

JES PLLC DOCUMENT NO. 2010-SIGAR-001

Independent Monitor Final Report

**for The Special Inspector General for Afghanistan Reconstruction
(SIGAR) in Response to the July 2010 Findings of the Council of the
Inspectors General on Integrity and Efficiency (CIGIE) Peer Review
Associated with SIGAR Law Enforcement Authority**

(Ref. SIGAR Contract W91WAW-10-P-0202)

October 8, 2010

Prepared For:

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-and-

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September 13, 2010

- 1. Chairman Levin & Ranking Member McCain, Senate Armed Services Committee
- 2. Chairman Kerry & Ranking Member Lugar, Senate Comm. on Foreign Relations
- 3. Chairman Inouye & Ranking Member Cochran, Senate Comm. on Appropriations
- 4. Chairman Leahy & Ranking member Gregg, Senate App. Subcommittee on State, etc.
- 5. Chairman Skelton & Ranking Member McKeon, House Armed Services Committee
- 6. Chairman Berman & Ranking Member Ros-Lehtinen, House Committee on Foreign Affairs
- 7. Chairman Obey & Ranking Member Lewis, House Appropriations Committee

September 18, 2010

- 8. Chairman Joseph I. Lieberman, Senate Committee on Homeland Security and Governmental Affairs
 - 9. Senator Chuck Grassley
 - 10. Senators Claire McCaskill, Tom Coburn, and Susan Collins
- l. INDEPENDENT MONITOR CORRESPONDENCE TO SIGAR EXECUTIVE BRANCH STAKEHOLDERS
 - 1. Secretary of State Hillary Rodham Clinton
 - 2. Secretary of Defense Robert M. Gates
 - 3. National Security Advisor, Gen. James L. Jones, USMC (Ret)
 - m. INDEPENDENT MONITOR REPORTS TO ATTORNEY GENERAL

1. August 11, 2010 (Initial Report)
 2. August 19, 2010 (Phase 1 Report)
 3. September 8, 2010 (Phase 2 Interim Report)
 4. September 23, 2010 (Phase 2 Interim Report/Draft Final)
- n. INDEPENDENT MONITOR PHASE 2 INTERIM REPORT/DRAFT FINAL REPORT OUTLINE, SEPTEMBER 21, 2010
- o. FURTHER IMPROVED/FINAL PLAN OF ACTION & COMPLIANCE MILESTONES, September 30, 2010
- p. INDEPENDENT MONITOR WORK PLAN (FINAL), OCTOBER 5, 2010

1. EXECUTIVE SUMMARY

A. By What Authority and For What Purpose?

On August 9, 2010, the Department of the Army Contracting Center for Excellence (CCE) on behalf of the Office of the Special Inspector General for Afghanistan Reconstruction (SIGAR), pursuant to SIGAR's statutory authority to, "enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and [to] make such payments as may be necessary to carry out the duties of the Inspector General" (National Defense Authorization Act for Fiscal Year 2008, §1229(h)(3) (Jan. 28, 2008) [APP. A]), contracted with JOSEPH E. SCHMITZ, PLLC, to serve as an Independent Monitor for a period of sixty (60) days. According to the contractual Statement of Work, the Independent Monitor, "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."

On April 20, 2010, the Attorney General of the United States granted SIGAR and its Office statutory law enforcement power on April 20, 2010 [APP. B]. On July 14, 2010, the Council on Inspectors General for Integrity and Efficiency (CIGIE) completed a peer review of SIGAR's Investigative component. The July 14, 2010, cover letter for the CIGIE's "Report on the Quality Assessment Review of the Investigative Operations" [APP. C], which is included as part of the Report, indicates that, "We have reviewed the system of internal safeguards and management procedures for the investigative function of the Office of Special Inspector General for Afghanistan Reconstruction in effect for the period ended April 16, 2010." On July 15, 2010, CIGIE reported the results of its peer review by letter to the Attorney General of the United States [APP. D].

According to the SOW for this Independent Monitorship, "The July 15, 2010, CIGIE letter to the Attorney General indicated 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 [that] Powers authorized for an Office of Inspector General . . . may be rescinded or suspended upon a determination by the Attorney General that . . . the exercise of authorized powers by that Office of Inspector General has not complied with the guidelines promulgated by the Attorney General'."

B. Bottom Line Results of Independent Monitorship:

Phase 1 Results: As reported to the Attorney General on August 19, 2010, the AIG-I's then current Plan of Action as of that date, which was an improved version of the one prepared prior to this Independent Monitorship, included a comprehensive Compliance Milestones tracking matrix that more than adequately addressed all ten (10)

findings by the CIGIE Peer Review team of “weaknesses and opportunities for improvement.” The original Plan of Action [APP. E] also addressed each of the ten (10) CIGIE Peer Review findings. The improved Plan of Action [APP F] was designed effectively and efficiently: (a) to document already achieved compliance by SIGAR with Attorney General Guidelines IV(A), IV(B), and IV(C); and (b) to assist in tracking and documenting compliance with all not yet then satisfied CIGIE standards no later than September 30, 2010.

