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

## MIDDLE EAST REGIONAL OFFICE

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### Limited-Scope Review of the Design and Construction of a Recreation Center at Embassy Dushanbe, Tajikistan

**Report Number MERO-I-11-04, March 2011**

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## PREFACE

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

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

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

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

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

Harold W. Geisel  
Deputy Inspector General

## TABLE OF CONTENTS

INTRODUCTION.....	1
BACKGROUND.....	3
RESULTS.....	5
Contractor’s Compliance with Intended Design and Construction Standards, Policies, Laws, and Regulations.....	5
Monitoring Contractor Performance.....	9
RECOMMENDATIONS.....	11
MANAGEMENT COMMENTS AND OIG RESPONSE.....	13
ABBREVIATIONS.....	15
APPENDIX I: COMMENTS FROM THE OFFICE OF ACQUISITION MANAGEMENT.....	17
APPENDIX II: COMMENTS FROM THE BUREAU OF OVERSEAS BUILDINGS OPERATIONS.....	21



# INTRODUCTION

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The Middle East Regional Office (MERO) of the Office of Inspector General (OIG) performed this limited-scope review because of concerns about the Department of State's (Department) management of the contractor's work and adherence to internal policy, procedures, laws, and regulations. The objectives of this review were to determine: (1) whether the contractor, PIR-5 LTD (PIR-5), constructed the recreation center according to the intended design and in compliance with the design and construction standards, laws, regulations, and policies; and (2) whether the Regional Procurement Support Office (RPSO) in Frankfurt, Germany and Embassy Dushanbe appropriately monitored PIR-5's performance against contract requirements.

OIG's limited-scope review took place between September 2010 and November 2010 in Washington, DC; Frankfurt, Germany; and Dushanbe, Tajikistan. During the review, OIG met with Embassy Dushanbe administrative, financial, and facilities managers to review the design and construction process, contract administration, contractor monitoring, and the invoice review process. In addition, OIG interviewed RPSO procurement officials, three of the five contracting officer's representatives (COR) assigned to monitor the contractor's performance, and the Bureau of Overseas Buildings Operations (OBO) design and program management staff responsible for administering the Dushanbe recreation center. OIG reviewed contract files, overseas contracting regulations, OBO standards and building codes, and survey results of the current conditions of the recreation center. OIG also physically observed the Dushanbe recreation center during a site visit in October 2010.

This review is a second evaluation of the Department's management of small post-managed construction projects.<sup>1</sup> In 2009, OIG reported that the contractor for the heated parking garage and recreation center at Embassy Astana, Kazakhstan did not follow OBO procedures for completing construction designs, including failure to address 83 comments in OBO's design review. In that project, the contractor failed to: (1) complete design/construction documents, a safety plan, and a quality control plan and designs; (2) pay the required performance guaranty bond and a payment bond; and (3) recover the value added tax on local procurements from the Government of Kazakhstan. Additionally, the contractor allegedly failed to pay salaries to local employees, vendors, and subcontractors. Furthermore, RPSO recently

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<sup>1</sup> See *Management and Internal Controls over Construction of a Heated Parking Garage and a Recreational Center at the U.S. Embassy in Astana, Kazakhstan*, MERO-I-09-11, November 2009.

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reported another failure of a post-managed construction project at Embassy Bishkek, Kyrgyzstan, citing poor evaluations of proposals, turnover of mission personnel, and resulting gaps in COR coverage.

This memorandum report was prepared under the direction of Richard “Nick” Arntson, Assistant Inspector General for MERO. The following staff members conducted the review and/or contributed to the report: David Bernet, Patrick Dickriede, Carl Gipson, Kelly Herberger, and Kelly Moon.

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## BACKGROUND

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In 2006, after the completion of its new compound, Embassy Dushanbe initiated a post-managed project to construct a recreation center consisting of a swimming pool, bathhouse, and tennis court. Embassy Dushanbe and RPSO solicited a design/build contract. In December 2006, RPSO and Embassy Dushanbe awarded a design/build contract to a local (Tajik) contractor, PIR-5 for a total of \$271,770. A subsequent modification valued at \$47,143 was added to the contract cost in May 2008, for a total value of \$318,913.

In January 2007, RPSO issued a notice to proceed with design, and PIR-5 designed and constructed the recreation center from January 2007 until May 2009. OBO issued the building permit<sup>2</sup> in October 2007, following its approval of the contractor's initial design.<sup>3</sup> In July 2008, RPSO issued a notice to proceed with construction while PIR-5 was still developing the design. PIR-5 began construction in the fall of 2008, and the initial project completion date was December 12, 2008. When the contractor could not meet the initial completion date, it was formally extended to April 30, 2009 through a contract modification.

On May 21, 2009, PIR-5 ceased site activities and walked off the job when RPSO withheld payments for unsatisfactory performance and failure to meet the agreed upon completion date. The contract was formally terminated for convenience<sup>4</sup> on July 15, 2009, and RPSO settled the termination price with the contractor.

