts**

The requesting agency point-of-contact in Washington is Suzanne Sheldon, INL/I Team Leader – Rule of Law, 202-647-0456, SheldonSA@State.gov, and in Baghdad is Garry Phillips, Judicial Security Program Manager. The performing agency point-of-contact is Mr. Lloyd Caldwell, Director, GRD Programs, 703-544-6936 ([Lloyd.caldwell@pco-iraq.net](mailto:Lloyd.caldwell@pco-iraq.net))

## VI. Billings and Accompanying Documentation

USACE/GRD will bill INL based on expenditures of funds obligated for authorized activity expenses at the end of each quarter. Billing and payment will be effected through the Interagency Payment and Collection system (IPAC). Notice of IPAC billing and a copy of the accompanying documentation should be sent to the following office:

Department of State  
International Narcotics and Law  
Enforcement Affairs (INL/RM)  
Room 103, SA-4, South Building  
Washington, D.C. 20522-2800

INL Agency Locator Code: 19-00-0001  
Fiscal data to be cited on all IPAC bills:

| <u>Appropriation</u> | <u>Allotment</u> | <u>Obligation</u> | <u>Org.</u> | <u>Function</u> | <u>Object</u> | <u>Amount</u>  |
|----------------------|------------------|-------------------|-------------|-----------------|---------------|----------------|
| 1911 7/81022.0       | 2072             | 849P744           | 019575      | 2795            | 2589          | \$9,000,000.00 |

On financial matters, the DOS point of contact is Debbie Short , 202-776-8951, WilliamsCF3@State.gov. The USACE/GRD point of contact is Ms. B.J. Fagan, Director, GRD Resource Management, 540-542-1404 ([billie.j.fagan@usace.army.mil](mailto:billie.j.fagan@usace.army.mil)).

## VII. Responsibilities of Parties and Progress and Financial Reports

### A. Responsibilities of the Department of the Army

1. The USACE shall provide the INL with goods or services in accordance with the purpose, terms, and conditions of this Agreement.
2. The USACE shall ensure only authorized USACE representatives sign agreements.
3. The USACE shall use its best efforts to provide goods or services either by contract or by in-house effort.
4. The performing agency will furnish INL with monthly status reports documenting highlights and accomplishments for the reporting period and describing, for each project activity listed in Attachment A, accomplishments, results, any problems

encountered, any change orders effected, and planned activities for the next 30 days. The report must contain each program activity title (per fiscal line in the agreement) and include, at a minimum, the following information/documentation:

- a. Overall project status;
- b. Remaining unobligated balance of funds;
- c. Projected funding needed for completion;
- d. A list of all change orders and design changes/modifications including completion dates and justification for these changes;
- e. A summary of critical issues or challenges;
- f. A plan of action to resolve outstanding challenges or issues;
- g. Photographs of completed sections of the project.

The performing agency shall provide INL a notice of intent to enter into contract(s) under this Agreement at least fifteen (15) days prior to signing and copies of all signed contracts within thirty (30) days of the contract signing.

The performing agency also will furnish INL with quarterly financial assessment reports including information on actual expenses for each completed activity and showing commitments and remaining balances for each major category and line item. All progress and financial assessment reports shall be forwarded to the following persons via e-mail:

Garry Phillips  
INL Baghdad Judicial Security Program Manager  
Embassy Baghdad, Iraq  
PhillipsGL@State.gov

Suzanne Sheldon  
U.S. Department of State, INL/I  
Team Lead- Iraq Rule of Law Programs  
SheldonSA@State.gov

and

Debbie Short  
U.S. Department of State, INL/RM/BUD  
Financial Management Analyst  
ShortDA@State.gov

5. USACE shall provide INL with copies of all signed contracts entered into under this Agreement within ninety (90) days of the contract signing. The POC for real estate issues is ~~XXXXXXXXXXXX~~ with the USACE Real Estate Office at ~~XXXXXXXXXXXX~~@usace.army.mil or 540-665-5069.

6. Subject to the terms and conditions of this Agreement, USACE agrees to make its best effort to perform the work within the amounts provided for under the section entitled "Fiscal Terms".

7. The overall fees of USACE in furnishing goods and services, as agreed to in the section entitled "Fiscal Terms", do not include life support and security costs for USACE which are paid for out of separate Department of Defense Operation and Maintenance appropriations.

8. USACE shall provide INL with copies of all signed contracts entered into under this Agreement within ninety (90) days of the contract signing.

**B. Responsibilities of the Bureau for International Narcotics and Law Enforcement Affairs**

1. INL shall pay all costs and fees associated with USACE's provision of goods and services, as defined under this Agreement and subject to the terms and conditions of this Agreement.

2. In the event that actual costs incurred by the USACE under this Agreement exceed the amount obligated in the section entitled "Fiscal Terms", INL agrees to pay such costs from legally and programmatically available funds. If INL has no legally and programmatically available funds to pay such costs, INL will use reasonable efforts to request from the relevant appropriations committees in Congress additional appropriations to pay for any such unpaid costs.

3. INL shall ensure that only authorized INL officers sign agreements.

4. When available and appropriate, INL shall allow USACE to share office space at facility locations where INL justices' program contractors are stationed. When available and appropriate, the INL shall allow the USACE personnel to utilize justice program ground transportation and force protection.