Phase 2 Results: Although a number of scheduled compliance milestones slipped during the course of the Independent Monitorship, the AIG-I complied in all material respects with the POA&CM that the Independent Monitor validated on August 19, 2010. Throughout the Independent Monitorship, the Assistant Inspector General continued to improve that POA&CM such that it served -- and continues to serve -- as an effective leadership tool for tracking and documenting compliance with all Attorney General and CIGIE standards. As of this final report, achievement of all Milestones in the POA&CM has been independently validated.

C. Overview of Independent Monitorship Methodology:

The methodology for carrying out this Independent Monitorship is based on the following Principles underlying 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:

- 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.

The Deputy Attorney General's Memo of March 7, 2008, which explains that, "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," is incorporated by reference into the Memorandum of Understanding (MOU) executed by SIGAR and the Independent Monitor on August 13, 2010 [APP. F]. The MOU includes the contractual SOW, which is also reflected in the Independent Monitor Initial Work Plan [APP. G].

2. OVERVIEW OF INVESTIGATIVE PEER REVIEW FINDINGS

In response to the February 24, 2010, request by the Special Inspector General for Afghanistan Reconstruction, the CIGIE reviewed the system of internal safeguards and management procedures for the investigative function of the Office of SIGAR for the period ending on April 16, 2010.

The review was conducted in conformity with: (a) the PCIE/ECIE Quality Standards for Investigations; (b) the Quality Assessment Review guidelines established by the CIGIE Quality Standards for Investigations; and (c) the Attorney General Guidelines for Office of Inspectors General with Statutory Law Enforcement Authority, as applicable.

In performing its review, CIGIE also gave consideration to the provisions that authorize law enforcement powers for eligible personnel of each of the various offices of presidentially appointed Inspectors General, including: (a) Section 6(e) of the Inspector General Act of 1978 (as amended); and (b) Section 812 of the Homeland Security Act of 2002 (Pub. L. 107-296).

The CIGIE review was conducted at SIGAR's headquarters office in Arlington, Virginia, and at SIGAR's in-country office in Kabul, Afghanistan. It included all case files for investigations closed since the inception of SIGAR's investigative function.

In its July 14, 2010, "Report on the Quality Assessment Review of the Investigative Operation of SIGAR" [report at APP. C; forwarding letter to the Attorney General at APP. D], the CIGIE concluded that "the system of internal safeguards and management procedures for the investigative function of the SIGAR in effect for the period ending on April 16, 2010, was not in compliance with the quality standards established by the PCIE/ECIE, the CIGIE, and the Attorney General guidelines." CIGIE further concluded that "the safeguards and management procedures of SIGAR's investigative organization did not provide reasonable assurance of conforming to professional standards in the conduct of its investigations" and identified "10 reportable findings which represent weaknesses and opportunities for improvement."

While noting that "it is likely that SIGAR can come into compliance with the applicable standards and guidelines within the near future," pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, the CIGIE report was forwarded "for a determination by [the Attorney General] as to whether SIGAR's law enforcement powers should be suspended or rescinded." Section 6(e) of the Inspector General Act 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.

(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). . . .

3. INDEPENDENT MONITORSHIP FINDINGS AND RECOMMENDATIONS

A. Phase 1 of Independent Monitorship: Preliminary Comments Regarding SIGAR Compliance with Attorney General Guidelines and the Adequacy of the Original POA&CM

- i. The original POA&CM [APP. E], in summarizing the results of the recent Investigations Directorate peer review, did not repeat the “opinion” expressed by the CIGIE Investigations Committee Chair in his letter to the Attorney General of July 15, 2010 [APP. D], that, “In our opinion, the system of internal safeguards and management procedures for the investigative function of SIGAR in effect for the period ending on April 16, 2010, was not in compliance with the quality standards of established by the PCIE/ECIE, the CIGIE, and the Attorney General guidelines.”
- ii. It was not clear whether or not the standards recited in each of the “FINDINGS,” starting on page five of the original POA&CM, were quoted directly from the source.
- iii. The original POA&CM did not have a summary spreadsheet that would allow an Assistant Inspector General or an Independent Monitor to keep track of progress towards full compliance. (The Independent Monitor subsequently outlined on a White Board the type of improvements that could transform an adequate POA&CM into a fully-functional matrix, with each Finding listed (preferably quoted, at least in a footnote), along with the applicable Standard (preferably quoted, at least in a footnote), planned completion date, completion status (including actual completion date, if completed), accountable SIGAR official for each Milestone, and Independent Monitor validation status).
- iv. Findings that had already been remediated by the date of the original POA&CM (20 July 2010) did not indicate the date on which they were remediated, and the way they were remediated, *e.g.*, Finding 2 Remediation Milestone read simply: “No further action required” (and the preceding “Relevant Observation” concluded with, “SIGAR’s current 16 Special Agents are senior-level, career law enforcement officers with an average of 28 years of relevant, federal law enforcement experience.”
- v. The original POA&CM indicated completion dates for AG#2 and AG#3 remediation milestones of 8-15 and 8-31-10 (and of 8-22 for AG#4), all of which milestone dates needed to be compared to actual completion (and validated standards) in order to validate SIGAR’s letter representation to the Attorney General on August 6, 2010, that, “As of this date, all of the AG standards have been met, as has one of the six CIGIE standards. The remaining five CIGIE standards will have been resolved by the end of September 2010.”