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<sup>2</sup> For projects involving U.S. Government-owned/long-term, leased real property, OBO reviews the design to ensure that the project conforms to building codes adopted by the Department of State. If the project complies with these building codes, OBO issues a building permit to be posted at the project site.

<sup>3</sup> The contract with PIR-5 requires the contractor to submit designs—an initial design that incorporates 60 percent of the contract specifications, and a final design that incorporates 100 percent of the contract specifications. OBO and the COR review and comment on both the initial and final designs. Before the final design is approved, the contractor should address each comment provided by OBO and the COR in their reviews of both the initial and final designs.

<sup>4</sup> According to the *Foreign Affairs Handbook* (FAH), 14 FAH-2 H-543.2a., "Situations may arise when the work contracted for does not run to completion. Two standard contract clauses are designed to cover this eventuality: the Termination for Convenience of the Government clause and the Default clause." For fixed price contracts terminated for convenience, per *Federal Acquisition Regulation* (FAR) 49.201(a), "A settlement should compensate the contractor fairly for the work done and the preparations made for the terminated portions of the contract, including a reasonable allowance for profit. . . various methods may be equally appropriate for arriving at fair compensation." According to FAR 49.402-2(a), if a fixed-price contract is terminated for default, the U.S. Government is not liable for the contractor's costs on undelivered work and is entitled to the repayment of advance and progress payments.

In October 2009, OBO retained Swanke Hayden Connell Architects, an architectural and engineering consulting firm, under an indefinite delivery indefinite quantity contract,<sup>5</sup> to evaluate the existing conditions of the recreation center and determine how to complete the project.

OBO provided a total of \$318,913 in construction funds to Embassy Dushanbe for the design and construction of the recreation center. Table 1 shows the total amount of funds obligated, expended, and de-obligated upon contract termination.

**Table 1: Bureau of Overseas Buildings Operations Funding for Embassy Dushanbe Recreation Center**

	FY 2007	FY 2008	FY2009	FY 2010	Total
<b>Contract Value</b>	<b>\$271,770</b>	<b>\$47,143</b>			<b>\$318,913</b>
Obligated	\$282,641	\$50,000			\$332,641 <sup>a</sup>
Expended	\$10,871	\$114,762	\$177,743		\$303,376
De-obligated				\$29,265	\$29,265 <sup>b</sup>
<b>Balance:</b>					<b>\$0</b>

<sup>a</sup> The total amount of obligated funding (\$332,641) includes RPSO fees and value added tax, in addition to the total contract value.

<sup>b</sup> The remaining balance of \$29,265 was de-obligated at the time of contract termination. However, on November 24, 2010, RPSO reduced the de-obligated amount to \$25,735 because Embassy Dushanbe and RPSO had erroneously included expenditures that were not directly related to the contract.

*Source: OIG analysis of RPSO and Embassy Dushanbe data*

<sup>5</sup> According to FAR 16.501-2 (a), “There are three types of indefinite-delivery contracts: definite-quantity contracts, requirements contracts, and indefinite-quantity contracts. The appropriate type of indefinite-delivery contract may be used to acquire supplies and/or services when the exact times and/or exact quantities of future deliveries are not known at the time of contract award.” Per FAR 16.504, “An indefinite-quantity contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period.”

# RESULTS

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## CONTRACTOR'S COMPLIANCE WITH INTENDED DESIGN AND CONSTRUCTION STANDARDS, POLICIES, LAWS, AND REGULATIONS

OIG found that the contractor, PIR-5, did not design and construct the Dushanbe recreation center in accordance with required building codes and guidelines. In addition, Embassy Dushanbe, OBO, and RPSO did not ensure PIR-5 submitted the required designs or resolved design issues prior to starting construction.

OIG confirmed through physical observation at Embassy Dushanbe and analysis that the constructed facilities in their current condition do not comply with International Building Code (IBC) specifications, OBO's Standard Embassy Design (SED), Americans with Disabilities Act (ADA) accessibility guidelines, and other internationally accepted mechanical, plumbing, and electrical codes. This finding corresponds with the results of Swanke Hayden Connell Architect's evaluation of the Dushanbe recreation center, which showed that the construction was substantially incomplete and the recreation center was not constructed in accordance with required codes and guidelines. Swanke Hayden Connell Architects reported that the site paving, site retaining walls, the pools and pool deck areas, electrical system, and pool filtration and heating systems were not completed, which resulted in an unsafe and largely unusable facility. In addition, Swanke Hayden Connell Architects determined that the site design of the pools and deck areas was not compliant with the IBC. As a result, OBO concluded that all swimming pool facilities must be demolished, redesigned, and reconstructed, except for the tennis court which was repairable. OBO estimated tear down and reconstruction costs to be approximately \$1.5 million. The initial project cost was \$318,913. As of October 2010, OBO had issued a modification to the existing task order for Swanke Hayden Connell Architects to begin redesigning the recreation center. The actual reconstruction contract will be re-competed, and rebuilding, according to OBO's plan, will not commence until late 2011. Instead of RPSO, the Office of Acquisition Management (AQM) in the Bureau of Administration will administer the redesign and reconstruction contract; an OBO employee will act as the COR. Table 2 outlines the deficiencies in design and construction. Figure 1 shows the condition of the swimming pool and the pool equipment room at the time of OIG's visit to Embassy Dushanbe.