**VIII. Applicable Laws**

This Agreement and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States. Unless otherwise required by law, all contract work undertaken by the USACE shall be governed by USACE policies and procedures. To the extent consistent with U.S. law, all work performed under this Agreement shall conform to applicable Iraqi laws. In the event applicable U.S. law conflicts with Iraqi law, the USACE and INL shall determine any remedies. If no remedies are available, USACE may terminate any affected agreement. In the event the USACE terminates an agreement, INL shall remain responsible for all costs, including liabilities incurred by USACE pursuant to that agreement.

## **IX. Dispute Resolution**

The parties agree that, in the event of a dispute between the parties, INL and USACE shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. The parties agree that, in the event such measures fail to resolve the dispute, they shall refer it for resolution to the appropriate officials, as agreed to by both parties.

## **X. Liability**

A. If liability of any kind is imposed on the United States in connection with the USACE's provision of goods and services under this Agreement, USACE will accept accountability for its actions, but INL will remain responsible for providing such funds as are necessary to discharge this liability and all related costs. This obligation relates to all funds legally and programmatically available to discharge this liability. Should INL have insufficient funds legally and programmatically available to discharge this liability, it remains responsible for seeking additional funds from Congress for such purpose, although nothing in this Agreement shall be construed to imply that Congress will appropriate funds sufficient to meet the liability.

B. USACE will inform INL of any contract or other claim filed in connection with any activity funded by this Agreement by including this information in the next monthly report provided for in this Agreement. INL will be offered the opportunity to review and comment on litigations proceedings, including settlement negotiations, for claims that arise out any activity funded by this Agreement.

## **XI. Intellectual Property**

A. Unless otherwise prohibited by law, the USACE shall have the sole right and responsibility to apply for, obtain, and maintain protection in the United States or other countries for technology or intellectual property developed by the USACE employees or arising under or related to contracts awarded by the USACE pursuant to this Agreement.

B. The USACE shall retain and distribute any royalties or other income from any such protection to the extent allowed by law.

C. Unless otherwise prohibited by law, USACE may grant nonexclusive, exclusive, or partially exclusive licenses under any form of protection obtained, royalty-free or for royalties or other consideration, and on such terms and conditions determined by USACE as appropriate in the public interest. INL shall have a non-exclusive, royalty-free right to utilize the documents and work products produced under this Agreement and on other projects and with other service providers.

## **XII. Public Information**

A. In general, INL is responsible for all public information. USACE may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. INL or USACE shall make its best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed under this Agreement.

B. Justification and explanation of INL's programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of INL. The USACE may provide, upon request, any assistance necessary to support INL's justification or explanations of INL's programs conducted under this Agreement.

## **XIII. Other Terms and Conditions**

1. An original of this interagency agreement must be returned to the requesting agency by the performing agency with original signatures. Duplicate signatures will not be accepted. One original with original signatures is for the performing agency; the other for the requesting agency.

2. The performing agency agrees that it will expeditiously initiate and complete the activities for which funds have been awarded under this agreement.

3. This Agreement may be amended by mutual agreement of both parties or terminated by either party upon serving written notice to the other party. If the Agreement is terminated, the performing agency will be reimbursed for work already performed and costs incurred in preparation for performance.

4. If and when arranging official international air travel, the performing agency will use travel guidelines set forth in 14 FAM Section 500 (or performing agency travel guidelines, if more restrictive). INL will reimburse for travel accommodations and routing by the most direct and economical means. Pursuant to guidelines issued by the Office of Management and Budget (OMB), if travel time is more than 14 hours a rest stop of up to 24 hours or the use of business class accommodation may be authorized if the traveler reports to duty the day after arrival and if authorized in advance by INL. Travel by participants in regional activities is to be by economy class accommodation by the most direct and economical route.

5. If and when arranging official international air travel, prior to such official travel abroad by its employees under this agreement, the performing agency will obtain required country clearance pursuant to relevant procedures established by the U.S. Mission-Iraq. In any such instances, INL will be notified five (5) business days before transmission of the country clearance request.

6. Procurement by USACE shall be in accordance with the Federal Acquisition Regulations (FAR) and 6 Foreign Affairs Manual (FAM) 200 and 6 FAM 1200.

7. USACE must have a warranted contracting official available to carry out the provisions of any contracts signed under this Agreement.

8. INL will conduct inspections of the project in coordination with GRD.

9. Other Relationships or Obligations: This Agreement shall not affect any pre-existing or independent relationships or obligations between INL and USACE.

10. Survival: The provisions of this Agreement which require performance after the expiration or termination of this Agreement shall remain in force notwithstanding the expiration or termination of this Agreement.

11. Severability: If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

#### **XIV. Right to Audit:**

The performing agency will allow INL to conduct program, financial and administrative reviews (e.g., audit of financial records and inspection of administrative procedures for authorizing travel, expenditure, etc.). The timing of reviews will be coordinated with the performing agency.

#### **XV. Period of Agreement**

This Agreement shall become effective as of the latest date indicated below when signed by both INL and USACE/GRD and shall continue into effect until December 2009.