B. Phase 1 of Independent Monitorship: Validation of Plan of Action & Compliance Milestones (POA&CM) for Each Deficiency Identified in CIGIE Peer Review

i. Independent Monitor Findings:

- a. The original POA&CM [App. E], prepared by the AIG-I, included all ten (10) deficiencies identified by the CIGIE peer review, and included milestones designed to correct each of the not-yet-corrected deficiencies.
- b. The original POA&CM did not include the prescribed standards associated with each deficiency identified by the CIGIE peer review.
- c. The original POA&CM did not identify by name the SIGAR officer responsible for accomplishing each milestone associated with correcting each already satisfied deficiency and each not-yet-satisfied deficiency identified by the CIGIE peer review.

ii. Independent Monitor Recommendations: In order better to allow independent validation of both already corrected deficiencies as well as not-yet-corrected deficiencies identified by the CIGIE peer review, on August 19, 2010, the Independent Monitor presented the following recommendations for improving the original POA&CM to the Assistant Inspector General for Investigations:

a. General

(1) For documentation and validation purposes, recommend the quoted Standards for Findings ## 6-10 be parenthetically cited (in column #2) in the same way the standards for Findings ## 1-5 are parenthetically cited after the respective quotes.

(2) For documentation and validation purposes, recommend the Accountable Official be identified for all milestone action items already completed (in column #5).

b. Finding-by-Finding

(1) The descriptions of milestones 1(B), 1(D), & 1(E) as they appear in the worksheet are apparently all variations of the same type of AIG-I “issuance”; they should be better described so as to clarify precisely what was done in each instance vis-à-vis the CIGIE standard. Recommend that the description of the 1(E) milestone/action item, which was approved by AIG-I on 8-14-10, be clarified by quoting the applicable CIGIE standard. This assumes, of course, that such a quotation would be part of an accurate

description of the milestone accomplished on 8-14-10. *E.g.*, change, “AIG-I training policy approval,” to, “AIG-I approval of Investigations Directorate training policy and associated “programs in place to facilitate compliance with the Attorney General’s Guidelines and/or PCIE/ECIE QSI.” Also recommend that the description of milestone 1(F) be clarified so that it is clear that whatever the General Counsel is reviewing does not affect the completion of milestone 1(E) – assuming that it does not. Likewise, for milestone 1(F), the description should make it clear that whatever the IG is approving is distinguishable from (albeit related to) what the AIG-I approved on 8-14-10. *E.g.*, if it is accurate, change, “IG training policy approval,” to “Approval as official OIG policy the investigative training policy and associated programs that the AIG(I) approved for the Investigations Directorate on 8-14-10 (Milestone 1(E)).”

(2) The two milestones associated with Finding #2 should allow the Independent Monitor to validate that all every, “Special Agent/Investigator who will be exercising powers under these [Attorney General] Guidelines” has been OIG certified as having completed FLETC basic training or its equivalent.

(3) The Peer Review finding of “no infrastructure” should be directly addressed as a milestone, *e.g.*, through a new milestone 3(C) along the lines of, “Establish infrastructure matrix to plan ‘periodic refresher training’ and to document ‘specific training received’ by each member of the Investigations Directorate ‘in the following areas: trial process; federal criminal and civil legal updates; interviewing techniques and policy; law of arrest, search, and seizure; and physical conditioning/defensive tactics’.”

(4) The Peer Review finding of “no infrastructure” should be directly addressed as a milestone, *e.g.*, through a new milestone 4(C) along the lines of, “Establish infrastructure matrix to plan ‘periodic firearms training and recertification’ and to document all ‘firearms training received,’ including ‘initial and periodic firearms training and qualification in accordance with Federal Law Enforcement Training Center standards’.” A training infrastructure matrix could be established that included firearms training along with the required “periodic refresher training” identified in Finding #3.

(5) The Peer Review finding of “no infrastructure” should be directly addressed as a milestone, *e.g.*, through a new milestone 5(C) along the lines of, “Establish infrastructure matrix to plan and to document initial training and periodic refresher training in ‘the deadly force policy established by the Department of Justice’.” A training infrastructure matrix could be established that includes deadly force training along with the required “periodic refresher training” identified in Findings 3 and 4.

