

Making Intelligence Contracting Smarter: Reexamining Government Roles and Oversight

Testimony prepared for the U.S. Senate Committee on Homeland Security and Government Affairs,
Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of
Columbia

Hearing on “Intelligence Community Contractors: Are We Striking the Right Balance?”

September 20, 2011

Joshua Foust
Fellow, American Security Project



INTRODUCTION

Chairman Akaka, Senator Johnson, and distinguished Members: Thank you for inviting me to speak about Intelligence Community contracting. There is broad public agreement that the government must take measures to respond to the explosive growth of contracting in the Intelligence Community (IC) during the past decade. The government tends to contract out services when it does not have employees with the skill set to perform a function (like building a surveillance drone), or when it needs to rapidly fill personnel gaps in a new program area. In the ten years since the September 11 attacks, however, contractors have grown from filling gaps in the intelligence community to being a large percentage of the people working on behalf of the country's intelligence agencies.

This public consensus that contracting must be curtailed is based on the assumption that contracting has grown beyond anyone's ability to control it, that it results in widespread fraud, waste, and abuse, and that the fundamental nature of contracting presents analysts, agents, and officers of the intelligence community with irreconcilable conflicts of interest. These are the wrong issues to worry about. Rather, while those assumptions about contracting are sometimes true, they do not address the real problems plaguing the IC's use of contractors.

The biggest problem facing the IC contracting industry is not that some contractors abuse the system, but that the government has designed a system that encourages abuse. Missing in the public examination of the IC contracting industry—best exemplified in the Top Secret America series of articles published over the last year by the Washington Post,¹ but also covered by countless other journalists and analysts—is the role the government itself plays. Ultimately, the government is responsible for the conduct of the companies it contracts to perform functions; while violations of the rules in place merit investigation and prosecution, contractor behavior labeled as “misconduct” is often perfectly legal and within the bounds of the contract agreements companies sign with their government clients.

I argue in this testimony that the first step in fixing the issues we associate with IC contractors really begins with fixing the government. I propose that by examining the system of intelligence contracting, we can best understand the systemic challenges facing the contracting reform.

In this testimony, I will examine one situation involving a contractor by name, but I do not intend to single out that company for wrongdoing. Rather, it happens to represent a very high profile example of how the system of contracting invites questionable conduct. Similarly, while I will speak from personal experience and in all likelihood will implicate other contractors and agencies, I do not mean to imply they are examples of misconduct. Rather, I believe the issues I highlight this morning to be systemic in nature and not the fault of any particular company or agency.

FIXING THE GOVERNMENT

The current state of IC contracting is incoherent. There is broad confusion about the nature of what are appropriate government roles and contractor roles, along with inconsistent accountability and poor resourcing for accountability mechanisms. Contracts are often worded vaguely or incompletely, and ever-changing requirements, deliverables, and performance metrics (all of which are supposed to catalogue and record how a company fulfills a contract) create an environment rife for exploitation by companies seeking to extract revenue from the process.²

Perhaps the most prominent example is the “blanket-purchase agreement” awarded by the Department of the Interior (Dol) to the contracting firm CACI in 1998 to supply, among other services, inventory control for the U.S. Army. The contract was worded vaguely, with poor government controls, and its structure—the contract was awarded by the Dol but administered by the Department of the Army—made accountability difficult if not impossible.³ By 2004, CACI contractors, hired under this inventory and logistics contract, had been assigned to the interrogation facility at Abu Ghraib in Iraq. While none of the contractors involved in prisoner interrogation were indicted for misconduct, the vaguely-worded contract awarded by the government allowed for the contractors it hired to be used inappropriately.

Most contracts never approach that level of questionable conduct, however. Rather, through vague language, open-ended requirements, and unclear performance metrics these contracts allow companies to send workers into government facilities without clear expectations for work output and job performance. Worse still, even for multi-million-dollar contracts I have personally encountered poorly trained government Contracting Officer Representatives (COR) who only perform their COR duties part time, and must perform other duties assigned by their superiors.