**Table 2: Deficiencies in Design and Construction of the Embassy Dushanbe Recreation Center**

<b>Wading Pool</b> ( <i>Wading Pool already demolished by the embassy</i> )
<ul style="list-style-type: none"> <li>- Needs separate filtration and heating system</li> <li>- No underwater or exterior lighting</li> <li>- Needs adequate spacing from the main pool</li> <li>- No waterproof barrier</li> <li>- Improper plumbing drains</li> <li>- No suction entrapment avoidance</li> </ul>
<b>Swimming Pool</b>
<ul style="list-style-type: none"> <li>- Pool design does not comply with OBO SED or the IBC</li> <li>- Needs separate filtration and heating system</li> <li>- No underwater and limited exterior lighting</li> <li>- Improper plumbing drains</li> <li>- No suction entrapment avoidance</li> <li>- No waterproof barrier</li> <li>- Needs outdoor shower</li> </ul>
<b>Cabana</b>
<ul style="list-style-type: none"> <li>- Toilet, showers, and locker rooms are not handicapped accessible and do not meet OBO SED or the IBC</li> <li>- Floor is not slip-resistant or moisture-resistant</li> <li>- Needs corrosive resistant metal door and grab bars</li> <li>- No heating, ventilation, or exhaust system</li> </ul>
<b>Pool Equipment Room</b>
<ul style="list-style-type: none"> <li>- Inadequate spacing and area clearances from the pool deck area</li> <li>- No filtration, ventilation, or heating systems</li> <li>- Improper electric service and branch circuits</li> <li>- Severe honeycombing texture in entry stairs and cracks in retaining wall</li> </ul>
<b>Tennis Court</b>
<ul style="list-style-type: none"> <li>- Concrete curb at the perimeter of the court not finished</li> <li>- Inadequate lighting for night time play</li> <li>- Fencing does not enclose all around the court</li> <li>- Poor water drainage in rain</li> </ul>

Source: *OIG physical observation and analysis of OBO data*

**Figure 1: Condition of the recreational facilities at Embassy Dushanbe:** The photo on the left shows incomplete and poor quality construction of the swimming pool. The photo on the right shows pipes protruding from the wall of the pool equipment room.



Source: OIG

OIG found a number of underlying issues that led to deficiencies in the design and construction of the recreation center. First, RPSO and the embassy based the award decision on price, but did not assess the reasonableness of the proposed price by adequately evaluating the contractor's technical qualifications. The FAR states that the evaluation of contract proposals should include consideration of whether proposed prices are reasonable;<sup>6</sup> purchases shall be made from, and contracts awarded to, responsible prospective contractors only.<sup>7</sup> PIR-5's price proposal, the sole offer received under the solicitation, was approximately 61 percent below the U.S. Government estimate of \$694,414. However, the proposal included no information on PIR-5's design experience, past performance in building swimming pools, the suppliers and subcontractors it planned to use, or planned soil testing. Nevertheless, the technical evaluation panel at the embassy determined the proposal to be conditionally acceptable. As a result, RPSO and the embassy took a risk by awarding the contract to an unqualified contractor.

Second, the *Foreign Affairs Manual* (FAM) states that, for projects valued at greater than \$250,000, staff from OBO's Design and Engineering Division in the Project Execution Office and other OBO professionals will assist the mission with all aspects of the work, including project planning, design review, construction, and commissioning.<sup>8</sup> OBO and RPSO officials stated that, although the Embassy Dushanbe

<sup>6</sup> FAR 15.305(a) (1).

<sup>7</sup> FAR 9.103(a).

<sup>8</sup> 15 FAM 645.1-2 (3).

recreation center project met the \$250,000 monetary threshold, it was decided the project would be post-managed. Additionally, the contract requires OBO and the on-site COR to review the contractor's initial and final design documents. It also requires OBO to conduct a final "back-check" of the contractor's final design to ensure that all issues identified during previous design reviews are resolved and incorporated into the final construction documents.

