

INTERAGENCY AGREEMENT
BETWEEN THE
UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT
AND THE
UNITED STATES DEPARTMENT OF COMMERCE

I. AUTHORITY AND PURPOSE

A. Under the Foreign Assistance Act of 1961, as amended, and the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010, as carried forward and amended in the Full-Year Continuing Appropriations Act, 2011 (Div. B, P.L. 112-10) (the “Appropriations Act”), the United States Agency for International Development (“USAID”) is authorized to provide development assistance and economic support to other countries.

B. Under section 632(b) of the Foreign Assistance Act of 1961, as amended, USAID may utilize the services and facilities of, or procure commodities from, another federal agency. USAID wishes to obtain the goods and services requested herein from the United States Department of Commerce (“the Servicing Agency”) for the purpose of developing the private sector of Afghanistan to create a market more conducive to trade, investment and private sector growth, including through the provision of legal and regulatory technical assistance to support the development of Afghanistan’s commercial legal and business environment. Consistent with ADS 306 and FAA 621(a) of the "particular suitability" of Commerce to carry out these activities, CLDP has predominant capability based on technical expertise which justifies the selection of CLDP to implement this activity. CLDP has previous experience working on commercial law development issues around the world, particularly in the Middle East and Central Asia and often through previous interagency agreements with USAID. For example, CLDP has facilitated entrepreneurial development activities in Pakistan, a fiscal policy project in India, arbitration training in Oman, and commercial law capacity building in Bahrain over the past year. As an office of the U.S. Commerce Department, CLDP will serve as a direct counterpart with officials in the Government of the Islamic Republic of Afghanistan (GIROA) such as the Ministry of Commerce and Industry, the Ministry of Justice, and the Afghanistan Investment Support Agency. This counterpart role should promote improved collaboration and lead to enhanced results from this activity.

C. Accordingly, USAID will reimburse the Servicing Agency \$2,856,750 (“Funding Amount”) for supplying the goods and services requested herein. Funds will be available upon signature of this Interagency Agreement.

II. REQUESTED GOODS AND SERVICES

A. Background

The United States Government provides technical assistance in Afghanistan to support economic growth and build capacity in the Afghan private sector. Under this agreement, USAID will make funds available to the Servicing Agency to further the development of a market more conducive to trade, investment and private sector growth in Afghanistan through the strengthening of Afghanistan's commercial legal and business environment. This Agreement between USAID and the Servicing Agency will allow the U.S. Department of Commerce's Commercial Law Development Program (CLDP) to provide legal and regulatory technical assistance and capacity building in Afghanistan.

B. Scope of Work

It is expected that the Servicing Agency, through CLDP, will implement program activities in the areas of commercial law education, commercial law implementation, arbitration development, and commercial officer and investment promotion development. Within 30 days of the completion of a USAID Gender Assessment of program activities, CLDP will incorporate recommendations into the Action Plan. Expected objectives to be achieved under this Agreement include:

a. Objective One: Increase the capacity of the Afghan academic and business community in commercial law

Improved understanding of commercial law is essential to improve the transparency and predictability of commercial transactions in Afghanistan. CLDP, through its Commercial Law Education Initiative (CLI), will design and implement commercial law education activities at American University of Afghanistan (AUAF), Kabul University, Herat University, and Balkh University to raise the capacity of the academic community (students and professors) in commercial law. The Servicing Agency will also implement programs to increase commercial law awareness among the business community and government officials. Illustrative activities to be undertaken include commercial law curriculum development workshops and consultations with faculty; lectures in commercial law with students, faculty, government officials, and members of the business community; and student competitions in commercial law. Expected initial results include new commercial law courses at participating universities; an increase in the academic faculty trained to teach commercial law courses; and the establishment of mechanisms to extend commercial law awareness to the business community and government officials.

b. Objective Two: Strengthen legal mechanisms (e.g. contracts) and capacity of GIROA officials to facilitate commercial law

The lack of understanding and use of appropriate commercial law documents and practices serves as a major impediment to the development of the private sector in Afghanistan. Through its Commercial Law Implementation program, CLDP will provide practical assistance to the Afghan business community and government officials on the implementation of basic commercial law documentation and relevant commercial legal practices such as, for example, contract development and execution. The development of such practices is essential for Afghanistan to develop the level of transparency and

predictability in commercial transactions necessary to sustain a viable private sector and a market conducive to international investment. The main objective over the period of performance is to increase the understanding and use of commercial law documentation and basic commercial legal practices appropriate for the Afghan context, including through the development of standard contract models and the training of members of the Afghan business community and government officials in the use of these models. Illustrative activities to be undertaken with the funds provided under this agreement include contracting workshops for private sector trade associations and consultations with the Ministry of Commerce and Industry on the development and implementation of effective commercial law practices and regulatory regimes. Expected initial results include the development of basic model commercial documents, such as model business contracts, created in Dari and Pashto and the development of a critical mass of Ministry of Commerce and Industry (MOCI) legal and regulatory staff with the capacity to implement basic commercial laws and commercial law practices.

c. Objective Three: Build capacity in effective commercial arbitration

An effective mechanism to resolve commercial disputes is essential to increase trust among foreign and domestic investors and enable increased private sector activity in Afghanistan. As permissible, CLDP will work with the Afghanistan Chamber of Commerce and Industry (ACCI), the Afghanistan Investment Support Agency (AISA), and other relevant Afghan business associations and government agencies to effectively implement a viable commercial arbitration model. Illustrative activities to be undertaken with the funds provided under this agreement will include consultations with arbitration administrators from relevant Afghan government agencies and business associations; training workshops for case managers, arbitrators, and arbitration center administrators; and regional workshops arbitration. Expected initial results include the development of viable operational models by Afghan arbitration centers, an increase in the number of case managers and arbitrators trained in international arbitration practices, and an increase in the use of contracts with alternative dispute resolution procedures.

d. Objective Four: Train commercial attaches and investment promotion officials in commercial business promotion

Afghan commercial attaches and investment promotion officials serve as a critical interface between Afghan firms and potential foreign business partners. Over the period of performance, CLDP will provide targeted training to Afghan commercial attaches and investment promotion officials to increase their ability to identify potential foreign direct investors, enable Afghan firms to connect with foreign partners to strengthen import and export relationships, and strengthen the understanding of attaches and investment promotion officials of international business transactions and contract negotiations. Illustrative activities to be undertaken with the funds provided under this agreement include training programs in the United States for groups of commercial attaches and investment promotion officers and a live client counseling training program for investment promotion officials in conjunction with the Herat Investment Conference.