It is difficult in many cases for the government to keep track of all contractor activities on a given project.⁴

The problem of poor government oversight should not imply simply more funding as a solution. Funding will not address the issue of contract wording, nor will it fix the very real cases of the government asking contractors to perform inappropriate tasks. This is where a more stringent definition—created in conjunction with Congress and the Director of National Intelligence—of what constitutes inherently governmental job functions will allow for tighter contract wording, and thus less opportunity for inappropriate conduct. An enforcement mechanism, whereby contracts can be ended or amended without penalty for improper job assignment, would also help to address this problem. The only way to arrive at a proper definition of what constitutes an inherently government job is to define the nature of the jobs the IC must hire for. Right now, many of those jobs remain so vague as to be indefinable.

THE SLOPPY GOVERNMENT CONTRACT

Every contract the government issues for a company to perform work is defined by the Statement of Work (SOW). This is a document that defines the parameters of the work the contractor will perform, including a description of the project, expected duties the contractor must fulfill, and the outputs and metrics by which performance will be measured. These are often poorly written, kept intentionally vague, and wind up not actually addressing the stated intent of the contracts.

As one example, every SOW I’ve had to either administer, edit, review, or write has stated as a basic metric of performance the number of employees the contractor should hire. That is, the basic means by which the government measures the contractor’s performance is based first and foremost on the number of people hired to work on the contract. This has two serious consequences that affect the contracting environment: it removes the distinction between employees that would make work products better, and it confuses the number of employees with contract performance.

The frankly bizarre system of hiring intelligence contractors is born from several interdependent processes: getting a security clearance, getting hired, and getting “read on” to work at a government site. The system of getting a clearance is structured such that those with clearances are given preference above those without clearance, regardless of the relevant experience of either employee. In other words, if two candidates are competing for a job with a contractor, and one has deep relevant experience but no clearance, she will most likely lose to a candidate with less relevant experience but a current and active security clearance.

In 2008, the Security Clearance Oversight Group reported that the average Top Secret clearance took 220 days to process⁵ and could cost upward of \$15,000.⁶ Repeated thousands of times a year, this extreme hurdle for hiring employees in cleared jobs—especially in intelligence analysis, but also in other fields—excludes highly qualified people from working on behalf of the intelligence community, and limits and restricts the pool of available talent to choose from. Once hired, these candidates then must wait an unreasonably long period of time for the government to then “read them on,” or clear them to work to the project they’ve been hired for. I have experienced read-on times lasting from weeks to months, depending on the agency and the contractor in question. During the lengthy read-on process, employees cannot usually charge their time to the contract, which creates a perverse incentive for the contractor to only hire those currently cleared and employed—removing a key assumption of contractor value (which is the ability of a contractor to rapidly hire qualified people from the outside). This presumption of cleared employee uniformity is a serious issue when hiring for jobs that require analytic judgment and research skill.

In other words, there is a very real distinction between qualifications and credentials. A security clearance has virtually no relation to one’s qualification to do a given job; it simply means an employee can enter a room and use a computer. A high clearance says nothing about an employee’s ability to perform any task. Focusing on extraneous details like the status of one’s clearance is focusing on credentials. It is unrelated to the qualifications a given candidate has to perform to contracted task.

Furthermore, poorly worded SOWs can place contractors in positions that introduce potential conflicts of interest. This can include hiring contractors to work in a government facility security office, putting them in charge of “reading on” competitor contractors (where they have an incentive to exclude or delay employees of competing firms), and it can also include contractors assisting the government in writing new contracts, new Requests for Proposals, and new Statements of Work—all of which present opportunities for serious abuse.

INPUTS V. OUTPUTS

The SOW system is also unclear on what constitutes deliverables and contract outcomes. In the analytic community, this is most often expressed as a certain number of reports drafted by each contractor. This, too, is a poor measurement of performance. One contract I worked on counted a 2-page report as equivalent output to a 35-page study. It also misidentifies what an outcome is. Simply sitting in a chair and turning out reports might be an outcome the government desires, but absent measuring the context of those reports, and the value that the contractors provide the government, it is difficult to say for certain that the contracted tasks actually help the government function.

Requiring the production of a required number of reports from a required number of contracted analysts is not a measurement of output. The intelligence community produces nearly 50,000 reports

every year⁷—more than any one agency can physically read, much less understand and act upon. The reports the IC generates each year are not just outputs from the analytic process but *inputs to the policy process*. If the output being measured by the SOW is irrelevant or inconsequential to the decisions being made, then is it really measuring the effect of the contract, or merely the paper it generated?

