



2. In consultation with the Army Contracting Command, SIGAR has proposed and the Army Contracting Command has approved Joseph E. Schmitz to serve as the Monitor. The Monitor's term shall be sixty (60) days from the date on which the contract was signed, August 9, 2010. The Monitor's duties and authority, and the obligations of SIGAR with respect to the Monitor, are set forth in the Statement of Work at ATTACHMENT 1.

3. SIGAR shall cooperate fully with the Monitor and the Monitor shall have the authority to take such reasonable steps as, in his view, may be necessary to be fully informed about the compliance milestones in SIGAR's POA&CM within the scope of his responsibilities under the Statement of Work. To that end, SIGAR shall provide the Monitor with access to all information, documents, records, facilities and/or employees that fall within the scope of responsibilities of the Monitor under the Statement of Work. Any such disclosure by SIGAR to the Monitor concerning noncompliance, if any, with Attorney General guidelines shall not relieve SIGAR of its obligation truthfully to disclose such matters to the Department of Justice.

4. The Monitor is an independent third-party, not an employee or agent of SIGAR, and no attorney-client relationship shall be formed between SIGAR and the Monitor.

5. SIGAR agrees that the Monitor shall carry out his duties in a manner as consistent as possible with the guidelines prescribed in the Deputy Attorney General's Memo of March 7, 2008, "Selection and Use of Monitors in Deferred Prosecution Agreements and Non-Prosecution Agreements with Corporations," taking into consideration, of course, that this Independent Monitorship involves neither a Deferred Prosecution Agreement nor a Non-Prosecution Agreement. Those guidelines include the following Principles, among others, about which the Deputy Attorney General's Memo explains: "As used in these Principles, the terms 'corporate' and 'corporation' refer to all types of business organizations, including . . . government entities, and unincorporated associations. . . . Given the varying facts and circumstances of

each case – where different industries, corporate size and structure, and other considerations may be at issue – any guidance regarding monitors must be practical and flexible”:

- A monitor's primary responsibility should be to assess and monitor a corporation's compliance with those terms of the agreement that are specifically designed to address and reduce the risk of recurrence of the corporation's misconduct, including, in most cases, evaluating (and where appropriate proposing) internal controls and corporate ethics and compliance programs.
- In carrying out his or her duties, a monitor will often need to understand the full scope of the corporation's misconduct covered by the agreement, but the monitor's responsibilities should be no broader than necessary to address and reduce the risk of recurrence of the corporation's misconduct.
- Communication among the Government, the corporation and the monitor is in the interest of all the parties. Depending on the facts and circumstances, it may be appropriate for the monitor to make periodic written reports to both the Government and the corporation.
- The duration of the agreement should be tailored to the problems that have been found to exist and the types of remedial measures needed for the monitor to satisfy his or her mandate.

6. In undertaking the validations and monitoring described above, the Monitor shall formulate conclusions based on, among other things: (a) inspection of relevant documents, including the Policies and Procedures relating to SIGAR's POA&CM; (b) onsite observation of SIGAR's systems and procedures, including its internal controls, record-keeping and internal audit procedures; (c) meetings with, and interviews of, relevant employees, directors and other persons at mutually convenient times and places; and (d) analyses, studies and testing of SIGAR's POA&CM as well as associated Policies and Procedure.

7. Should the Monitor, during the course of his engagement, discover credible evidence that materially contradicts the representation of SIGAR to the Attorney General (“AG”) on August 6, 2010, that, “As of this date, all of the AG standards have been met,” the Monitor

shall promptly report such to SIGAR's General Counsel, unless the Monitor believes, in the exercise of his discretion, that such report should be made directly to the Department of Justice.

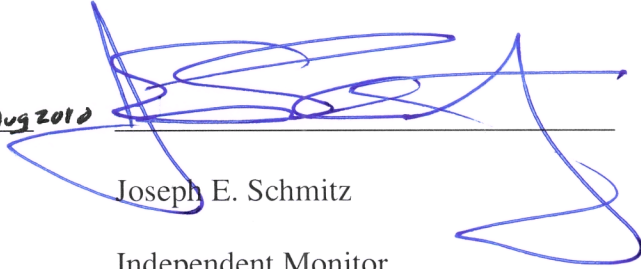
8. The provisions of this Memorandum of Understanding regarding background information on and agreed terms of reference for the independent monitorship of SIGAR by Joseph E. Schmitz, PLLC shall not be construed as overriding any inconsistent provisions of the underlying SIGAR contract, to include the Statement of Work at Attachment 1, to the extent of any such inconsistencies. Consistent with this understanding, the provisions of this Memorandum of Understanding will be deemed effective as of 9 August 2010, the same date on which the independent monitorship contract was entered into by and between the Parties, on whose behalves the signatories below have duly assented having full authority to do so.