PIR-5, however, never addressed OBO's outstanding design issues. Furthermore, neither the COR at Embassy Dushanbe, nor OBO nor RPSO, verified that these design issues were resolved prior to authorizing the start of construction. In October 2007, OBO approved the contractor's initial design with the provision that the contractor address a number of OBO's comments in the final design and during construction. These comments included such items as handicapped accessibility; pool layout; and plumbing, electrical, and safety items that were not in compliance with requirements in the IBC, ADA specifications, or other relevant construction codes. OBO provided detailed codes and specifications to the COR. According to emails written in November and December 2007 between the COR then at the embassy and RPSO, post management was eager to start construction of the project, despite the contractor's failure to address OBO's review comments or obtain required performance bonds and insurance. OBO subsequently agreed to allow the construction to begin provided the contractor address the outstanding design issues in the final design, and the COR ensure they were incorporated into the construction of the facilities. On July 1, 2008, a construction notice to proceed was issued by RPSO, which authorized PIR-5 to begin construction without either PIR-5's submittal or Department review of the final project design. Consequently, PIR-5 did not submit its final design until November 2008—1 month prior to the initial construction completion date. OBO pointed out that previously identified deficiencies had not been corrected by PIR-5 in its final design, but the contractor refused to make any corrections, stating that the facilities were already built and OBO had approved the initial design. As a result, the issues identified by OBO in its review of the initial design were never incorporated into the construction of the facilities.

RPSO and Embassy Dushanbe also did not establish the means to guarantee performance or limit risk on a fixed-price contract. Because Embassy Dushanbe was eager to start the project, as stated in emails from November to December 2007, RPSO waived the requirements for performance guarantee. RPSO did not enforce a contract requirement to limit the U.S. Government's risk through the contractor's purchase of payment bonds and insurance<sup>9</sup> when PIR-5 encountered difficulties obtaining them. No other means, such as bank letter of credit, were pursued to limit risk should the contractor fail to fulfill the terms of the contract. The waiver of bonding and insur-

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<sup>9</sup>The contract states that, pursuant to FAR 52.228-15 Performance and Payment Bonds – Construction, "... the contractor shall furnish (1) a performance guaranty bond in the amount of 10% and (2) a payment bond in the amount of 10% of the contract price from sureties acceptable to the Government, or comparable alternate performance security approved by the Government such as bank letters of credit or guaranty."

ance requirements, coupled with the termination of PIR-5's contract for convenience, leaves the Department with little ability to recover any of the \$303,376 expended on the construction of this recreation center.

## MONITORING CONTRACTOR PERFORMANCE

The CORs assigned to oversee the contractor's design and building of the Embassy Dushanbe recreation center did not properly monitor the contractor's performance. CORs failed to establish quality assurance measures, ensure the contractor submitted contractually required documents, or monitor progress.

The FAH states that the COR is responsible for ensuring that "the Department gets what it pays for through good contractor performance." The COR must ensure the contractor complies with reporting provisions in the contract, and must read and understand the contractor's progress reports to identify possible risks. The COR is responsible for developing quality assurance procedures, verifying that supplies or services conform with contract quality requirements, and maintaining quality assurance records.<sup>10</sup>

The CORs assigned to the Dushanbe recreation center project did not ensure that PIR-5 submitted the required contractual deliverables. Although the contractor routinely submitted invoices for payment, OIG found no evidence in the contract files of required safety and quality assurance plans, weekly inspection reports, monthly progress reports, or updated construction schedules. Such reports are necessary to measure contractor performance, ensure services are being performed according to contract requirements, and account for the actual progress of the work with the approved adjustments. Moreover, OIG found no daily logs indicating construction progress, weather conditions, or the number of people working on the project. CORs reported performance problems including lack of personnel, poor progress, and quality of construction to the contracting officer at RPSO, but they failed to collect the required documents to monitor performance and hold the contractor accountable. Additionally, until the last invoice, CORs continued to approve invoices, which were not written in English, and paid the contractor although the work was unacceptable.

A constant turnover of CORs and a shortage in management staff to oversee the project led to a lack of continuity in contract management. Five different CORs served during the 30 months the contract was operational. In addition, staff on temporary duty often filled in during the periods between the departure and arrival of CORs. Those who were assigned as CORs, including facility managers and general services officers, lacked the technical expertise, contract management skills, and COR training to adequately monitor the contractor's performance. Furthermore, CORs could

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<sup>10</sup> Paraphrasing of information found in 14 FAH-2 H-521b., 14 FAH-2 H-522.2, and 14 FAH-2 H-523.

not verify whether the contractor was meeting OBO standards or other building design and construction code requirements.

Because of inadequate contractor performance monitoring and insufficient quality assurance, the contractor was not held accountable for deficiencies and delays. Without the proper means to measure progress and detect risks, the project continued to run behind and the completion date was extended several times. The project eventually ran out of funds prior to completion. When RPSO tried to withhold the last payment due to poor progress and quality, the contractor argued that the project was 94 percent complete. The COR and RPSO could not specifically measure progress, but estimated the project was 85 percent complete. In addition, because of the COR's lack of documentation, there was nothing to support termination of the contract for default.