Attachment One contains a detailed draft action plan of the program activities (collectively “the Program”) that shall serve as a point of reference as to expected objectives, timelines, and deliverables during the period of performance. The action plan

will be revised within 30 days of signature to update project activities and timetables. Within 30 days of the completion of the USAID Gender Assessment, the action plan will be revised to address Assessment recommendations.

C. Budget

The total estimated cost of carrying out the Scope of Work is \$2,856,750 from date of signature of this Interagency Agreement until December 31, 2013. Attachment Two contains a detailed budget. A summary of the budget is included as follows:

EXPENSE	AMOUNT
Overhead	\$228,540.00
Salaries & Benefits	\$828,457.50
Program Budgets	
1. Commercial Law Education Initiative	\$482,328.00
2. Commercial Law Implementation	\$717,570.00
3. Arbitration Development	\$369,904.50
4. Commercial Officer/Investment Promotion Development	\$229,950.00
	\$2,856,750.00
TOTAL	

Within the total budget amount for the Program, the Servicing Agency may adjust line items, as indentified by numbers 1 through 6 in Attachment 2, provided that (1) any adjusted line item does not change by more than 10 percent of the amount shown for that line item and (2) the Servicing Agency gives USAID written notice of the adjustments. Adjustments to the budget that exceed 10 percent for any one line item require prior written approval of USAID.

D. Reports

Achievement of tangible results is expected from this Agreement. If agreed results will not be achieved, or if the Servicing Agency or Servicing Agency’s contractor/implementer becomes aware that results may not be achieved within the agreed timeframe, the Servicing Agency and/or Servicing Agency’s contractor/implementer will immediately advise USAID/Afghanistan in writing and, in the next periodic report required, will provide a complete explanation. The Servicing Agency shall provide USAID with the following:

a. Performance Monitoring Plan (PMP)

Within 30 days of the signing of the Agreement, the Servicing Agency will provide an updated Performance Monitoring Plan (PMP) to the Agreement Officer’s Representative (AOR) for approval. The PMP will include a description of indicators, linked to overall program objectives and expected results for each activity, which will be used to measure results (USAID Template). The PMP will also include critical

assumptions in the achievement of objectives and results and a Performance Data Table (PDT) describing indicator baselines and targets by quarter within the agreement period.

b. Progress Report

The Servicing Agency shall submit an original and one copy of a performance report in accordance with the PMP to the AOR and to the Agreement Officer (AO). The performance reports are required to be submitted quarterly no later than 15 calendar days after the end of reporting period coinciding with the fiscal year. The performance report for the fourth quarter will be cumulative. The reports will include an executive summary and shall contain the following information:

1. Describe activities undertaken and achievements in terms of progress during the reporting period toward the program objectives outlined in Section II.B;
2. Provide an updated PMP Performance Data Table and accompanying narrative describing progress on indicators, targets, and results and explanations for missing or exceeding targets;
3. Include an analysis, including gender and ethnicity as requested, of the individuals trained to date under the Program;
4. Describe any potential constraints that might prevent CLDP from meeting agreed upon targets;
5. Discuss any problems encountered, whether they were solved or are still outstanding, and any proposed solutions to new or ongoing problems;
6. Provide any compelling individual level success stories during the reporting period; and,
7. As available, document any best practices that can be replicated or taken to scale.

c. Reporting In TraiNET

The Servicing Agency will provide reports to USAID through USAID's required participant training database, "TraiNet," in accordance with USAID Automated Directives System Chapter 253. The Servicing Agency must enter in the database data for each person trained under the Program. The data will include biographical, programmatic, administrative, and logistical information that will facilitate USAID's reporting to Congress.

d. Financial Reports

The Servicing Agency must furnish quarterly financial reports as required under Section B(2) of the Standard Provisions (Attachment 3) of this Agreement to the AOR, to USAID Kabul Official of Financial Management and to:

United States Agency for International Development
M/FM/CMP/IBU
Inter-Agency Billing Unit
1300 Pennsylvania Avenue, N.W.
Room 7.07-064
Washington, D.C. 20523-0208

Quarterly financial reports shall contain, at a minimum:

1. Total funds obligated to date by USAID into the Agreement;
2. Total funds expended by the Servicing Agency to date by activity including accrued expenditures broken out by mainline items;
3. Pipeline (committed funds minus expended funds); and
4. Funds and time remaining in the Agreement, by activity.

If the Servicing Agency is authorized to receive advance funding, it must provide to the AOR and USAID Inter-Agency Billing Unit, and the USAID Kabul Office of Financial Management quarterly financial statements showing the status of amounts advanced and amounts expended during the quarter in a format comparable to the budget elements outlined at Section B(2) of the Standard Provisions (Attachment 3) of this Agreement within 45 day after the close of the quarter. All advance funding must be for immediate disbursing needs of seven days or less.

e. Interim Reports

The Servicing Agency and Servicing Agency Contractors/Implementers will provide periodic updates in written or oral form, as requested, to the USAID AOR and/or AO.

f. Final Report

This report, signed by an authorized employee of the Servicing Agency, is due no later than sixty (60) days after completion of the Agreement. The Final Report shall include both performance and financial report information as described above. All reports shall be electronically transmitted to the USAID AOR and AO at the address detailed in Section VI of this agreement.

g. Miscellaneous Reports

The Servicing Agency shall provide USAID with copies of all other records, evaluations or reports generated by Servicing Agency contractors/implementers or outside sources, in addition to reports specified above.

III. FUNDING TERMS AND CONDITIONS

A. Signature of this Agreement by USAID and the Servicing Agency constitutes an obligation of the Funding Amount. USAID funding for this Agreement is limited to the Funding Amount. Unless USAID agrees otherwise in writing, funds obligated under this Agreement are available for expenditures under this Agreement until the Completion Date as defined in Article VII of this Agreement. If the Servicing Agency chooses to continue any of the program activities described herein after USAID funding has been exhausted, the Servicing Agency agrees to use its own funds for that purpose. Funds not expended by the Servicing Agency by the Completion Date and funds expended for purposes or activities not authorized by this Agreement must be promptly refunded to USAID.