- (6) Recommend including in description of milestone 6(A) a quote from the CIGIE standard, e.g., add after “Self Inspection Policy,” the text, “designed to, ‘Establish organizational and case specific priorities and develop objectives to ensure that individual case tasks are performed efficiently and effectively’.”
- (7) In order to show the connection to the prescribed standard, recommend inserting “single-source” between “Submit draft of” and “strategic plan” in the description of milestone 7(A).
- (8) Recommend front-loading an “ongoing” Finding #8 milestone along the lines of, “Maintain current ‘centralized information management functions’ as Investigations Directorate explores ‘adoption and development of a functional electronic information system’ designed better to, ‘Store investigative data in a manner allowing effective retrieval, referencing, and analysis’.”
- (9) Recommend front-loading an “ongoing” Finding #9 milestone along the lines of the recommended front-loaded “ongoing” milestone for Finding #8 (quoting instead the standard for Finding #9).
- (10) Recommend front-loading an “ongoing” Finding #10 milestone along the lines of the recommended front-loaded “ongoing” milestones for Findings 8 & 9 (quoting instead the standard for Finding #10).
- iii. Response to Independent Monitor Recommendations: The SIGAR AIG-I fully embraced the recommendations of the Independent Monitor, the result of which was a more practically useful leadership tool [APP. H] designed effectively and efficiently: (a) to document already achieved compliance by SIGAR with Attorney General Guidelines IV(A), IV(B), and IV(C); and (b) to assist in tracking and documenting compliance with all not yet then satisfied CIGIE standards no later than September 30, 2010.
- iv. Pursuant to the SOW, the Independent Monitor reported the results of Phase 1 to SIGAR and to the Attorney General on August 19, 2010. The Independent Monitor’s outline utilized for his report to SIGAR is at Appendix I. His letter report to the Attorney General is at Appendix M2.

C. Phase 2 of Independent Monitorship: Finding-by-Finding Validation of SIGAR Investigative Staff's Accomplishment of Each POA&CM Milestone

Finding #1:

Deficiency: "Investigations Directorate Policies and Procedures: In sum and substance, there were nearly no official investigative policies and procedures in place prior to March 2010 and, therefore, no investigative activities in compliance therewith. Policies and procedures found in the 'SIGAR Agent Manual' were almost entirely verbatim copies of policies and procedures borrowed from the Special Inspector General for Iraq Reconstruction (hereafter SIGIR). Many of these borrowed policies and procedures bore watermarks (evidently as received from SIGIR) indicating they were in draft form. Policies not coming from the SIGIR manual were largely formulated and formally adopted in the weeks immediately preceding the Quality Assessment Review (QAR) and were virtual mirrors of the QAR standards which lacked implementation processes. This finding covers the period prior to March 25, 2010, and applies to every aspect of the standardized CIGIE Qualitative Assessment Review Guidelines for Federal Offices of Inspector General (May 2009) (Appendices B and C-1)."

CIGIE Standard: "Does the organization have policies, procedures, or programs in place to facilitate compliance with the Attorney General's Guidelines and/or the PCIE/ECIE QSI?" [Qualitative Assessment Review Guidelines for Federal Offices of Inspector General, May 2009, page 10].

Milestones:

- A. Adopt Investigative Policies from SIGIR. [**Completion validated by Independent Monitor 9/8/10**]
- B. Approve SIGAR Policy Memorandum 10-02, Policies, Procedures and SOPs Applicable to SIGAR Investigations, to establish implementation of investigative policies. [**Completion validated by Independent Monitor 9/8/10**]
- C. Draft Investigations Directorate training policy for providing periodic refresher training in trial process; federal criminal and civil legal updates; interviewing techniques and policy; law of arrest, search, and seizure; and physical conditioning/defensive tactics. [**See 'E' below**]
- D. Issue an official, directorate-wide notification of the implementation of SIGAR investigative policies mandating full compliance by all directorate personnel. [**Completion validated by Independent Monitor 9/8/10**]
- E. AIG-I approval of Investigations Directorate training policy and associated programs in place to facilitate compliance with the

Attorney General's Guidelines and PCIE/ECIE Quality Standards for Investigations. **[Completion validated by Independent Monitor 9/8/10]**

- F. Approval as official OIG policy the investigative training policy and associated programs that the AIG-I approved for the Investigations Directorate on 8-14-10 (Milestone 1(E)). **[Subsequent to the Independent Monitor validating this Milestone, the AIG-I determined that the "organization" to which the CIGIE standard refers need not be the OIG, but would more appropriately be the Investigative component -- taking into consideration, of course, whatever more general OIG policies, procedures, or programs were in place providing "intelligible principles" for the more specific policies, procedures, or programs of the Investigative component. The Independent Monitor made an independent determination that this development, consistent as it is with the principle of subsidiarity, was an improvement to the POA&CM that warranted deletion of this Milestone from the Independent Monitor POA&CM validation process].**