### *Conclusion*

RPSO and Embassy Dushanbe awarded a contract to an unqualified contractor, whose proposal—the only one submitted in response to the solicitation—was 61 percent below the independent government cost estimate. In addition, embassy staff did not have the technical knowledge to monitor the contractor's performance, or determine whether the contractor designed and constructed the facilities according to required standards and regulations. Moreover, even if the embassy had the technical and managerial skills to properly monitor the contract, frequent turnover of CORs made project oversight inconsistent. As a result, Embassy Dushanbe was left with substantially incomplete and poorly constructed facilities that could not be used and posed safety hazards to embassy staff. What was built did not meet OBO quality standards, relevant building codes, or contractual requirements. Further, an additional \$1.5 million—more than five times the original contract value—as well as a significant amount of time will be needed to re-procure, demolish, redesign, and reconstruct the recreation center. Finally, OIG notes that a similar lack of oversight and failure to follow contractual requirements arose in post-managed construction at Embassy Astana and were reported to have occurred for a post-managed construction project at Embassy Bishkek.

## RECOMMENDATIONS

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**RECOMMENDATION 1:** The Office of Acquisition Management, in consultation with the Bureau of Overseas Buildings Operations (OBO), should develop guidance that requires the chairman of a technical evaluation team for a post-managed construction project be an OBO-assigned employee with construction engineering experience. (Action: AQM, in consultation with OBO)

**RECOMMENDATION 2:** The Office of Acquisition Management, in consultation with the Bureau of Overseas Building Operations (OBO), should require the contracting officer for a post-managed construction project to obtain an audit from OBO's Office of Cost Management before awarding a contract that varies more than 20 percent from the Independent Government Cost Estimate. (Action: AQM, in consultation with OBO)

**RECOMMENDATION 3:** The Bureau of Overseas Buildings Operations should ensure that the initial and final designs for post-managed construction projects are fully reviewed and approved prior to commencing construction. (Action: OBO)

**RECOMMENDATION 4:** The Office of Acquisition Management, in consultation with the Bureau of Overseas Buildings Operations, should review and approve management and quality assurance plans for post-managed construction projects prior to starting construction, and conduct periodic reviews to determine construction progress and identify risks. (Action: AQM, in consultation with OBO)

**RECOMMENDATION 5:** The Bureau of Overseas Buildings Operations (OBO), in consultation with the Office of Acquisition Management, should establish minimum technical qualifications for contracting officer's representatives overseeing post-managed construction projects to ensure construction meets OBO's quality standards. (Action: OBO, in consultation with AQM)



# MANAGEMENT COMMENTS AND OIG RESPONSE

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OIG twice provided a draft of the report to Embassy Dushanbe, the AQM, and OBO for review and comment. The second comment period was necessary because changes to one recommendation resulted in a change of the action office from AQM to OBO.

Embassy Dushanbe provided informal technical comments on both versions of the draft report. The embassy generally agreed with the report's recommendations, but disagreed with supporting evidence in the initial draft regarding the embassy's efforts to expedite the contract solicitation and construction processes. The subsequent version of the report incorporated additional information supporting the conclusion.

AQM provided written comments, which are included verbatim in Appendix I, only on the initial draft. AQM concurred with OIG's general finding that errors made by the acquisition team exposed the U.S. Government to increased risk. However, AQM believed the recommendations were too broad, given the scope of the evaluation. Based on AQM's comments, OIG deleted one initial recommendation, modified the language of three others, and added a new recommendation. In particular, AQM stated that the recommendation to "establish procedures to ensure CORs for post managed construction projects have both construction and contract management experience sufficient to oversee contractor performance" was unnecessary because such procedures already exist. AQM further stated that if OIG retained the recommendation, OBO should be designated the action office because using other than mission personnel to manage OBO projects is the responsibility of OBO, not AQM.

OBO provided written comments on both versions of the draft report; both sets of comments are included verbatim in Appendix II. OBO agreed with the initial findings and each of the recommendations as written in the initial draft report. However, OBO disagreed with the revised recommendation in which OBO, rather than AQM, is the action office for developing guidance on oversight of CORs for post-managed projects. OBO stated it has no authority to issue such guidance. Rather, according to OBO, such guidance should derive from the Office of the Procurement Executive, which sets the procurement policies AQM implements.

As noted in this report, the Embassy Dushanbe recreation center is one of at least three Central Asian construction projects that in recent years either failed or exposed the U.S. Government to unnecessary and significant financial risks. In each of these instances, CORs with little experience in construction trades failed to properly

oversee contractor performance and construction quality. OIG believes these issues indicate a potentially systemic problem in post-managed construction projects, and the recommendations are designed to correct the identified issues. Both OBO and AQM have critical roles in developing and monitoring construction contracts—OBO acting as construction and technical experts, and AQM as contracting experts. Each office is responsible for ensuring that post-managed projects are effectively managed. OIG agrees with OBO that it has no authority to issue guidance on monitoring contracts. Rather, that authority lies with AQM, which acknowledges in its comments that established procedures were not followed. However, OIG believes OBO does have the authority to determine CORs' technical qualifications to ensure construction meets the quality standards outlined in the contract. Therefore, OIG has modified recommendation 5 to focus solely on the construction management aspects of the CORs' duties.

