



Synchronized Pre-Deployment and Operational Tracker (SPOT) Fact Sheet

Problem Summary

The intent of the original language found in the National Defense Authorization Act of 2008 was to mandate the use of common databases to provide Congress with a repository for the collection of aggregate information on the USG funded projects in Iraq and Afghanistan contracted by the Department of Defense (DoD), Department of State (DoS), and the United States Agency for International Development (USAID). The National Defense Authorization Act of 2010 expanded the definition of contracts to include grants and cooperative agreements. While NGOs are willing to engage further on how to best to provide Congress with reporting on the aggregate figures of their USG funded programs in Iraq and Afghanistan, DoD's SPOT database requires a level of detail from local and international NGO program staff that exceeds the information stipulated by the legislation itself. The level of detail required by SPOT may afford DoD certain advantages in terms of managing and vetting their contractor workforce consistent with a military mission. However, when the same reporting requirements are rigidly applied to civilian agency partners (i.e. NGOs or their staff); the problems it creates outweigh the comparable advantages and goes beyond what is being sought by Congress in terms of aggregate data.

Following consultations with members of the NGO community, USAID recently responded to our concerns by reaching an agreement with DoD that would allow for common sense modifications to be made the current SPOT database. The modifications would allow USAID to meet the requirements of the law by collecting only summary aggregate information on NGO staffers working on USAID grants and cooperative agreements in Iraq and Afghanistan. However, in instances where a Letter of Authority (LOA) is needed to access military facilities or services, NGO employees must be entered individually into SPOT.

Despite attempts to consult with DoS officials on creating a similar arrangement that would allow them to meet the intended requirements of the law, the NGO community has been not been as successful in its attempts to reach a workable solution on the application of the database. Recently, in response to the security concerns of NGOs, policy guidance from the DoS allows for the collection of aggregate information on local national staff only. However, the onus is on the implementing NGO to decide to enter locally hired nationals in an aggregate manner rather than individually. Furthermore, US nationals and third country nationals will still need to be entered individually into the database for programs in Iraq and Afghanistan regardless of the need for an LOA.

Thus, the NGO community continues to have concerns regarding DoS that continued use of the original version of SPOT will undermine the effective delivery of relief aid and development activities in the field by principled NGOs as well as jeopardize the safety of NGO staffers, who are often working in dangerous environments and have no desire to be associated with military operations. As it is currently being implemented SPOT is wholly inappropriate for use by any civilian agency in tracking and monitoring their non-military contracts, grants, and cooperative agreements with international development and relief NGOs. The NGO community seeks to engage further with Congress, DoD, and DoS to formulate a commonsense implementation policy that is reflective of the needs of the legislation.



SPOT At-a-Glance

- January 2008: The National Defense Authorization Act of 2008 includes language creating a permanent information database to monitor private security contractors under contracts with DoD, DoS, and USAID in Iraq and Afghanistan.
- July 2008: DoS, DoD and USAID sign an MOU implementing SPOT as the common database they will use as the repository of information required by NDAA 2008 relating to contracts in Iraq and Afghanistan. It stipulates that DoS and other entities as appropriate shall establish procedures for coordinating the movement of USG non-DoD contractors in Iraq and Afghanistan. The agencies agreed that DoD's SPOT database will be used as appropriate to store contractor personnel data that they are otherwise required to maintain. However, the MOU did not expand the SPOT database to grantees unless they perform private security functions.
- April 1, 2009: USAID issues AAPD 09-01 providing language to include in solicitations and awards involving activities in Iraq. The AAPD says the three parties to the MOU have decided to apply to grants and cooperative agreements in Iraq the same requirements as for contractors.
- June 22, 2009: NGOs meet with a senior USAID official who says he learned about the AAPD from them and that USAID signed off at the request of State. While opposed to the requirement in the AAPD he says NGO objections are undercut by the fact that 20 of USAID's implementing partners in Iraq are taking advantage of DoD services and have provided the data needed for SPOT. He suggests writing a letter of protest to USAID's leadership.
- July 2, 2009: InterAction CEOs send a letter to Acting USAID Administrator Fulgham asking that the AAPD be immediately suspended and reissued to cover contracts as specified in the law. (No response to date).
- August 18, 2009: InterAction leadership receives verbal assurances from BPRM officials that SPOT will not be expanded to cover cooperative agreements and grants by DoS and that in fact the interagency is working on the language of a specific exemption for NGOs with grants and cooperative agreements.
- October 2009: The National Defense Authorization Act of 2010 is signed into law expanding the coverage of SPOT to include cooperative agreements and grants in any area of combat as designated by the Secretary of Defense.
- November 2009: InterAction learns that DoS and USAID have taken steps pursuant to 2010 NDAA to apply SPOT to NGOs operating in both Iraq and Afghanistan with cooperative agreements and grants.
- November 2009 – December 2009: InterAction requests dialogue with USAID and DoS on issues associated with SPOT compliance and seek common-sense guidance and exceptions.
- January-February 2010: InterAction meets with senior USAID and various congressional committee staff to dialogue about the concerns of the NGO community regarding the proposed implementation scheme.
- March 23, 2010: The Investigations and Oversight Subcommittee of the House Armed Services Committee holds a hearing on the Interagency Coordination of Grants and Contracts in Iraq and Afghanistan: Progress, Obstacles, and Plans, in which SPOT implementation procedures are highlighted. USAID announces its plans to modify its use of SPOT for implementing partners.