B. Except as USAID may otherwise agree in writing, the Servicing Agency must, not later than nine months following the Completion Date, submit to USAID requests for

reimbursement or liquidation of outstanding advances under this Agreement. Funds that have not been disbursed and for which reimbursement requests have not been received by USAID as of nine months following the Completion Date may be unilaterally de-obligated by USAID.

C. The Servicing Agency must comply with all Standard Provisions set forth at Attachment 3 and must ensure that all statutory or other restrictions on expenditures of the funds transferred in this Agreement are fully complied with.

D. The Servicing Agency will bill USAID through the Intra-governmental Payment and Collection system, using accounting classification information specified at the end of this Agreement. Upon request by the Servicing Agency, USAID will provide funds to the Servicing Agency in advance of receiving the requested goods and services.

E. The Servicing Agency will administer the funds it receives under this Agreement in accordance with the Standard Provisions set forth at Attachment 3; all applicable laws; and USAID policy guidance including USAID environmental regulations (Code of Federal Regulations (CFR) Title 22, Part 216); USAID Source and Nationality requirements for Commodities (22 CFR Part 228 and USAID Automated Directives System (ADS) Chapters 310 and 311); and Section 487 of the Foreign Assistance Act of 1961, as amended, and ADS 206, prohibiting assistance to drug traffickers.

F. If the Servicing Agency is authorized to receive advance funding, the Servicing Agency must provide the Agreement Officer’s Representative (AOR) and USAID paying office and the USAID Kabul Office of Financial Management quarterly financial statements showing the status of amounts advanced and amounts expended during the quarter in a format comparable to the budget elements outlined in this agreement. These statements must be received by the AOR and USAID within 45 days after the close of the quarter.

Required IPAC Fields:

Agency Name:	USAID/Afghanistan
Agency ALC:	72-00-0058
TAS (Treasury Account Symbol)	7211/121037
Amount:	\$2,856,750
BETC (Business Event Transaction Code)	DISB (for disbursement)
Agreement Number:	AID-306-T-12-00001
Funding Code:	ES/2011/2012
Description:	Commercial Law Development Program
Agency Name:	DOC/OS/OGC/CLDP
Agency ALC:	13-06-0001
DUNS:	13-090-0322
Appropriation	13120120
BETC (Business Event Transaction Code)	COLL
Accounting Code:	51/12/08/7071000/0710

IV. RESPONSIBILITIES

A. USAID

USAID will:

1. Ensure that funds are available to cover the cost of the requested goods and services.
2. Reimburse the Servicing Agency up to the Funding Amount for the requested goods and services.
3. Provide oversight and coordination of program activities and funds through AOR review and approval of reports, periodic monitoring of program activities, and updates from Service Agency and Service Agency contractors/implementers as per CFR 306.3.2.21 and FAA 632b.

B. The Servicing Agency

The Servicing Agency will:

1. Receive reimbursement from USAID to cover the cost of the requested goods and services.
2. Provide all project travel and logistics and staff and participant support.
3. Ensure that all funds received are properly committed and obligated for the purposes specified herein and that expenditures conform to applicable guidelines.
4. Ensure that all Agreement elements (and USAID legal and policy restrictions) are adhered to by Servicing Agency contractors/implementers.
5. Ensure that no funds are provided directly on-budget to either Afghan government entities or ACCI and no grant funding is provided to non-US, non-governmental organizations.
6. Ensure that standard U.S. Government audits are conducted upon all sub-recipients. Any sub-agreement in excess of \$ 300,000 must have an audit conducted in accordance with *U.S. Government Auditing Standards* issued by the U.S. Government Accountability Office (July 2007 revision) and the USAID Office of Inspector General *Guidelines for Financial Audits Contracted by Foreign Recipients (Guidelines)*. Copies of all audit reports are to be provided immediately to USAID upon issuance.
7. Consult with USAID as requested on all matters necessary to accomplish the purposes of the Agreement.
8. Make best efforts to coordinate its activities with those of other US Government financed programs and other donors providing substantially similar assistance as that contemplated by this Agreement.
9. Adhere to existing and any new USAID policy guidance introduced after the date of this Agreement, so long as such policies are consistent with the purpose of this Agreement and with the laws governing the operations of the Servicing Agency.

V. PROGRAM EVALUATIONS

The Servicing Agency must notify USAID promptly in writing of any audits of activities financed by this Agreement initiated by or at the request of the Servicing Agency, its Inspector General, the Office of Management and Budget, or the Government Accountability Office.

At the option of either USAID or the Servicing Agency, the Servicing Agency will undertake or cause to be undertaken, within the total budget specified in Attachment A to this Agreement, an external evaluation of the Program. The Servicing Agency and USAID must agree on the terms of reference for the evaluation and an appropriate schedule for conducting it. Evaluations may include:

- a. Evaluation of progress toward attainment of Program objectives;
- b. Identification and evaluation of problem areas or constraints that may inhibit attainment of Program objectives;
- c. Assessment of how such information may be used to help overcome such problems; and,
- d. Evaluation of the overall impact of the Program on Program objectives.

VI. POINTS OF CONTACT

A. Financial Officers

For USAID

Daniel Cabet
Deputy Controller
Office of Financial Management
USAID/Afghanistan
US Embassy/Kabul
Kabul, Afghanistan

For the Servicing Agency

Denise Hicks (dhicks@doc.gov)
Budget Analyst
Commercial Law Development Program
U.S. Department of Commerce
Ronald Reagan Building
1300 Pennsylvania Ave. NW
Washington, DC 20004

B. Technical Officers

For USAID:

In Afghanistan:

Susan Coleman
Senior Economist/OEGI
Unit 6180, Box 1060
DPO AE 09806 – 1060

In Washington:

USAID/OAPA/Technical Services
1300 Pennsylvania Ave. NW
Washington, DC 20523

For the Servicing Agency

James Filpi (jfilpi@doc.gov)
Senior Counsel
Commercial Law Development Program
U.S. Department of Commerce
Ronald Reagan Building
1300 Pennsylvania Ave. NW
Washington, DC 20004

VII. COMPLETION DATE

The planned completion date of this Agreement, *i.e.*, the estimated date by which all USAID-financed services will have been performed and all USAID-financed goods will have been furnished under this Agreement is December 30, 2013 or such other date as USAID and the Servicing Agency may agree to in writing (“Completion Date”). Except as USAID may otherwise agree in writing, funds made available under this Agreement may not be used to finance services performed after the Completion Date or goods furnished after the Completion Date.