Finding #2:

Deficiency: "he Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority (2003) (Section IV(A)) require that OIGs certify that individuals exercising law enforcement powers have completed Basic Criminal Investigator Course at Federal Law Enforcement Training Center (FLETC) or a comparable course of instruction. SIGAR's Investigations Directorate effectively began in early 2009 with two investigators and later, in the fall of 2009, an Acting Assistant Inspector General (Investigations) (A-AIGI). One of the two investigators had received academy-level training. Neither the other investigator nor the A-AIGI, both experienced licensed attorneys, had received such training. This is considered worthy of note in the context of the truncated period of review. In effect, half of the investigators (n=1) for roughly half the operational duration of the agency's existence (seven months) did not meet the law enforcement training requirements set forth in the Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority (2003) (Section IV(A)). The QAR team did note, however, that all of the more recently hired investigators have had academy-level training and are generally very experienced criminal investigators. SIGAR's current practice and recently adopted policies do comply with this requirement."

Attorney General Guidelines: "Each Office of Inspector General must certify completion of the Basic Criminal Investigator Training Program at the Federal Law Enforcement Training Center by each Inspector General, Assistant Inspector General of Investigations, and Special Agent/Investigator who will be

exercising powers under these Guidelines." [Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority, 12/08/2003, Section IV. (A)].

Milestones:

- A. Review professional background of all law enforcement personnel assigned to Investigations Directorate to ensure each Special Agent exercising powers under the Attorney General Guidelines has completed FLETC basic training or its equivalent. [**Completion validated by Independent Monitor 9/8/10**]
- B. AIG-I certification and documentation in the appropriate administrative control file that all Special Agents exercising law enforcement powers under the Attorney General Guidelines have completed Basic Criminal Investigator Training at FLETC, or equivalent academy. [**Completion validated by Independent Monitor 8/19/10**]

Finding #3:

Deficiency: "The Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority (2003) (Section IV(A)) also require that the OIG provide periodic refresher training to its agents. SIGAR's Investigations Directorate had no infrastructure which captured specific training received during the review period, and as such, there were insufficient training records to substantiate agency-wide compliance with this standard. No clear anecdotal evidence mitigated this finding."

Attorney General Guidelines: "Additionally, the Office of Inspector General will provide periodic refresher training in the following areas: trial process; federal criminal and civil legal updates; interviewing techniques and policy; law of arrest, search, and seizure; and physical conditioning/defensive tactics." [Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority, 12/08/2003, Section IV. (A)].

Milestones:

- A. Evaluate and identify appropriate training courses currently available at FLETC. [**Completion validated by Independent Monitor 9/8/10**]
- B. Special Agent Bristol to attend FLETC training at Inspector General Criminal Investigator Academy. Certificate of completion maintained in appropriate SIGAR Headquarters administrative control file. [**Completion validated by Independent Monitor 9/8/10**]

- C. Establish infrastructure matrix to plan periodic refresher training and to document specific training received by each member of the Investigations Directorate in the following areas: trial process; federal criminal and civil legal updates; interviewing techniques and policy; law of arrest, search, and seizure; and physical conditioning/defensive tactics. **[Completion validated by Independent Monitor 9/8/10]**

Finding #4:

Deficiency: “The Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority (2003) (Section IV(B)) require that eligible individuals receive initial and periodic firearms training and recertification in accordance with FLETC standards. SIGAR’s Investigations Directorate had no infrastructure which captured firearms training received during the review period, and as such, there were insufficient training records to substantiate agency-wide compliance with this standard. No clear anecdotal evidence mitigated this finding.”

Attorney General Guidelines: "All individuals exercising authorities under section 6(e) must receive initial and periodic firearms training and qualification in accordance with Federal Law Enforcement Training Center standards." [Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority, 12/08/2003, Section IV. (B)].

Milestones:

- A. Afghanistan personnel receive firearms qualifications training. Qualification certifications maintained in appropriate SIGAR Headquarters administrative control file. **[See ‘C’ below]**
- B. Headquarters personnel receive firearms qualifications training. Qualification certifications maintained in appropriate SIGAR Headquarters administrative control file. **[Completion validated by Independent Monitor 9/8/10]**
- C. Establish infrastructure matrix to plan periodic firearms training and recertification and to document all firearms training received, including initial and periodic firearms training and qualification in accordance with Federal Law Enforcement Training Center standards. **[Completion validated by Independent Monitor 9/8/10]**

Finding #5:

Deficiency: “The Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority (2003) (Section IV(C)) require that OIGs receive training on and adopt Department of Justice (DOJ) deadly force policy. SIGAR’s Investigations Directorate had no infrastructure which captured training received relating to the DOJ deadly force policy during the review period. As such, there were insufficient training records and no clear anecdotal evidence to substantiate agency-wide compliance with this standard.”