# ABBREVIATIONS

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ADA	Americans with Disabilities Act
AQM	Office of Acquisition Management
COR	contracting officer's representative
Department	Department of State
FAH	<i>Foreign Affairs Handbook</i>
FAM	<i>Foreign Affairs Manual</i>
FAR	<i>Federal Acquisition Regulation</i>
IBC	International Building Code
MERO	Middle East Regional Office
OBO	Bureau of Overseas Buildings Operations
OIG	Office of Inspector General
PIR-5	PIR-5 LTD
RPSO	Regional Procurement Support Office
SED	Standard Embassy Design



# APPENDIX I: COMMENTS FROM THE OFFICE OF ACQUISITION MANAGEMENT

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JANUARY 24, 2011

## MEMORANDUM

TO: OIG/MERO – Richard G. Arntson

FROM: A/LM/AQM - Cathy J. Read

SUBJECT: Response to the OIG's Draft Limited Scope Review of the Design and Construction of a Recreation Center at Embassy Dushanbe in

Tajikistan (Contract No. SGE500-07-C-1034), MERO-1-11-04

As requested, we have reviewed the subject draft report. We have some substantive comments and concerns, which we have compiled and attached to this memorandum.

In particular, we feel that the recommendations are too broad and request actions that will be ineffective to remedy what was errors in judgment by the acquisition team caused by a specific set of issues that arose on this one contract being awarded in a country with minimal good local contractors.

Thank you for the opportunity to review and comment on the draft report. We would be pleased to meet with you and/or your staff, if you have questions regarding our response.

Attachment: As stated.

The draft report establishes the Office of Acquisition Management as a participant for recommendations 1, 3, 4, and 5.

**AQM comments:** AQM concurs with the facts in the report and concurs that errors of judgment were made by the members of the acquisition team that increased risk on the Government and caused the failure of this project. However, we believe the recommendations to be too broad and should be deleted or modified as follows.

**Request to delete or modify Recommendation 1**

**Recommendation 1:** *The office of Acquisition Management, in consultation with the Bureau of Overseas Building Operations, should establish procedures to ensure that missions evaluate the reasonableness of contract proposals and select only contractors that demonstrate they meet all technical qualifications required to complete such projects.*

**A/LM/AQM response:** AQM believes this recommendation to be too broad as written because the FAR and other procurement regulations already address how a source selection should be conducted in order to reduce the risk of selecting a qualified contractor. These regulations protect the Government in the vast majority of cases. Your limited review was looking at a specific set of circumstances that require limited changes.

It is agreed that in the case of this acquisition, there may have been errors in judgment by the acquisition team. AQM does not believe we can achieve improved performance by creating additional procedures.

However if additional guidance must be given, it must address the exact problem found in your review which was lack of construction knowledge on the evaluation team, the evaluation team not wanting to delay the project and the Contracting officer taking a risk on price without enough advice.

If the OIG does not wish to delete the recommendation AQM suggests the recommendation be narrowed to state: “The Office of Acquisition Management, in consultation with the Bureau of Overseas Building Operations, publishes guidance that requires the chairman of a technical evaluation team for an OBO post managed construction project (to include design/build) be an OBO assigned employee with construction engineering experience. AQM should require the contracting officer to obtain audit from the OBO Office of cost Management before awarding a contract that varies more than 20% from the IGCE”.

**Request to delete or modify recommendation 3:**

**Recommendation 3:** *The office of Acquisition Management, in consultation with the Bureau of Overseas Buildings Operations, should ensure that management and quality assurance plans for post-managed construction projects, are established prior to starting construction, and that contractually required reports are collected from the contractor and reviewed to measure progress and identify risks.*

**A/LM/AQM response:** AQM agrees that the Contracting Officers Representative should ensure a quality assurance plan is in place and that he is collecting the data necessary to ensure quality contractor performance. However, this is already tasked on the COR by his required COR training and his appointment letter. AQM does not believe this recommendation can result in any positive changes and should be deleted. If the OIG disagrees, then AQM suggests action on the recommendation be transferred to OBO because the failure to follow already established COR procedures is a discipline issue and not a procedural one.

**Request to delete or modify recommendation 4.**

**Recommendation 4:** *The Office of Acquisition Management, in consultation with the Bureau of Overseas Buildings Operations, should establish procedures to ensure the contracting officer's representatives (COR) for post-managed construction projects have both contract and construction management and experience sufficient to oversee contractor performance, and that a single COR responsible for contract oversight is assigned to the project throughout the construction process.*

**A/LM/AQM response:** AQM believes this recommendation to be too broad, inaccurate and states the obvious. It would be ideal for every COR to have the knowledge and skills in your recommendation. However, few personnel in the department have all these skills. First, there is no requirement for CORs to have contract experience before being assigned a COR on any type of contract to include those over \$100M. Secondly, the requirements office has an inherent duty to reduce risk to the Government by assigning personnel that have the qualifications and skills required to manage their projects. If they do not assign appropriate personnel it is a management control issue and writing volumes of procedures will not correct this. AQM recommends deleting any recommendation to write more procedures as it is costly and does not solve the real issue.