VIII. DISPUTE RESOLUTION

Should disagreements arise on the interpretation of the provisions of this agreement or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement in interpretation is not reached within 30 days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

If a dispute related specifically to accounting remains unresolved for more than 30 calendar days after the parties have engaged in an escalation of the dispute, disputes will be resolved in accordance with instructions provided in the Treasury Financial Manual (TFM) Volume I, Part 2, Chapter 4700, Appendix 10, available at <http://www.fms.treas.gov/tfm/index.html>.

IX. SUPPORT TO TERRORISM

The Servicing Agency is reminded that U.S. Executive Orders and U.S. laws prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the Servicing Agency to ensure that all sub-agreements, contracts, and grants issued under this Agreement comply with these Executive Orders and laws.

**UNITED STATES AGENCY FOR
INTERNATIONAL DEVELOPMENT**

**UNITED STATES DEPARTMENT
OF COMMERCE**

Brian K. Woody
Agreement Officer
USAID/Kabul

Cameron F. Kerry
General Counsel
U.S. Department of Commerce

Date_____

Date_____

Attachment 1 -- 2012-13 CLDP AFGHANISTAN ACTION PLAN

CLDP Activities **\$2,856,750**

CLDP will conduct four activities:

1. Commercial Law Education Initiative
2. Commercial Law Implementation
3. Arbitration Development
4. Commercial Officer/Investment Promotion Development

Commercial Law Education Initiative (CLI) ***\$765,600***

Projects Include:

- Commercial Law Lecture Series @ AUAF, Kabul Univ., Herat Univ., Balkh Univ.;
- Commercial Law Student Competition;
- U.S. Consultations for University Faculty/Administrators;
- Contracts Workshops for Business Associations (e.g., Afghan Builder's Association);
- Commercial Law Education for Afghan Ministries (e.g., Ministry of Commerce and Industries and Ministry of Mines)

Mechanism:

Direct Services & Logistics Contracting

Objectives:

In 2012 and 2013, CLDP will design and implement commercial law initiatives at AUAF, Kabul University, Herat University and Balkh University that will raise the capacity of the legal and business community in commercial law education, resulting in more transparent and predictable commercial transactions. The aim of this activity is to improve commercial law education for university students as well as for business and government leaders. CLDP will provide commercial law courses at universities in Afghanistan, but also use university facilities and faculty to train business and government leaders. The long term goal is to develop a consistent connection between commercial law educators and government and business leaders, thereby raising the independent legal capacity of communities presently dependent on international advisors for legal needs. Eventually, the program will establish academic and practical skills training centers at Afghan universities to support the growth of commercial law capacity amongst law and business students, within government ministries, amongst the legal community and within critical Afghan industries. These activities are designed to kick-start the development of commercial law centers through commercial law short courses, workshops, and lectures for students, ministry staff, and private sector employees.

Results/Targets

- Courses/Short Classes instituted that will include substantive trainings in Contracts, Company Law, Lending & Islamic Finance, Insolvency, Arbitration, Consumer Protection, Competition Law
- Local Faculty/Students/Ministry Officials/Businesspeople trained in Commercial Law Curriculum

- Increased linkages between Universities and Ministries/Business Associations
- Increase use of contracts, receipts, bills of lading, lending agreements, etc. by businesses
- Fewer incidents of contract disagreement
- Increase advocacy/use of commercial documents by MoCI and, potentially, other ministries

2012 Proposed Timeline:

30 August 2012	Summer Commercial Law Short Courses
30 September 2012	Contracts Workshops, CLI Lectures
30 October 2012	U.S. Consultations
30 November 2012	Contracts Workshop, CLI Lectures,
30 December 2012	Fall Commercial Law Practicum Courses
30 January 2013	Contracts Workshop, CLI Lectures
30 March 2013	Contracts Workshop, CLI Lectures
30 May 2013	Inaugural Student Competitions; Commercial Law Practicum Spring Short Course

Sustainability:

Through the CLI short courses, lectures series, workshops and student competitions, CLDP programming will build the capacity of Afghan universities to design and implement commercial law education courses and events as a cohesive commercial law education program. CLDP expects that the CLI will be a sustainable mechanism by which Afghan Universities will continue commercial rule of law capacity building initiatives after CLDP and the USG depart Afghanistan. CLDP will work closely with participating universities to identify local faculty and practitioners to train in order to become permanent resources to educate students, lawyers, ministry officials, and businesspeople regarding commercial law. In addition, CLDP's programs will develop lasting linkages between the universities and commercial law stakeholders so that the government and business communities, in addition to students, will look to the universities as places for continuing and regular education in commercial law.

Donor Coordination:

CLDP coordinates CLI with Stanford University's Afghanistan Legal Education Project (ALEP), which is supported by State Department INL funds. ALEP's mandate is to develop legal materials for AUAF and CLDP's programming that will both incorporate and complement ALEP's materials. CLDP will collaborate with USAID-funded economic growth programs including the Economic Growth and Governance Initiative, the Financial Access for Investing in the Development of Afghanistan program, the Trade Accession and Facilitation for Afghanistan project and any future USAID-funded activities relevant to CLDP's work in Afghanistan. CLDP will also seek to incorporate other stakeholders potentially involved in commercial law education, such as lawyers and legal societies, judges, business associations, ministries, and NGOs, in the CLI's substantive program events in order to further the objectives of all parties.

GIRoA Coordination:

CLDP primarily coordinates with AUAF and ALEP on the Commercial Law Initiative but as discussed further below in the "Commercial Law Implementation" component, CLDP is planning commercial law education and implementation activities for the Ministry of Commerce and Industries (MoCI) and Ministry of Mines (MoM) at AUAF. CLDP has relationships with MoCI and MoM and has already been commenting on draft commercial laws for MoCI and has conducted a competition and consumer protection law workshop for MoCI's new Competition

Promotion and Consumer Protection Law Directorate (CPCPD). CLDP has also established initial linkages with Kabul University, Herat University, and Balkh University.