Attorney General Guidelines: "The Offices of Inspector General will abide by the deadly force policy established by the Department of Justice." [Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority, 12/08/2003, Section IV. (C)].

Milestones:

- A. Afghanistan personnel attend Department of Justice deadly force policy training. Training certifications maintained in appropriate SIGAR Headquarters administrative control file. [See ‘C’ below]
- B. Headquarters personnel attend Department of Justice deadly force policy training. Training certifications maintained in appropriate administrative control file. [Completion validated by Independent Monitor 9/8/10]
- C. Establish infrastructure matrix to plan and to document initial training and periodic refresher training in the deadly force policy established by the Department of Justice. [Completion validated by Independent Monitor 9/8/10]

Finding #6:

Deficiency: “The Quality Standards for Investigations, Qualitative Standards, Section A, p. 8, require that OIG investigative organizations establish organizational and case specific priorities and develop objectives to ensure that individual case tasks are performed efficiently and effectively. SIGAR’s Investigations Directorate lacked an adopted, documented and agency-wide prioritization document during nearly all of the review period.”

CIGIE Standard: "The first qualitative standard for investigative organizations is: Establish organizational and case specific priorities and develop objectives to ensure that individual case tasks are performed efficiently and effectively." [Quality Standards for Investigations, Qualitative Standards, Section A, p. 8].

Milestones:

- A. Draft Investigations wide Self Inspection Program policy designed to establish organizational and case specific priorities and develop objectives to ensure that individual case tasks are performed efficiently and effectively. [**Changed to read: “Draft Investigations Directorate Priorities to modify, expand and augment November, 2009 issuance of general priorities associated with the Case Numbering System”; see ‘C’ below**]
- B. Submit draft to AIG-I for review. [See ‘C’ below]
- C. AIG-I implements Self Inspection Program. [**Changed to read: “AIG-I Issue and implement Directorate wide investigative priorities”; completion validated by Independent Monitor 9/8/10. Independent Monitor Recommendation: When the Independent Monitor validated completion of this Milestone based upon the Assistant Inspector General for Investigations having issued a Policy Memorandum on August 29, 2010, titled, SIGAR POLICIES; INVESTIGATIVE PRIORITIES,” the Independent Monitor recommended that the Assistant Inspector General consider further improvements to this Policy Memorandum, which as issued satisfied the CIGIE standard that requires Investigative organizations to, “Establish Organizational and case specific priorities and develop objectives to ensure that the individual case tasks are performed efficiently and effectively” (Quality Standards for Investigations, Qualitative Standards, Section A, p. 8). Specifically, the Independent Monitor recommended that the Assistant Inspector General front-load into a revised version of this Policy Memorandum whatever substantive guidance there is from both: (a) Congress, which serves as the *de facto* “Board of Directors” for any Office of Inspector General; and (b) the “front office” of the Office of Inspector General. If possible, the Independent Monitor recommended referencing both of these sources of “intelligible principle” guidance for organizational and case specific priorities as “Reference (a)” and “Reference (b)” of a revised Policy Memorandum on “Investigative Priorities.” The AIG-I responded positively to this recommendation, and indicated that he would endeavor to incorporate it into all further policy memoranda.**]

Finding #7:

Deficiency: “The Quality Standards for Investigations, Qualitative Standards, Section A, p. 8, also require a basic, single-source planning document that presents the organization’s goals, allocation of resources, budget guidance,

performance measures, and a guide for managers to implement these plans. SIGAR had not, at the time of onsite review, adopted such a planning document in the form of a Strategic Plan or other similar instrument.”

CIGIE Standard: "A basic, single-source planning document should present each organizations's [sic] goals and objectives, allocation of resources, budget guidance, performance measures, and a guide for managers to implement these plans." [Quality Standards for Investigations, Qualitative Standards, Section A, p. 8].

Milestones:

- A. Submit draft of single-source strategic plan for IG review and comment. [**Completion validated by Independent Monitor 9/22/10**]
- B. IG concurrence with strategic plan/AIG-I published Strategic Plan. [**Changed to read: “IG review, comment & concurrence with strategic plan”**]; **completion validated by Independent Monitor 9/22/10**]
- C. AIG-I publishes strategic plan directorate-wide. [**Completion validated by Independent Monitor 9/30/10**]

Finding #8:

Deficiency: “The Quality Standards for Investigations, Qualitative Standards, Section D, pp. 12, 13, require that an organization have an organizational component responsible for record maintenance and specific procedures to be performed. SIGAR did not, prior to the review, have such a component identified. This standard is in the context of information management standards which dictate that investigative data be stored in a manner allowing effective retrieval, cross-referencing, and analysis. Prior to late November 2009, files were practically maintained in raw form in Afghanistan. In November 2009, a simple but generally effective and efficient case management system was developed at SIGAR’s headquarters. Though no policy was put in place at the time, a practice did develop which sufficiently centralized information management functions. The most debilitating variable in this regard noted by the peer review team, and shared by SIGAR management, is the lack of an electronic file maintenance system. The team noted that SIGAR management is aggressively pursuing the identification of such a system, and information management issues are likely to diminish rapidly following adoption and deployment.”