Background

SPOT was originally conceived as a centralized information database to assist defense contractors and combat commanders in “planning force protection, medical support, personnel recovery, and logistics support of contractors who accompany the U.S. Armed Forces.” The database permanently stores a litany of detailed identification information on personnel including but not limited to full name, telephone number, email address, passport number, government identification number, addresses for employer and next of kin, and employee blood type.

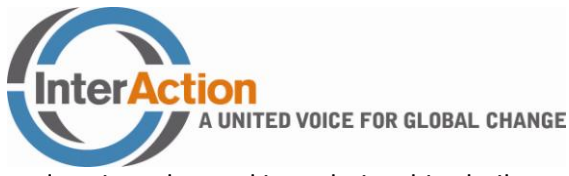
Due to a prior lack of available summary information or aggregate facts and figures on USG contractors in Iraq and Afghanistan, members of the Armed Services Committee inserted language into the National Defense Authorization Act of 2008 (“2008 NDAA”) to assist in the coordination and monitoring of USG funded “matters related to contracting.” However, as the mandate did not authorize funding for new common databases, DoD suggested its existing SPOT database as the single vehicle to meet the informational needs of Congress and to comply with the legislation. Almost by default, SPOT was agreed to as the common database in a Memorandum of Understanding (MOU) signed by DoD, DoS, and USAID in July of 2008.

In the summer of 2009, Section 813 of the National Defense Authorization Act of 2010 (“2010 NDAA”) amended the original scope of the reporting to the common databases to mandate further tracking, monitoring, and oversight to contracts and contractor personnel on USG funds in Iraq and Afghanistan. The definition of “contracts” was expanded to include grants and cooperative agreements with DoD, DoS, and USAID for services in “an area of combat operations.” The recently finalized 2010 MOU between the implementing agencies simply included language to reflect this broadened usage of the SPOT database.

The Problems for NGOs

The international relief and development NGOs represented by InterAction remain committed to working transparently as neutral partners with the USG and its agencies in achieving U.S. foreign policy goals. Unfortunately, the SPOT requirement threatens to undermine NGO effectiveness, humanitarian worker safety, and NGO’s ability to work in partnership with U.S. civilian branch agencies (DoS and USAID) in areas of the world that are of vital national interest and where NGOs have a comparative advantage on the ground in terms of relating to local populations.

First, the language in the original NDAA 2008 addressed the minimum requirements for reporting on matters related to contracting for contractors in Iraq and Afghanistan in very broad terms by mandating the identification of common databases to serve as a repository of information. For reasons outlined above, DoD, DoS, and USAID agreed that SPOT would be the sole repository. The SPOT database, however, requires a far more detailed level of personal information on program staff than mandated by the legislation. Moreover, although NGOs working in Iraq and Afghanistan are overwhelmingly staffed by local nationals, the categories of information required under SPOT were not developed with host country nationals in mind and may be impossible to obtain and update regularly. Requiring NGOs to provide detailed personal information into a military database on both their international and local staff-poses a practical problem when dealing with incomplete or non-existing data, possible legal difficulties arising from privacy protections of host-country or third-party national governments, and



undermines the working relationships built on trust with local communities and civil society organizations.