2013 Follow-On:

CLDP anticipates that it will need to continue all of the CLI components in 2013 and will reassess needs at the end of 2012.

Commercial Law Implementation

\$1,139,000

Projects Include:

- Public & Private Sector Contracting Workshops;
- MoCI Consultations on Implementation of Afghan Commercial Law;
- Company Law Capacity-Building;
- Insolvency Regime Capacity-Building
- Competition Regulation Capacity-Building

Mechanism:

Direct Services & Logistics Contracting

Objectives:

CLDP will advise Afghan ministries and the Afghan business community on the implementation of specific commercial laws that would support entrepreneurship and private sector growth in the country. CLDP will begin working with basic commercial law implementation issues, such as forming contracts, documenting business transactions, and registering and licensing companies. CLDP will work closely with the Ministry of Commerce and Industry (MoCI) to establish the appropriate mechanisms and resources in the ministry to facilitate commercial law in the private sector in Afghanistan. CLDP will support MoCI's recently appointed legal staff in order to improve their capacity to implement commercial laws and regulations and increase the use of commercial legal documentation. In addition, CLDP will work to develop knowledge of commercial rule of law in international business transactions amongst Afghan firms. Through training Afghan ministries and business associations on useful commercial law tools such as appropriate documentation, CLDP will be assisting these groups in developing lasting mechanisms that will improve accountability and reliability in commercial transactions. CLDP will also work with Ministries and business associations to make sure they understand how to sustain proper incentives in business such as competition and investment recovery in commerce in Afghanistan. For example, CLDP will work with MoCI to teach that ministry how to properly enforce a competition and consumer protection law regime, and with various relevant ministries on utilizing proper debt recovery mechanisms during bankruptcy.

Results/Targets

- Critical mass of MoCI executive staff have the capacity to implement basic commercial laws
- Critical mass of MoCI legal and regulatory staff have capacity to support executives in basic commercial law implementation
- Core model commercial documents created in Dari and Pashto (contracts, receipts, bills of lading, lending agreements, etc.)
- Core commercial laws reach milestones of implementation to reasonable standard (insolvency, competition law, company law)

- Successful Ministry actions to enforce basic commercial laws (e.g., anti-competitive action cases brought against cartels)
- Increase use of contracts, receipts, bills of lading, lending agreements, etc. by businesses
- Lower percentage of incidents of contract disagreements
- Increase advocacy/use of commercial documents by MoCI and other ministries (MoM, etc.)

2012 Proposed Timeline:

30 April 2012	MoCI Competition and Consumer Protection Regulation Capacity Building
30 September 2012	ABA Contracts Workshop; MoCI Insolvency Consultations Phase 1; MoCI Company Law Consultations Phase 1
30 October 2012	NICTAA Contracts Workshop; MoM Contracts Administration Workshop Phase 1
30 October 2012	MoCI Competition and Consumer Protection Law Regional Conference Module 1
30 November 2012	ABA Contracts Workshop; MoCI Company Law Consultations Phase 2; MoCI Insolvency Roundtable
30 February 2013	MoCI Competition and Consumer Protection Regional Conference Module 2
30 March 2013	MoM Contracts Administration Workshop; ABA and NICTAA Contracts Workshop; ACCI Contracts Workshops; MoCI Insolvency Workshop Phase 3
30 April 2013	MoCI Competition and Consumer Protection Spring Meeting
30 May 2013	MoCI Competition and Consumer Protection Law Regional Conference Module 3

Sustainability:

CLDP programming is designed to raise the capacity of the leadership within MoCI, CPCPD and MoM so that they can carry on with transparent and predictable implementation of applicable laws and regulations such as in the areas of Commercial Companies, Lending, Insolvency, Contracts, Consumer Protection, and Competition.

Donor Coordination:

CLDP coordinates regularly with Adam Smith International (ASI) advisors imbedded in MoCI on all commercial law implementation efforts. As to implementation of specific commercial laws, CLDP will attempt to coordinate with the Harakat Foundation regarding Competition and Consumer Protection regulation specifically, as Harakat is funding advisor positions with the CPCPD, and with the World Bank IFC, which is assisting MoCI with business registration reform efforts. CLDP has also had multiple contacts with the USAID economic governance team in Kabul to provide updates on CLDP's advisory role within the MoCI and to obtain guidance on programs focusing on implementation of various commercial laws. Further communication was conducted with the USAID investment promotion team in Kabul to vet CLDP plans for contract administration training for the legal department of the MoM.

GIRoA Coordination:

CLDP is planning multiple commercial law education and implementation activities in collaboration with MoCI and MoM. CLDP has ongoing relationships with MoCI and MoM on

multiple fronts, including regular advisory consultations with the legal team at the MoCI regarding commercial law infrastructure and the Ministry's advocacy efforts with other stakeholders and direct regulatory training for MoCI's new Competition Promotion and Consumer Protection Law Directorate. Planned implementation activities for the MoM are in response to a direct request from the head of the MoM legal department.

2013 Follow-On:

CLDP anticipates that MoCI, CPCPD and MoM will need next phase programming in 2013 and CLDP will reassess needs at the end of 2012.

Arbitration Development

\$587,150

Projects Include:

- Arbitration Environment Workshops;
- Alternative Dispute Resolution (ADR) Center Administration Consultations;
- Case Manager Training;
- Arbitrator Training

Mechanism:

Direct Services & Logistics Contracting

Objectives:

CLDP will support the development and implementation of a viable commercial dispute resolution mechanism in Afghanistan in the form of commercial arbitration. As permissible, CLDP will work with local organizations (such as the Afghanistan Chamber of Commerce and Industry (ACCI) and the Afghanistan Investment Support Agency) in order to develop the skills within the business and legal community to resolve commercial disputes. It is important for foreign investors such as joint venture partners to be able to depend upon a dispute resolution mechanism based in Afghanistan that all business parties can trust to resolve commercial disputes. Therefore, CLDP will train Afghans to become arbitration case managers, arbitrators, and arbitration center administrators, so domestic and international businesses can effectively resolve disputes in Afghanistan, resulting in lower transaction costs and increased predictability in the Afghan market.