CIGIE Standard: "The fourth qualitative standard for investigations is: Store investigative data in a manner allowing effective retrieval, referencing, and analysis." [Quality Standards for Investigations, Qualitative Standards, Section D, pp. 12 and 13].

Milestones:

- A. Maintain current centralized information management functions as the Investigations Directorate explores adoption and development of a functional electronic information system designed better to, "store investigative data in a manner allowing effective retrieval, referencing, and analysis." **[Completion validated by Independent Monitor 9/8/10]**
- B. Finalize Market comparison of systems. **[Completion validated by Independent Monitor 9/8/10]**
- C. Finalize investigative work flow. **[Changed to read: "Finalize Statement of Work and forward to contracting"; completion validated by Independent Monitor 9/8/10]**
- D. Finalize statement of work. **[Changed to read: "Complete Investigative Work Flow"; completion validated by Independent Monitor 9/22/10]**
- E. Select Vendor and issue procurement contract. **[Changed to read: "Investigations to review PWS, confirm requirements, forward package to NCRCC for contract solicitation"; completion validated by Independent Monitor 9/30/10]**

Finding #9:

Deficiency: "The Quality Standards for Investigations, Qualitative Standards, Section D, pp. 13, 14, require that an organization's management information system collect the data needed to assist management in performing its responsibilities, measuring its accomplishments, and responding to external customers. SIGAR's Investigations Directorate information management system did not exist in any identifiable capacity until approximately late November 2009. While the file management system created in November 2009 is adequate for day-to-day operations, the system at the time of review lacked the power to assist management in the conduct of its responsibilities. As noted above, the peer review team universally agreed that the adoption and deployment of a functional electronic information system would reduce SIGAR's information management related issues."

CIGIE Standard: "Accurate processing of information is essential to the mission of an investigative organization. It should begin with the orderly, systematic, accurate, and secure maintenance of a management information system." [Quality Standards for Investigations, Qualitative Standards, Section D, pp. 13 and 14].

Milestones:

- A. Maintain current centralized information management functions as the Investigations Directorate explores adoption and development of a functional electronic information system designed better to, "assist management in performing its responsibilities, measuring its accomplishments, and responding to external customers [sic]." **[Completion validated by Independent Monitor 9/8/10]**
- B. SEE # 8 (B-E) ABOVE

Finding #10:

Deficiency: "The Quality Standards for Investigations, Qualitative Standards, Section D, p. 14, require that case files be established immediately upon the opening and assignment of investigations. SIGAR's Investigations Directorate file management system was not in place until November 2009. As such, beyond "working files" maintained by investigators in the field, it was impossible for the peer review team to independently validate compliance with this standard. However, the peer review team did note that practices in place by the time of the onsite review did comply with this requirement."

CIGIE Standard: "All investigative activity, both exculpatory and incriminating, should be recorded in an official case file. A case file should be established immediately upon the opening and assignment of an investigation." [Quality Standards for Investigations, Qualitative Standards, Section D, p. 14].

Milestones:

- A. Maintain current centralized information management functions as the Investigations Directorate explores adoption and development of a functional electronic information system designed better to ensure that, "case files be established immediately upon the opening and assignment of investigations." **[Completion validated by Independent Monitor 9/8/10]**
- B. SEE # 8 (B-E) ABOVE

D. Phase 2 of Independent Monitorship: Monitoring and Reporting to SIGAR, the Attorney General, Congressional, and Executive Branch Stakeholders

1. Pursuant to the SOW, the Independent Monitor reported the interim results of Phase 2 to SIGAR and to the Attorney General on September 8, 2010, "independently assessing the AIG-I's compliance with the validated

POA&CM.” The Independent Monitor’s outline utilized for his report is at Appendix J. His letter report to the Attorney General is at Appendix M3.

2. Copies of the Independent Monitor’s letter reports to the various Congressional Stakeholders are included at Tabs K1-K10.
3. Copies of the Independent Monitor’s September 13, 2010, letter reports to the Secretary of State, the Secretary of Defense, and the National Security Advisor, are included at Tabs L1, L2, and L3 respectively.
4. Copies of all the Independent Monitor’s letter reports to the Attorney General are included at Tabs M1-M-4.
5. Pursuant to the SOW, the Independent Monitor made a second interim report to SIGAR on September 21, 2010 (two days before due date on account of the Special Inspector General’s travel schedule), and to the Attorney General on September 23, 2010, “independently assessing the AIG-I’s compliance with the validated POA&CM.” The Independent Monitor’s outline utilized for this second interim Phase 2 report is at Appendix N. His letter report to the Attorney General is at Appendix M4.
6. A copy of the final Plan of Action & Compliance Milestones matrix that the Inspector General utilized independently to monitor compliance with all of the Milestones, which is a further improved version of the POA&CM the Independent Monitor validated on August 19, 2010 [APP. H] is included at Appendix O. The Independent Monitor’s final Work Plan is at Appendix P.