The recommendation on having one COR for the length of the project is desirable but impossible so there is no use of making the recommendation. Post personnel are on one to three year rotations at best and sometimes have to curtail. The situation in this limited scope review was unique in that the contractor could not perform the contract in a timely manner. There would not have been such a high turnover of CORs had he performed on schedule. The problem on this contract should not be

generalized as an issue on other post projects. Therefore, AQM believes this recommendation should be deleted.

However, if the OIG does not agree, you should address the real issue and assign the recommendation to OBO. Using other than Post personnel to manage OBO post projects is totally in OBO's authority and not AQMs. The issue should be the use of Post personnel (usually the facility manager) by OBO instead of assigning a full time project director. AQM believes doing this on a small dollar project to be cost prohibitive but that is an OBO management decision that they should address.

#### **Request to delete recommendation 5**

**Recommendation 5:** *The Office of Acquisition Management should ensure that contractors for post-managed construction projects secure performance and payment bonds or that other means of performance guarantees are established prior to executing the work requirements of the contract.*

**A/LM/AQM response:** The FAR already levies the responsibility on the contracting officer to protect the interest of the Government by obtaining bonds (domestically), letters of credit (overseas) or other security to protect the Government on construction contracts. The contract required the security until the contracting officer made the decision to delete the requirement by modification without obtaining some other form of security. While incorrect and risky, making this decision on a contract under \$1M is within the authority of the contracting officer without higher level review. This one time discrepancy by the contracting officer on this particular contract is not a policy or procedure issue that AQM can take any action on. AQM requests OIG delete this recommendation because there is no cost effective action AQM can take to "ensure" something already required by the FAR.

# APPENDIX II: COMMENTS FROM THE BUREAU OF OVERSEAS BUILDINGS OPERATIONS

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United States Department of State

*Washington, D.C. 20520*

**JANUARY 25, 2011**

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MEMORANDUM

TO: OIG/MERO – Mr. Richard G. Arntson

FROM: OBO/RM – Jürg E. Hochuli 

SUBJECT: Response to the OIG Draft Limited Scope Review of the Design and Construction of a Recreation Center at Embassy Dushanbe, Tajikistan (Contract No. SGE500-07-C-1034), MERO-1-11-04

Per your request, OBO thanks the OIG for the opportunity to respond to the recommendations listed in the draft limited scope review of the Dushanbe recreation center project. For ease of reference, our responses are in **bold** type.

Attachment:  
OBO Response, January 2011

**OBO Comments on the OIG Draft Report  
Limited Scope Review of the Design and Construction of  
Embassy Dushanbe Recreation Center**

OBO received the draft report on the Dushanbe Recreation Center from the OIG on January 11, 2011 with comments requested by January 24, 2011.

**OBO General Comments on the Draft Report: Post managed projects enable the Bureau of Overseas Buildings Operations (OBO) to provide services to posts worldwide. Generally, the Facility Manager (FM) serves as the Contracting Officer's Representative (COR) and post allows the FM to have the necessary time to manage the technical aspects of the construction services contract. A solid framework exists for contract administration, which should be enforced to ensure compliance with procurement regulations. OBO's support during construction administration ranges from review of technical submittals to conducting on-site inspections, but the role of the COR remains directly linked to the contracting officer.**

The following responses reference existing regulations and procedures to provide successful management of post managed contracts.

**OIG Recommendation 2:** The Bureau of Overseas Buildings Operations should ensure that the initial and final designs for post-managed construction projects are fully reviewed and approved prior to commencing construction. (Action: OBO) (p. 11)

**OBO Comment: OBO agrees with the recommendation. As a matter of fact, 15 FAM 640 requires posts to submit drawings and other technical documents for review and for an OBO building permit to be issued before beginning work on a facility overseas.**

**OIG Recommendation 1:** The Office of Acquisition Management, in consultation with the Bureau of Overseas Buildings Operations, should establish procedures to ensure that missions evaluate the reasonableness of contract proposals and select only contractors that demonstrate they meet all technical qualifications required to complete such projects. (Action: AQM, in consultation with OBO) (p. 11)

**OBO Comment: AQM provides guidance for a Technical Evaluation Panel (TEP) during reviews of bidder documentation, which includes identification of deficiencies, checking references, price analysis/cost analysis and adequate price competition. The Independent Government Cost Estimate (IGCE) provides a basis for review of bidder submissions by the COR and TEP. Construction industry practices acknowledge**

price fluctuation with ranges up to 5-8% for non-proprietary items, assemblies and systems which can be expected due to multiple factors including transportation, source, distribution, backorders, etc. AQM reinforces this procurement process during the bid phase and provides guidance to the COR and TEP when abnormally high or low and single bids are received on construction projects.

