



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
MANPOWER AND RESERVE AFFAIRS
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WASHINGTON, DC 20310-0111

March 26, 2003

MEMORANDUM FOR THE INSPECTOR GENERAL

SUBJECT: The Inspector General Exemption

Reference memorandum, Office of The Inspector General (SAIG-ZA), 26 November 2002, subject: Request for Exemption of Inspector General (IG) Functions, Non-Core Competencies Working Group NCCWG) and the Third Wave.

Function. This decision includes military officers and civilians performing inspections (with auditors as required), investigations, assistance, intelligence oversight, teaching and training spanning the Active and Reserve Components.

Decision. The Inspector General function is exempt from sourcing consideration. While the function is not listed in Army Field Manual 1 or The Army Plan as a core competency of the Army, a broad framework of statutory and regulatory authorities mandates Inspector General activities and positions. Additionally, although the function as a whole is not inherently governmental, the role of the IG in several areas is so intimately related to the public interest as to require performance by a Federal Government employee. The use of military in this function, when not required by statute or other policy considerations, is discretionary. Current administrative support provided to IG offices is exempted, as necessary, to avoid personal services arrangements.

At enclosure are instructions on how to implement this decision in the Inventory of Commercial and Inherently Governmental Activities (including the Federal Activities Inventory Reform Act Inventory), to be developed by Deputy Chief of Staff (DCS), G-1 in coordination with our responsible staff officers.

Requestors Positions on Issues. The Inspector General (TIG) claims that all of the IG functions should be exempt, including administration and automation support. TIG also states that the proper balance of military and civilian IGs currently exists. The substantiation request from TIG relies on the function being inherently Governmental in nature and on the many statutory and regulatory authorities that govern IG practices and positions. Relying primarily on these bases, TIG does not address the risk factors associated with a core function analysis.

The Inspector General has also identified the IG's role in intelligence oversight, as outlined by Executive Order 12333 and DODD 5240.1, and implemented by Army Regulation 20-1. Since the IG exemption is approved, no decision is made with respect to whether the IG role in intelligence oversight is inherently Governmental.

Standard of Review. The senior HQDA functional official for a function must describe and substantiate specifically how preparation and implementation of a Third Wave implementation plan for each course of action poses substantial and specific risks to a core war-fighting mission of the Army (i.e., a core competency) or violates a statutory requirement affecting a function. The following are the risk factors to evaluate this request: force management risk; operational risk; future challenges; and institutional risk. How these risk criteria are applied may vary based on each course of action evaluated (i.e., A-76; alternatives to A-76; military conversions; transfer to another agency; divestiture). Therefore, exemption requests and decisions must assess the potentially adverse impact of each course of action.

Core Competency Relevant to Risk Issue. The Inspector General function is not listed as one of the six recognized core competencies of the Army, as provided for in Field Manual 1 and The Army Plan: Shape the Security Environment (Deter Forward); Prompt Response; Forcible Entry Operations; Mobilize the Army; Sustained Land Dominance; or Support Civil Authority. Based on the IG submission, the risk criteria pertaining to the impact of an implementation plan or sourcing decision as it affects the Army's war-fighting competencies do not appear to be directly relevant to the IG function.

Statutory Requirement Relevant to Divestiture Issue. Title 10, U.S. Code, Section 3014 requires the Secretary of the Army to establish an Inspector General office. Title 10, U.S. Code, Sections 3020 and 3065 contemplate the assignment of military officers to perform the Inspector General function. Similarly, Title 10, U.S. Code, Section 1034 intends a wide availability of IGs to satisfy the statutory purpose of protecting Whistleblowers. Additionally, Title 10, U.S. Code, Section 10542 and Title 32, U.S. Code, Section 105 require that an inspection of the Army National Guard be performed by IGs or commissioned officers of the Regular Army for inclusion in the Army Posture Statement. Accordingly, the Inspector General function cannot be divested or transferred to another agency.