4. APPENDICES

TAB A: NATIONAL DEFENSE AUTHORIZATION ACT FOR F.Y. 2008

TAB B: ATTORNEY GENERAL AUTHORIZATION FOR SIGAR TO EXERCISE
LAW ENFORCEMENT POWER, APRIL 20, 2010

TAB C: CIGIE REPORT ON THE QUALITY ASSESSMENT REVIEW OF THE
INVESTIGATIVE OPERATION OF SIGAR, JULY 14, 2010

Tab D: CIGIE LETTER TO ATTORNEY GENERAL, JULY 15, 2010

Tab E: ORIGINAL PLAN OF ACTION & COMPLIANCE MILESTONES, JULY 20,
2010

Tab F: SIGAR-INDEPENDENT MONITOR MOU, AUGUST 13, 2010

Tab G: INDEPENDENT MONITOR WORK PLAN (INITIAL), AUGUST 9, 2010

Tab H: IMPROVED/VALIDATED PLAN OF ACTION & COMPLIANCE
MILESTONES, August 19, 2010

Tab I: INDEPENDENT MONITOR PHASE 1 REPORT OUTLINE, AUGUST 19 2010

Tab J: INDEPENDENT MONITOR PHASE 2 INTERIM REPORT OUTLINE,
SEPTEMBER 8, 2010

Tab K: INDEPENDENT MONITOR SIGAR CONGRESIONAL STAKEHOLDER
CORRESPONDENCE

September 13, 2010

1. Chairman Levin & Ranking Member McCain, Senate Armed Services Committee
2. Chairman Kerry & Ranking Member Lugar, Senate Comm. on Foreign Relations
3. Chairman Inouye & Ranking Member Cochran, Senate Comm. on Appropriations
4. Chairman Leahy & Ranking member Gregg, Senate App. Subcommittee on State, etc.
5. Chairman Skelton & Ranking Member McKeon, House Armed Services Committee
6. Chairman Berman & Ranking Member Ros-Lehtinen, House Committee on Foreign Affairs
7. Chairman Obey & Ranking Member Lewis, House Appropriations Committee

September 18, 2010

8. Chairman Joseph I. Lieberman, Senate Committee on Homeland Security and Governmental Affairs
9. Senator Chuck Grassley
10. Senators Claire McCaskill, Tom Coburn, and Susan Collins

Tab L: INDEPENDENT MONITOR CORRESPONDENCE TO SIGAR EXECUTIVE BRANCH STAKEHOLDERS

1. Secretary of State Hillary Rodham Clinton
2. Secretary of Defense Robert M. Gates
3. National Security Advisor, Gen. James L. Jones, USMC (Ret)

Tab M: INDEPENDENT MONITOR REPORTS TO ATTORNEY GENERAL

1. August 11, 2010 (Initial Report)
2. August 19, 2010 (Phase 1 Report)
3. September 8, 2010 (Phase 2 Interim Report)
4. September 23, 2010 (Phase 2 Interim Report/Draft Final)

Tab N: INDEPENDENT MONITOR PHASE 2 INTERIM REPORT/DRAFT FINAL REPORT OUTLINE, SEPTEMBER 21, 2010

Tab O. FURTHER IMPROVED/FINAL PLAN OF ACTION & COMPLIANCE MILESTONES, September 30, 2010

Tab P. INDEPENDENT MONITOR WORK PLAN (FINAL), OCTOBER 5, 2010

Independent Monitor Team Members:

This Independent Monitor report was prepared by JOSEPH E. SCHMITZ, PLLC, and included on-site work at the SIGAR Headquarters facilities (both new and old) located in Arlington, Virginia, as well as remote work at JES PLLC in Bethesda, Maryland. The Independent Monitor Team contributing to this report included The Honorable Joseph E. Schmitz, former Inspector General of the Department of Defense, Gregg E. Bauer, former DoD OIG Chief of Staff, and Robert Rodriguez, Esq., former Principal Deputy Assistant Secretary of the Army (M&RA), as well as administrative support personnel. The JES PLLC Independent Monitor Team was formed and deployed in a manner consistent with precedent established by similar teams of former IG professionals called in to help manage extraordinary challenges of a federal oversight office in order that that office might better focus on its statutory duties, *e.g.*, the Department of Defense Office of Inspector General in 2002, and the United States Office of Special Counsel in 2004.