Second, as the system is owned and maintained by DoD with its contents subject to interagency information-sharing and intelligence gathering operations, the decision to use SPOT failed to consider some significant implications for, and special challenges to, U.S. NGOs who are dedicated to working as neutral actors in the field. In its current form SPOT is not an appropriate database for use by DoS and USAID as it blurs the distinction between civilian led humanitarian and development activities and U.S. military operations and creates a perception that NGOs are closely associated with the military and U.S. intelligence forces. Consequently, NGO staff may feel threatened by the intrusion upon their privacy rights given the U.S. government's request to permanently store their private and personal information for unspecified and potentially unlimited use. This may result in principled NGOs losing valuable staff that is implementing humanitarian assistance programs in Iraq and Afghanistan. Moreover, in areas where NGOs are providing emergency relief, unnecessary tensions will likely arise if NGO staffers are perceived to be working in concert with the U.S. military. NGO managers collecting the data may also feel that their personal security will be compromised if they are perceived to be agents of U.S. intelligence and law enforcement agencies or the U.S. military.

Third, the vast majority of NGOs working on the ground in Iraq and Afghanistan have little to no contact with military personnel or complexes. However, in the database itself, there is a field which asks which "operation" one is supporting. For USAID grants NGOs were previously instructed to choose "USAID Mission", but for grants from the State Department's Bureau of Democracy, Human Rights and Labor they are currently instructed to choose "Operation Iraqi Freedom". As organizations working largely independent of the U.S. military mission, the majority of NGOs carrying out USAID and State Department relief and development grants do not wish to affiliate or work closely with the military, do not want badges issued by the U.S. military, and do not need to access military facilities.

Finally, there is a lack of consistency between how USAID and the State Department have chosen to apply SPOT to NGO staff working in Iraq or Afghanistan or whether and how to apply to sub-awards. The inconsistent, overly broad, and burdensome policies will undermine the partnership between civilian agencies and principled actors in the field.

The Solution for NGOs

While SPOT is not meant to be a vetting system, the NGO community understands the interest that the USG may have in ensuring that funds are not being spent to support the activities of terrorists. Fortunately, humanitarian relief and international development NGOs already take thorough and systematic precautions to hire dependable staff free of terrorist connections in all of their operations regardless of region. Following decades of experience on the ground in communities devastated by violent conflict, political strife, and natural disasters, NGOs have developed well-tested and proven security and vetting systems to safeguard their local and international staff. As this practice complies fully with current USAID management requirements, registering staff in SPOT ultimately does nothing to make existing vetting and security systems more effective or useful and is likely duplicative of other ongoing systems that are more appropriate to civilian programs.

In addition, the decades of experience in the field has helped foster local ownership for NGO programs. The local buy-in has been instrumental in building sustainable capacity in many areas of the developing



world. The enforcement of SPOT would militate against the longstanding relationships that US humanitarian relief and international development NGOs have forged with local partners.

The aforementioned description of concerns clearly reflects that international development NGOs have not been adequately consulted in deliberations leading to SPOT requirements. NGOs believe that given the opportunity to engage in face-to-face talks with USAID, State Department, DoD, and Congress a more workable and safer policy can be shaped that will not detrimentally affect development and relief programs in communities throughout Iraq, Afghanistan and other regions experiencing conflict and disasters. At this time, USAID is believed to be working with DoD to meet the intent of the legislation without endangering the agency's partnership with principled NGO partners. We ask that the State Department suspend further implementation of the SPOT database requirement until such time that a similar policy can be designed in consultation with NGO implementing partners of the US Government.

Original MOU Guidance Language from '08 NDAA

SEC. 861. MEMORANDUM OF UNDERSTANDING ON MATTERS RELATING TO CONTRACTING.

(a) MEMORANDUM OF UNDERSTANDING REQUIRED.—The Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall, not later than July 1, 2008, enter into a memorandum of understanding regarding matters relating to contracting for contracts in Iraq or Afghanistan.

(b) MATTERS COVERED.—The memorandum of understanding required by subsection (a) shall address, at a minimum, the following:

(1) Identification of the major categories of contracts in Iraq or Afghanistan being awarded by the Department of Defense, the Department of State, or the United States Agency for International Development.

(2) Identification of the roles and responsibilities of each department or agency for matters relating to contracting for contracts in Iraq or Afghanistan.

(3) Responsibility for establishing procedures for, and the coordination of, movement of contractor personnel in Iraq or Afghanistan.

(4) Identification of common databases that will serve as repositories of information on contracts in Iraq or Afghanistan and contractor personnel in Iraq or Afghanistan, including agreement on the elements to be included in the databases, including, at a minimum—

(A) with respect to each contract—

(i) a brief description of the contract (to the extent consistent with security considerations);

(ii) the total value of the contract; and

(iii) whether the contract was awarded competitively; and

(B) with respect to contractor personnel—

(i) the total number of personnel employed on contracts in Iraq or Afghanistan;

(ii) the total number of personnel performing security functions under contracts in Iraq or Afghanistan; and

(iii) the total number of personnel working under contracts in Iraq or Afghanistan who have been killed or wounded.