Results/Targets

- Increase use of contracts by businesses with alternative dispute resolution provisions
- Number of contract disagreements resolved
- Arbitration curriculum developed for business associations/relevant Ministries
- Number of Local Arbitrators trained
- Number of Arbitrations completed
- Number/Diversity of companies availing themselves of arbitration mechanism
- Reasonableness of arbitration remedies
- Private sector management of commercial disputes (without government invention)

2012 Proposed Timeline:

30 September 2012 Arbitration Center Administration Consultations Phase 2

30 November 2012 Arbitration Center Administration Consultations Phase 3

30 February 2012	Regional Arbitration Workshops (3) Phase 1
30 May 2013	Case Manager Training Group 1
30 May 2013	Arbitrator Training Group 1
30 May 2013	Regional Arbitration Workshops (3) Phase 2

Sustainability:

The ACCI is, on its own initiative and in coordination with other donors, moving forward with the establishment of a commercial alternative dispute resolution center. At this stage, CLDP’s program is designed to 1) educate the technical staff of an arbitration center as to international practices in the administration of a private commercial arbitration institution and in conducting individual arbitration that meet international standards, and 2) introducing the business community to the concept of commercial arbitration.

Donor Coordination:

CLDP is the only international donor directly involved in the area of commercial arbitration and is partnering with the American Arbitration Association (AAA) in the implementation of the project. Several organizations are collaborating in the area of commercial mediation, to which commercial arbitration serves a related but complimentary role in an effective alternative dispute resolution environment. The World Bank IFC, through funding from Harakat, expects to begin implementation of a commercial mediation program in 2012, and will enlist both ASI and the Center for Effective Dispute Resolution (CEDR) to administer various aspects of their program. CLDP has been coordinating regularly with both Harakat and the IFC project team to ensure that the programs are both complimentary and utilizing available efficiencies.

GIRoA Coordination:

CLDP maintains a close working relationship with the MoCI, which has jurisdiction over arbitration and mediation law within GIRoA. Though the Commercial Arbitration law was passed by decree in 2007, MoCI will play a crucial strategic role in future years in obtaining support for arbitration from other GIRoA stakeholders—the Ministry of Justice, the Commercial Courts—and CLDP advisory assistance will support these MoCI initiatives. CLDP may also utilize its working relationship with AISA to provide advisory assistance and training to the dispute resolution office of that organization.

2013 Follow-On:

CLDP will monitor the progress of the ADR Center as it develops into 2013 and will reassess the frequency and type of future training needs prior to the end of the 12-month implementation period. As the ADR Center develops institutional capacity, it will be the recipient of increasingly varied and complex commercial disputes. In order to render arbitral awards with the quality and integrity sufficient to develop into a regional and international standard arbitration center, administrators and arbitrators will have continuing training needs through 2014.

Commercial Officer/Investment Promotion Development

\$365,000

Projects Include:

Training for Commercial Attachés and Investment Promotion Officials

Mechanism:

Direct Services & Logistics Contracting

Objectives:

CLDP will provide Afghan commercial attachés and investment promotion officials within relevant Afghan government agencies with the knowledge and the skills required to identify potential foreign direct investors, to act as an interface between Afghan firms and potential foreign partners, and to understand international business transactions and contract negotiations.

Results/Targets

- Number of Commercial Attachés trained
- Reports of effective Commercial Attaché activity from Afghan firms and foreign firms
- Number of Investment Promoters trained
- Increase in International Business Partnerships (e.g., Joint Ventures)

2012 Proposed Timeline:

30 July 2012	Attaché/Investment Promotion Officer Group 1 Training Phase 2
30 September 2012	Herat Investment Conference Client Counseling Live Training
30 December 2012	Attaché Group 2 Phase 1 (conditional upon visa issuance)
30 April 2012	Attaché Group 2 Phase 2 (conditional upon visa issuance)

Sustainability:

The training of commercial officers and investment promotion officers is designed to produce long-term benefits to the economy of Afghanistan by increasing the capacity of the country's current commercial diplomatic corps, but also apprising MoCI of frameworks necessary to attract foreign investment and the commercial diplomatic tradecraft and training structures likely to create commercial successes.

Donor Coordination:

CLDP is the only donor organization training Afghan commercial officers. However, CLDP consults regularly with USAID personnel in Kabul managing investment promotion capacity building efforts focused on particular sectors and GIRoA ministries.

GIRoA Coordination:

CLDP works directly with the Deputy Minister of Trade of MoCI, the VP of Investment for AISA and the Director of Policy and Promotion of MoM in selecting participants and training topics.

2013 Follow-On:

CLDP will assess the value and effectiveness of potential future commercial officer/investment promotion officer training in light of MoCI personnel turnover, MoCI capacity to develop permanent training program for commercial officers, and an increasingly limited ability of Afghans to obtain U.S. visas.

Attachment 2 -- FINANCIAL PLAN AND BUDGET

EXPENSE		AMOUNT
1. Overhead		\$228,540.00
Office Rent	\$111,070.44	
Commerce Dept. Working Capital Fund	\$90,958.92	
Security (Domestic)	\$2,285.40	
Training	\$5,942.04	
Supplies & Equipment	\$14,398.02	
Telecommunications	\$3,885.18	
2. Salaries & Benefits		\$828,457.50
Chief Counsel (30% of time)	\$57,337.13	
Dep. Chief Counsel (30% of time)	\$55,691.25	
Admin. Officer (30% of time)	\$46,409.25	
Senior Counsel (90% of time)	\$157,791.38	
Senior Counsel (25% of time)	\$43,830.94	
Senior Legal Expert (part-time; 75% of time)	\$111,756.00	
Senior Legal Expert (part-time; 100% of time)	\$59,608.00	
Attorney-Advisor (100% of time)	\$111,291.25	
Attorney-Advisor (50% of time)	\$72,331.88	
Int'l Program Specialist (100% of time)	\$61,656.00	
Int'l Program Specialist (65% of time)	\$50,754.42	
Program Budgets		\$1,799,752.50
3. Commercial Law Education Initiative		\$482,328.00
Workshops & Consultations	\$192,328.00	
CLDP & Advisor Travel	\$82,000.00	
Participant Travel	\$100,000.00	
Advisor Fees	\$24,000.00	
Textbook Translation	\$84,000.00	
4. Commercial Law Implementation		\$717,570.00
Workshops & Consultations	\$337,570.00	
CLDP & Advisor Travel	\$180,000.00	
Participant Travel	\$200,000.00	
5. Arbitration Development		\$369,904.50
Workshops & Consultations	\$174,904.50	
CLDP & Advisor Travel	\$75,000.00	
Participant Travel	\$120,000.00	
6. Commercial Officer/Investment Promotion Development		\$229,950.00
Workshops & Consultations	\$12,950.00	