**OIG Recommendation 3:** The Office of Acquisition Management, in consultation with the Bureau of Overseas Buildings Operations, should ensure that management and quality assurance plans for post-managed construction projects, are established prior to starting construction, and that contractually required reports are collected from the contractor and reviewed to measure progress and identify risks. (Action: AQM, in consultation with OBO) (p. 11)

**OBO Comment:** The role of the COR during construction administration includes elements common to all construction contracts including documenting contractor's progress of work, reviewing contractor technical submittals, and inspection of materials and work in place to review contractor payment applications. This process allows equitable payment for acceptable services and work performed by the contractor. AQM can request that the COR provide a monthly update on project status, which coincides with payment applications to ensure the COR is fulfilling their obligations. Updates will ensure work at the site is progressing in an approved manner and eliminates the risk of advance payments for work that is not in place or is not acceptable. AQM also has quality assurance and control contractors who can provide support as needed. OBO requires all of its CORs to be trained.

**OIG Recommendation 4:** The Office of Acquisition Management, in consultation with the Bureau of Overseas Buildings Operations, should establish procedures to ensure contracting officer's representatives for post-managed construction projects have both contract and construction management and experience sufficient to oversee contractor performance, and that a single COR responsible for contract oversight is assigned to the project throughout the construction process. (Action: AQM, in consultation with OBO) (p. 11)

**OBO Comment:** The transition of contracts between CORs can be formalized by requiring the turnover of contract files maintained by the previous COR to the current COR. This ensures accountability for each tenured COR over the duration of a contract. OBO recommends that AQM review post managed project COR Nomination Memorandums,

**which includes an individual's historical data, in managing government projects and formalized COR training to determine if the nominee is appropriate for the contract. OBO requires both initial COR training as well as refresher training for its CORs.**

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United States Department of State

*Washington, D.C. 20520*

**FEBRUARY 17, 2011**

UNCLASSIFIED

**MEMORANDUM**

TO:           OIG-MERO – Mr. Richard Arnston

FROM:        OBO/RM – Jürg E. Hochuli 

SUBJECT:     OBO Comments to the Limited Scope Review of the Dushanbe  
              Recreation Center Project Draft Report

Please find OBO's comments to the subject referenced draft report.

Attachment:  
    OBO Comments

**UNCLASSIFIED**

**OBO Comments on the OIG Draft Report  
Limited Scope Review of the Design and Construction of  
Embassy Dushanbe Recreation Center**

**OIG Recommendation 1:** The Office of Acquisition Management, in consultation with the Bureau of Overseas Buildings Operations, should develop guidance that requires the chairman of a technical evaluation team for a post-managed construction project be an OBO-assigned employee with construction engineering experience. (Action: AQM, in consultation with OBO) p. 11

**OBO Comment:** OBO agrees with this recommendation. The guidance can be put in a cable that goes forth with each project. OBO can simultaneously amend the FAM to reflect the cable guidance. The Facility Manager, based on technical knowledge and experience, who typically serves in the role of COR for contract actions, could serve as chairman of the technical review committee for contractor proposals. Additional technical support may be provided by OBO for complex procurement actions in conjunction with the Facility Manager/COR.

**OIG Recommendation 2:** The Office of Acquisition Management, in consultation with the Bureau of Overseas Building Operations (OBO), should require the contracting officer for a post-managed construction project to obtain an audit from OBO's Office of Cost Management before awarding a contract that varies more than 20 percent from the Independent Government Cost Estimate. (Action: AQM, in consultation with OBO) p. 11

**OBO Comment:** OBO agrees with this recommendation. Currently, post-managed projects normally do not have a current working estimate or independent government cost estimate prepared by OBO's Office of Cost Management (COST). COST can perform this function; however, OBO currently does not know the impact this function would have in terms of increased workloads. It may be determined that additional staff would be required to perform this function that may prove problematic in the current budget environment.

**OIG Recommendation 3:** The Bureau of Overseas Buildings Operations should ensure that the initial and final designs for post-managed construction projects are fully reviewed and approved prior to commencing construction. (Action: OBO) p. 11

**OBO Comment: OBO agrees with this recommendation.**

**OIG Recommendation 4:** The Office of Acquisition Management, in consultation with the Bureau of Overseas Buildings Operations, should review and approve management and quality assurance plans for post-managed construction projects prior to starting construction, and conduct periodic reviews to determine construction progress and identify risks. (Action: AQM, in consultation with OBO) p. 11

**OBO Comment: OBO agrees with this recommendation.**

**OIG Recommendation 5:** The Bureau of Overseas Buildings Operations, in consultation with the Office of Acquisition Management, should establish guidance on the necessary qualifications for and oversight of contracting officer's representatives (COR) for post-managed construction projects, as well as guidance for ensuring management continuity as CORs transfer to and from missions. (Action: OBO, in consultation with AQM) p. 11

**OBO Comment: OBO disagrees with this recommendation and should not be the action entity. The provision of such guidance should come from the Office of the Procurement Executive, which is responsible for establishing training and CO/COR qualification requirements. Presumably OPE would draw on OBO expertise, but in fact, OBO has no authority to issue such guidance on its own. See Department of State Delegation of Authority 120-5.**

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