(5) Responsibility for maintaining and updating information in the common databases identified under paragraph (4).

(6) Responsibility for the collection and referral to the appropriate Government agency of any information relating to offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice) or chapter 212 of title 18, United States Code (commonly referred to as the Military Extraterritorial Jurisdiction Act), including a clarification of responsibilities under section 802(a)(10) of title 10, United States Code (article 2(a) of the Uniform Code of Military Justice), as amended by section 552 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364).

(c) IMPLEMENTATION OF MEMORANDUM OF UNDERSTANDING.— Not later than 120 days after the memorandum of understanding required by subsection (a) is signed, the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall issue such policies or guidance and prescribe such regulations as are necessary to implement the memorandum of understanding for the relevant matters pertaining to their respective agencies.

(d) COPIES PROVIDED TO CONGRESS.—

(1) MEMORANDUM OF UNDERSTANDING.—Copies of the memorandum of understanding required by subsection (a) shall be provided to the relevant committees of Congress within 30 days after the memorandum is signed.

(2) REPORT ON IMPLEMENTATION.—Not later than 180 days after the memorandum of understanding required by subsection (a) is signed, the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall each provide a report to the relevant committees of Congress on the implementation of the memorandum of understanding.

(3) DATABASES.—The Secretary of Defense, the Secretary of State, or the Administrator of the United States Agency for International Development shall provide access to the common databases identified under subsection (b)(4) to the relevant committees of Congress.

(4) CONTRACTS.—Effective on the date of the enactment of this Act, copies of any contracts in Iraq or Afghanistan awarded after December 1, 2007, shall be provided to any of the relevant committees of Congress within 15 days after the submission of a request for such contract or contracts from such committee to the department or agency managing the contract.

Amended Language from '10 NDAA

SEC. 864. DEFINITIONS AND OTHER GENERAL PROVISIONS.

(a) DEFINITIONS.—In this subtitle:

(1) MATTERS RELATING TO CONTRACTING.—The term “matters relating to contracting”, with respect to contracts in Iraq and Afghanistan, means all matters relating to awarding, funding, managing, tracking, monitoring, and providing oversight to contracts and contractor personnel.

(2) CONTRACT IN IRAQ OR AFGHANISTAN.—The term “contract in Iraq or Afghanistan” means a contract with the Department of Defense, the Department of State, or the United States Agency for International Development, a subcontract at any tier issued under such a contract, a task order or delivery order at any tier under such a contract, a grant, or a cooperative agreement (including a contract, subcontract, task order, delivery order, grant, or cooperative agreement issued by another Government agency for the Department of Defense, the Department of State,



or the United States Agency for International Development), if the contract, subcontract, or task order, delivery order, grant, or cooperative agreement involves work performed in Iraq or Afghanistan for a period longer than 30 days.

(3) COVERED CONTRACT.—The term “covered contract” means—

(A) a contract of a Federal agency for the performance of services in an area of combat operations, as designated by the Secretary of Defense under subsection (c) of section 862;

(B) a subcontract at any tier under such a contract;

(C) a task order or delivery order issued under such a contract or subcontract;

(D) a grant for performance of services in an area of combat operations, as designated by the Secretary of Defense under subsection (c) of section 862; or

(E) a cooperative agreement for the performance of services in such area of combat operations.

(4) CONTRACTOR.—The term “contractor”, with respect to a covered contract, means

(A) in the case of a covered contract, subcontract, task order, or delivery order, the contractor or subcontractor carrying out the covered contract;

(B) in the case of a covered contract that is a grant, grantee; and

(C) in the case of a covered contract that is a cooperative agreement, the recipient.

(5) PRIVATE SECURITY FUNCTIONS.—The term “private security functions” means activities engaged in by a contractor under a covered contract as follows:

(A) Guarding of personnel, facilities, or property of a Federal agency, the contractor or subcontractor, or a third party.

(B) Any other activity for which personnel are required to carry weapons in the performance of their duties.

(6) RELEVANT COMMITTEES OF CONGRESS.—The term “relevant committees of Congress” means each of the following committees:

(A) The Committees on Armed Services of the Senate and the House of Representatives.

(B) The Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives.

(C) The Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

(D) For purposes of contracts relating to the National Foreign Intelligence Program, the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

(b) CLASSIFIED INFORMATION.—Nothing in this subtitle shall be interpreted to require the handling of classified information or information relating to intelligence sources and methods in a manner inconsistent with any law, regulation, executive order, or rule of the House of Representatives or of the Senate relating to the handling or protection of such information.