CLDP & Advisor Travel
Participant Travel

\$15,000.00
\$202,000.00

TOTAL

\$2,856,750.00

Attachment 3 -- STANDARD PROVISIONS

A. GENERAL

1. The Servicing Agency will use the funds made available to it under this Agreement to cover costs incurred in carrying out the Program under the terms and conditions of this Agreement. The Servicing Agency will be accountable for all funds made available to it under this Agreement. Funds not expended by the Servicing Agency by the Completion Date of the Program (as defined at Section VII above) and funds expended for purposes or activities not authorized by this Agreement will be promptly refunded to USAID.
2. USAID will begin to formally close out the Program after the physical completion of the Program or the Completion Date, whichever occurs first. The Servicing Agency will cooperate with USAID to expeditiously and properly document the close-out of the Program.

B. BILLING AND FINANCIAL REPORTS

1. The Servicing Agency must bill USAID as provided in Section III of this Agreement. The amount billed will be determined by the Servicing Agency and will be billed for an expenditure transfer into an account administered by the Servicing Agency and for which the Servicing Agency provides fiscal reports to OMB and/or the Department of Treasury. This amount will be treated by USAID as an advance and will be expended based on the periodic financial reports, described below, detailing the implementation of the Program.
2. The financial reports submitted for liquidation of advances or requests for reimbursement must, contain current period and cumulative amounts as follows:

Budget Line Item	Budget Amount	Current Period Disbursements	Cumulative Disbursements	Remaining Budget Balance
---------------------	------------------	---------------------------------	-----------------------------	--------------------------------

3. The Servicing Agency must use the categories of obligations and expenditures set forth in Attachment Two to this Agreement or as advised by the AOR.
4. The financial reports will be used to liquidate the advance authorized by this Agreement. The Servicing Agency must submit its periodic financial report within 30 days after the end of the applicable reporting period. The report must be signed in the original by an authorized official of the Servicing Agency billing office.

C. PROCUREMENT

1. The Servicing Agency will administer the funds (including procurement and monitoring actions) in accordance with its own procedures, except as provided in this Agreement or as USAID may otherwise agree in writing.

2. The authorized USAID Principal Geographic Code for the procurement of commodities and services under this Agreement is Code 937 (the United States, Afghanistan, and developing countries other than advanced developing countries, but excluding any country that is a prohibited source) as further described at ADS 310 and 311.

D. BOOKS AND RECORDS.

The Servicing Agency must keep full and complete records and accounts with respect to the funds made available to it under this Agreement in accordance with generally accepted U.S. Government accounting principles. The Servicing Agency must require that all contractors or grantees financed under this Agreement maintain books and records related to the Program in accordance with generally accepted accounting principles as formally prescribed by the United States, the Cooperating Country, or the International Accounting Standards Committee (an affiliate of the International Federation of Accountants). The Servicing Agency must ensure that all such books and records of all contractors and grantees financed under this Agreement may be audited by the Servicing Agency, USAID, or other authorized U.S. Government official for a period of three (3) years from the expiration of the contract or grant.

E. IMPLEMENTATION AND MONITORING

1. The Servicing Agency is responsible for overall supervision of the Program.
2. The Servicing Agency must submit to USAID such other information as USAID may reasonably request regarding the implementation, impact, or success of the Program of the Program and the expenditure of funds under this Agreement.

F. AUDIT AND INSPECTION RIGHTS

1. Audit and inspection requirements as set forth in the Inspector General Act of 1978, as amended, (the "Act") apply with respect to the funds transferred hereby, and to the books and records of any contractor or grantee financed with such funds. The Office of the Inspector General for USAID must ensure full compliance with all applicable provisions of the Act in coordination with the Office of the Inspector General for the Servicing Agency, or other appropriate office, which will provide all appropriate assistance or other support.
2. The Servicing Agency must ensure that grants with non-U.S., nongovernmental organizations include an audit clause that requires that if a grantee receives \$300,000 or more per year in grant awards, the grantee agrees that it will have an independent financial audit of the funds provided under such grants. The financial audit of the funds disbursed to the grantee will determine whether the receipt and expenditure of the funds provided under the grant are in accordance with generally accepted accounting principles and whether the grantee has complied with the terms of the agreement. An audit must be conducted for each fiscal year of the grantee. The audits must usually be performed annually, but not less frequently than every two years. The audits must be performed in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States. Non-U.S., nongovernmental organizations

receiving less than \$300,000 per year are exempt from the financial audit requirements, but are subject to the requirement to make records available upon request for review by authorized U.S. Government officials.

3. The Servicing Agency must ensure that contracts with non-U.S. contractors include the appropriate audit and examination of records clauses as specified in the Federal Acquisition Regulation.
4. The Servicing Agency must ensure, by appropriate written arrangements with recipients of USAID-financed assistance under this Agreement, that such assistance will be subject to audit and inspection by authorized U.S. Government officials.

G. OTHER AGREEMENTS

1. In each Cooperating Country in which a framework economic assistance bilateral agreement governing privileges, immunities, and tax exemptions of USAID-financed personnel, entities, and commodities is not in effect, the Servicing Agency, with the assistance of USAID and, if necessary, the United States Embassy in the Cooperating Country, will seek to obtain for its personnel, contractors, and grantees as well as for any commodities financed under this agreement, exemptions from taxes, duties, and fees that may be imposed by the Cooperating Country with respect to activities or transactions financed under this Agreement.
2. The Servicing Agency must ensure, with the assistance of USAID, and if necessary, the United States Embassy in the Cooperating Country, through written arrangements which the Servicing Agency and/or grantees or contractors financed under this Agreement must enter into with recipients of USAID-financed assistance that (1) such assistance must only be used for the purposes stated therein and, (2) that if such assistance is no longer needed for such purposes, that such assistance may be used for other purposes as may be agreed upon by the Servicing Agency in consultation with USAID.