SIGAR

Joseph E. Schmitz, PLLC

BY:

BY:



Arnold Fields

Joseph E. Schmitz

Inspector General

Independent Monitor

Attachment:

1 – Statement of Work – Independent Monitor



Statement of Work  
Independent Monitor

For the period of performance from 9 August 2010 through 30 September 2010, and in response to the recent peer review conducted under the auspices of the Council of the Inspectors General on Integrity and Efficiency (“CIGIE”), the results of which were reported by letter to the Attorney General<sup>1</sup> on July 15, 2010:

1.1.1 In order to conduct an effective initial review and fully to understand any existing deficiencies in SIGAR’s controls and in its Policies and Procedures related to law enforcement authority, the contractor shall develop an initial work plan which shall include such steps as are reasonably necessary to develop an understanding of the facts and circumstances surrounding each of the ten “weaknesses and opportunities for improvement” identified by CIGIE, but contractor will not conduct its own inquiry into those historical events.

2.1.1 The contractor shall perform the functions of an independent monitor and shall independently validate and monitor compliance with the plan of action and completion milestones (“POA&CM”) prepared by the SIGAR Assistant Inspector General for Investigations (“AIG-I”) on July 20, 2010, in response to ten findings of “weaknesses and opportunities for improvement” by a multiagency review team in the course of the recent peer review.

3.1.1 The work will be conducted in two phases:

Phase 1 – During the first ten (10) calendar days after award of contract, the contractor shall review, analyze, recommend any improvements to, and validate the soundness of the AIG-I’s POA&CM with respect to the findings of the CIGIE peer review and the above-quoted

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<sup>1</sup> The July 15, 2010, CIGIE letter to the Attorney General indicates that, “We are notifying you of this matter for a determination by you as to whether SIGAR’s law enforcement powers should be suspended or rescinded,” citing, among other authorities, Section 6(e) of the Inspector General Act of 1978, as amended, which provides in pertinent part:

(2) The Attorney General may authorize exercise of the [law enforcement] powers under this subsection only upon an initial determination that--

(A) the affected Office of Inspector General is significantly hampered in the performance of responsibilities established by this Act as a result of the lack of such powers;

(B) available assistance from other law enforcement agencies is insufficient to meet the need for such powers; and  
(C) adequate internal safeguards and management procedures exist to ensure proper exercise of such powers.

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(4) The Attorney General shall promulgate, and revise as appropriate, guidelines which shall govern the exercise of the law enforcement powers established under paragraph (1).

(5) (A) Powers authorized for an Office of Inspector General under paragraph (1) may be rescinded or suspended upon a determination by the Attorney General that any of the requirements under paragraph (2) is no longer satisfied or that the exercise of authorized powers by that Office of Inspector General has not complied with the guidelines promulgated by the Attorney General under paragraph (4).

(B) [Law enforcement] powers authorized to be exercised by any individual under paragraph (1) may be rescinded or suspended with respect to that individual upon a determination by the Attorney General that such individual has not complied with guidelines promulgated by the Attorney General under paragraph (4).

standards for the Attorney General rescinding or suspending law enforcement powers prescribed in Section 6(e) of the Inspector General Act of 1978.

Contractor Phase 1 Deliverables:

- (1) Prepare initial work plan for both (a) independently validating AIG-I's POA&CM, and (b) independently monitoring AIG-I's compliance with that POA&CM;
- (2) Brief the SIGAR as well as the Department of Justice and/or congressional oversight stakeholders identified by SIGAR;
- (3) Conduct independent validations of AIG-I's POA&CM;
- (4) Report to SIGAR as well as the Department of Justice and/or congressional oversight stakeholders on the results of the independent validation of AIG-I's POA&CM.

Phase 2 – During the forty (40) calendar days following the completion of Phase 1, the contractor shall independently monitor the AIG-I's compliance with the validated POA&CM.

Contractor Phase 2 Deliverables:

- (1) No later than twenty (20) calendar days prior to the completion of Phase 2, the contractor shall provide an interim report to SIGAR as well as the Department of Justice and/or congressional oversight stakeholders, independently assessing the AIG-I's compliance with the validated POA&CM;
- (2) No later than five (5) calendar days prior to the completion of Phase 2, the contractor shall provide a draft final report to SIGAR as well as the Department of Justice and/or congressional oversight stakeholders, independently assessing the AIG-I's compliance with the validated POA&CM;
- (3) With respect to any recommendations that SIGAR considers unduly burdensome, impractical, costly or otherwise inadvisable, SIGAR need not adopt that recommendation; instead, SIGAR may propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose. As to any recommendation on which SIGAR and the contractor do not agree, the views of SIGAR and of the contractor shall be included in the final written report;
- (4) No later than ten (10) calendar days following the completion of Phase 2, the contractor shall provide a final written report to SIGAR as well as the Department of Justice and/or Congressional oversight stakeholders, independently assessing the AIG-I's compliance with the validated POA&CM.

Both the report of CIGIE peer review and the latest draft POA&CM will be provided to the contractor as government furnished information (GFI) upon execution of the above tasking.