Inherently Governmental Relevant to Outsourcing Issue. An inherently Governmental function includes those activities that require either the exercise of substantial discretion in applying Government authority or the making of value judgments in making decisions for the Government. An inherently Governmental function is so intimately related to the public interest as to require performance by Federal Government employees. According to the FAIR Act statutory definition of inherently Governmental, gathering information for or providing advice, opinions, recommendations, or ideas to Federal Government officials is normally not inherently Governmental. However, interpreting and executing United States laws so as to bind the Government to take some action by policy, regulation or other authority; or so as to determine, protect and advance United States interests by military action or civil or

judicial criminal proceedings would satisfy the criteria for an inherently governmental function.

The Military Whistleblower Act, Title 10, U.S. Code, Section 1034, affords Whistleblower protection across the military to anyone making a protected communication. Congress specifically designated IGs to play a central part in a statutory protection scheme that grants special status to anyone making a protected communication. Accordingly, IGs are needed to effectuate this purpose. Additionally, IGs are required to conduct investigations concerning allegations of Whistleblower reprisal and must report the findings to the Department of Defense Inspector General pursuant to Department of Defense Directive (DODD) 7050.6. The IG investigation and findings are pivotal toward preserving the statutory proscriptions against reprisal and against restricting communications to IGs. Insofar as attaining Whistleblower protection affords certain statutorily binding protections, the IG role in this process is inherently Governmental.

Statutes Relevant to Sourcing Decision. Title 10, U.S. Code, Section 3014 requires an Inspector General office. Title 10, U.S. Code, Section 3020 calls for the detailing of officers to serve as IG deputies and assistants. Title 10, U.S. Code, Section 3065 contemplates the assignment of military officers to perform Inspector General functions. Title 10, U.S. Code, Section 1034 intends a wide availability of IGs to satisfy the statutory purpose of protecting Whistleblowers. Title 10, U.S. Code, Section 10542 and Title 32, U.S. Code, Section 105 require that an inspection of the National Guard be performed by IGs or commissioned officers of the Regular Army for inclusion in the Army Posture Statement. Additionally, Army Regulation 20-1 implements various Department of Defense Directives and Executive Order 12333. The combination of these requirements calls for a workforce robust with commissioned officers and civilian employees, albeit with some discretion between them for certain billets. Outside the IG function, administrative support may be subject to the normal competition process provided by Title 10, U.S. Code, Section 2461, and Section 8014 of appropriations acts mandating public-private competition in certain circumstances (subject to personal services issues, below).

Personal Services. Where supervision by an official required by statute is required for effective performance of an activity in support of that official, there is a basis for exempting that activity, whether advisory or clerical support, to avoid an inappropriate personal services contract. In addition, if persons supervised by that official in turn must supervise individuals supporting them in order to effectively perform the activity, a further extension of this exemption may be warranted.

Conflicts of Interest. No conflict of interest issues have been identified in your request.

Military Conversions. The basis for maintaining military performance in the infrastructure include express statutory requirements, the need for development of senior military IGs, and the need to allocate military personnel primarily at locations with high troop concentrations and at the Army Inspector General Agency. The central issue (according to the Inventory Guide, Enclosure 6, page 6-9) is whether adequate performance of the function in the infrastructure requires military unique knowledge and experience that can only be derived from *recent* first-hand involvement in military activities – i.e., through commanding military forces or conducting or participating in military operations or exercises. This knowledge and experience must be more substantial than familiarity with doctrine, tactics, operations, or regulations; capabilities that can be developed by civilians; or, advice military retirees can provide based on their knowledge and experiences. Based on this standard, TIG has identified positions for conversion.



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Enclosure

CODING RULES for IG

1. Office of the Inspector General (W0Z6AA) and U.S. Army Inspector General Agency (W303AA)
 - Military
 - Civilian

Code F – Military Unique Knowledge and Skills
Code E – Civilian Authority Direction and Control

2. Military Inspectors General (outside OIG/DAIG)
 - OFF with ASI of 5N
 - ENL with SQI of B
 - ATEC/MEPCOM/AMC (Except HQ AMC)
 - All others

Code E – Civilian Authority Direction and Control
Code F – Military Unique Knowledge and Skills

3. Civilians in same TDA Para as Military IG (outside OIG/DAIG)
 - 1800 series
 - All others

Code E – Civilian Authority Direction and Control
Code L - Protected by law, statute, treaty or agreement