H. AMENDMENTS AND MODIFICATIONS

1. Implementation letters may be used to record mutually agreed upon adjustments to Attachments One (Detailed Action Plan) and Two (Detailed Budget) without formal amendment of this Agreement. In addition, USAID, from time to time may issue implementation letters to furnish additional information about matters addressed in this Agreement. Implementation letters must not be used, however, to modify the Completion Date, the body of the Agreement or this Attachment C (Standard Provisions) of this Agreement or to increase the total amount of USAID funds obligated under this Agreement. Such changes must only be accomplished through formal amendment of this Agreement.
2. This Agreement may be amended, modified or canceled upon the mutual, written agreement of both parties.

I. AUTHORIZED REPRESENTATIVES

For all purposes relevant to this Agreement, the Servicing Agency and USAID will be represented by the individuals identified at Section VI of this Agreement. Each party may, by written notice to the other party, designate additional representatives, who will serve as representatives for all purposes specified in such notice.

J. INTERNATIONAL TRAVEL

1. Except as USAID may otherwise agree in writing, all travel financed under this Agreement is subject to the Federal Travel Regulation.
2. Except as USAID may otherwise agree in writing, travel financed under this Agreement to all international destinations will be subject to United States Embassy or USAID Mission clearance in accordance with guidance issued from time to time by USAID. The Servicing Agency is hereby advised that in some instances, several weeks' advance notice may be required in order to obtain the necessary approvals for certain international destinations. Accordingly, the Servicing Agency will advise USAID in Washington of proposed international travel at least three weeks in advance, if possible.

K. INVESTMENT PROMOTION

1. No funds or other support provided under this agreement may be used in a project or activity reasonably likely to involve the relocation or expansion outside of the United States of an enterprise located in the United States if non-U.S. production in such relocation or expansion replaces some or all of the production of, and reduces the number of employees at, said enterprise in the United States.
2. No funds or other support provided under this agreement may be used in a project or activity the purpose of which is the establishment or development in a foreign country of any export processing zone or designated area where the labor, environmental, tax, tariff, and safety laws of the country would not apply, without the prior written approval of USAID.
3. No funds or other support provided under this agreement may be used in an activity that contributes to the violation of internationally recognized rights of workers in the cooperating country, including those in any designated zone or area in that country.

L. COMMERCE AND TRADE

1. No funds or other support provided under this agreement may be used for any testing or breeding feasibility study, variety improvement or introduction, publication, conference, or training in connection with the growth or production in a foreign country of an agricultural commodity for export which would compete with a similar commodity grown or produced in the United States: provided that this shall not prohibit (a) activities designed to increase food security in developing countries where such activities will not have a significant impact in the export of agricultural commodities of the United States; or (b) research activities intended primarily to benefit United States producers.

2. No funds or other support provided under this agreement may be used to:
 - a. Procure directly feasibility studies or prefeasibility studies for, or project profiles of potential investment in, the manufacture, for export to the United States or to third country markets in direct competition with United States exports, of import-sensitive articles as defined by 19 U.S.C. 2463 (b) (1) (A) and (E)); or
 - b. Assist directly in the establishment of facilities specifically designed for the manufacture, for export to the United States or to third-country markets in direct competition with United States exports, of import-sensitive articles as defined by 19 U.S.C. 2463 (b) (1) (A) and (E)).

M. COMMUNICATIONS PRODUCTS

Unless this Agreement specifically provides otherwise or USAID approves otherwise in writing, the following requirements apply to any printed material (other than noncolor photocopy material), photographic services or video production services (“Communications Products”) prepared under this Agreement:

1. The Servicing Agency must follow USAID-established standards for Communications Products financed by USAID. A copy of the USAID standards may be obtained from the USAID Authorized Representative on request.
2. The following Communications Products are eligible for USAID financing under this Agreement only if they are approved in writing by the USAID Bureau for Legislative and Public Affairs (LPA):
 - a. Any Communications Products costing over \$25,000, including the costs of both preparation and execution. (For example, in the case of a publication, the costs will include research, writing, and other editorial services (including any associated overhead), design, layout, and production costs.)
 - b. Any Communications Products that will be sent directly to, or are likely to be seen by, a Member of Congress or Congressional staffer.
 - c. Any Communications Products of which more than 50 percent of the copies will be distributed in the United States (excluding copies provided to USAID/PPC/CDIE and other USAID/Washington offices for internal use).

N. TRAINING OF COOPERATING COUNTRY PERSONNEL

Except as USAID may otherwise agree in writing, the planning and implementation of all training of personnel of cooperating countries financed under the Program must comply with USAID ADS Chapter 253.

O. NATIONAL SECURITY

1. In accordance with National Security Decision Directive 38 of June 2, 1982,

[A]ll agencies with staffs operating under the authority of Chiefs of Mission will ensure that, in coordination with the Department of State, the Chiefs of Missions' approval is sought on any proposed changes in the size, composition, or mandate of such staff elements. Departments and agencies wishing to initiate changes should transmit their proposals to Chiefs of Missions in consultation with the Department of State.

Accordingly, the Servicing Agency is responsible for complying with all requirements of National Security Decision Directive 38, as instructed by the Department of State and the chiefs of mission in each cooperating country.

2. The Servicing Agency must ensure that all of its employees assigned or hired overseas and all of its personnel (both employees and contractors) traveling overseas on temporary duty have the requisite security clearance and otherwise comply with the requirements of 12 Foreign Affairs Manual (FAM) 443.

P. USE OF GOODS AND SERVICES

Except as USAID may otherwise agree in writing, all goods and services financed under this Agreement will be used for the purposes of the Program until the completion or termination of this Agreement, and thereafter will be used as USAID may direct in implementation letters.

Q. MARKING

Unless USAID agrees otherwise,

1. All USAID-financed equipment and materials must be marked with the USAID red, white, and blue emblem, and their shipping containers must be marked with the emblem and the USAID financing document number.
2. All construction sites and other locations receiving USAID financing must display signs marked with the USAID red, white, and blue emblem and indicating participation by the United States of America. These signs should be erected at an early date in the construction or implementation phase and be replaced by permanent signs, plates or plaques, marked with the USAID red, white, and blue emblem, at the end of this phase.