UTILIZING INDEPENDENT PRIVATE SECTOR INSPECTORS GENERAL TO CONDUCT COST EFFECTIVE INVESTIGATIONS

INTRODUCTION

In recent years, I have had the opportunity to interact with Government officials in Federal, State and City Agencies on a regular basis. State Attorneys General, Federal Inspectors General, State Inspectors General, City Commissioners of Investigations, and Federal, State and City prosecutors all are faced with stringent budgetary constraints which have adversely impacted their ability to conduct investigations due to lack of money and resources. The hiring of Independent Private Sector Inspectors General or "IPSIG's," has afforded these Government entities the ability to meet their investigative responsibilities and fulfill their official mandates.

An IPSIG is oftentimes hired by a government entity, and it is the corporation that wishes to do business with that government entity, that pays for the IPSIG. Meanwhile, the IPSIG's reporting responsibility is solely to the Government entity. In many jurisdictions the hiring of an IPSIG is a cost of doing business with the government, and if the corporation refuses, they are debarred.

In 1989, while I was serving the people of New York State as its first ever Inspector General, I had occasion to attend a meeting at which the concept of the Independent Private Sector Inspector General was discussed for the very first time. This concept was later described by the N.Y. State Organized Crime Task Force in its Report on Corruption and Racketeering in the New York City Construction Industry.

By definition an IPSIG is an independent, private sector firm with legal, auditing, investigative, and loss prevention skills, employed by an organization (voluntarily or by compulsory process) to ensure compliance with relevant law and regulations and to detect, enjoin, uncover and report unethical and illegal conduct by, within and against the organization. Where the culture of the entity is primarily

legitimate or amenable to reform, the IPSIG may be a major participant with management in enhancing the economy, efficiency and effectiveness of the entity. Where the culture is illegitimate and hostile to change, the IPSIG's role may be limited to instituting internal controls and monitoring organizational activities. The IPSIG has precedent, for example, in the appointment of monitors to oversee the activities of corrupt unions under Federal Racketeering laws and in the use of Special Masters by the SEC as part of a consent decree. Case in point, I served as an IPSIG appointed by the SEC for two Stock Exchanges.

In that an IPSIG may be imposed involuntarily on an organization i.e. by the court, a regulatory or other government agency, or voluntarily, there are various motives which might lead an organization to adopt an IPSIG, including:

- compliance with the Federal Sentencing Guidelines;
- a desire to protect the organization's reputation for integrity;
- a desire to reform the organization and re-establish its credibility in the marketplace after a criminal or civil investigation and/or criminal regulatory proceedings;
- a desire to minimize the intrusiveness of government regulation;
- a desire to cut costs and improve efficiencies by controlling fraudulent or unethical practices amongst its employees prompted by a suspicion that such practices are occurring.

To ensure the IPSIG's integrity and credibility as an independent agent, it must be free to report violations of the law without the authorization of the host organization.

Let me briefly touch on some of the powers the court or another authority might bestow on an IPSIG by the courts. IPSIG's often are granted access to all books, records, files, accounts and correspondence of the organization; power to subpoena witnesses and documents and to take testimony under oath or otherwise; power to hold hearings, discipline, dismiss, remove and replace officers, employees and

members of the organization; approving major contracts entered into by the organization; and approve the bidding process for major projects.

Let me speak now on some of the IPSIG assignments I am working on currently or have worked on in the past.

In the wake of the September 11, 2011 terrorist attacks on the World Trade Center, I was engaged as an IPSIG by the N.Y. City Department of Design and Construction to establish internal controls, provide financial oversight and enjoin fraud during the emergency debris removal and disposal operations at Ground Zero. The policies and procedures developed by my team facilitated the review of more than $500 million of construction manager payment requisitions. In addition we verified laborers at work, tracked the existence and operational status of equipment, verified receipt of material deliveries, and monitored the overall progress of the project.

My partner, Ellen Zimiles, served as an IPSIG for the International Brotherhood of Teamsters ("IBT") as part of a consent agreement issued by the U.S. District Court for the Southern District of N.Y. For 3 years, Ellen was responsible for reviewing all expenses to ensure that there was no waste or abuse of IBT funds. The review included overseeing a $12 million budget for convention expenses, travel and entertainment expenses, political contributions and operational expenses.

Finally, I was selected by Miami-Dade County as an IPSIG to monitor construction of their Performing Arts Center, built at a cost in excess of $250 million. I was tasked with ensuring compliance with contract terms as well as assessing procurement policies.

In addition to the aforementioned IPSIG projects, we have served as an IPSIG for the New York City School Construction Authority, New York City Dept. of Investigations, New York City Dept. of Education,

Attorneys General of Massachusetts, New Hampshire and Arkansas and U.S. Marshal's Service just to name a few.

Let me conclude by stating that the installation of an IPSIG allows corporations which might otherwise have had no choice but to dissolve, to remain in business and assists them in the process of acquiring or regaining legitimacy. Companies with dubious histories can be awarded public contracts in circumstances which they would otherwise have been disqualified. Thus IPSIG's represent good business as well as effective law enforcement at no cost to the government.