Describing the specific outcome of hiring a contractor to perform a given task is surprisingly difficult. Because the government often does not actually measure outputs in the form of outcomes—that is, because they don't measure what result a report or process had, but rather whether it existed or not—it cannot determine if the contractors it hires are performing work that is vital or peripheral to the project. I have written dozens of reports that counted toward my employer's fulfillment of a contract, but which had nothing to do with the government's preferences or needs for making a decision. In hindsight, while I'm glad I learned about the topics I wrote about, I feel like I wasted time, effort, and money writing things virtually no one ever read.

PROJECT DESIGN FIRST, EMPLOYMENT MIXTURE LATER

A basic sense of project design is absolutely necessary to properly balance contractors and government employees. For example, in response to the rising threat of terrorism from Al Qaeda in the Arabian Peninsula (AQAP), the Defense Intelligence Agency last year decided to dramatically expand the number of analysts working on Yemen. This expansion was not based on an increase in messaging traffic coming into the DIA, nor was it based on a need for increased analyst output: they necessarily didn't need a larger number of reports. Rather, the government decided that studying Yemen was a priority, so it assigned extra personnel billets to study Yemen—and because hiring government employees is a time-consuming process to begin with, but requires an intolerable amount of time for the intelligence community, it asked contractors to bid for the opportunity to staff this new priority research area. The government could only staff this new research area in a timely way with contractors. But the decision to increase the number of staff working on Yemen was unrelated to the value extra analysts would bring to the table.

Proper program design requires a strategic mindset. It requires setting out the ends, and means of a given program, and the resources and timeframes needed to achieve them. For the IC, this would require an idea of what a specific process is supposed to produce: understanding of a terrorist organization, the technical details of another country's weapons system, a predictive model of the political climate of a negotiating partner, the monitoring and maintenance of a system, and so on. Once the purpose of the program is in place, then the job types needed to accomplish that purpose can be assigned and filled.

Right now, the government does not engage in solid program design for two reasons: some of its programs defy traditional design methods, and often needs are generated far faster than the government can fill them. Both reasons should give program managers pause before seeking to fill job roles with contractors. If a program must be staffed immediately, but it is expected to last a long time (Yemen, for example, will most likely require substantial intelligence resources for many more years), then that, too, should call into question the hiring of contractors rather than government employees.

At the same time, if a program is designed properly, and if the government knows what it is measuring and what it wants to accomplish, there is little reason to restrict the participation of a contracted workforce. Even in less measurable programs, like media monitoring or systems

administration, good program design can take advantage of a contracted workforce without creating a free-for-all.

CONCLUSIONS

There is broad agreement that the intelligence contracting industry is badly in need of reform. While the inherent opacity of intelligence work will make imposing accountability difficult in some cases, relatively minor changes can allow the government to better police itself. Good program design and output measurements can alleviate many of the issues normally attributed to contractor misconduct, as they would close programmatic loopholes and prevent overcharging. Similarly, training government CORs, to include writing tighter contracts with better oversight mechanisms and more specific measurements of output and performance, can close many of the loopholes that plague the contractor-government relationship. Simplifying the system of hiring and firing government employees would also remove the need to rely on contractors for projects with short lead times.

The broader question of what constitutes an inherently governmental function is beyond the scope of this testimony. I do not have direct experience that would give me an authoritative stance on functions that should never be performed by a civilian contractor, though I do not think life and death decisions should be made by contractors. However, the many conflicts of interest that arise from involving contractors in the contracting process can be very easily addressed by prohibiting their involvement in writing contracts, in approving employees from other firms at government facilities, and in assisting the government in evaluating contractor performance. The government should prioritize insourcing where contractors make up the majority of a workforce so that evaluation and accountability systems can be put in place to monitor contractor conduct.

Many of the problems that exist within the intelligence contracting community begin with the government lacking the knowledge and means to design and manage its contracts. Rather than focusing on the numbers and balance of the contracted workforce, it would be better to examine the broader systemic issues that require the use of contractors in the first place. By fixing the need for contractors, and by making the process of contracting both more transparent and more accountable, many, if not most, issues of balancing contractor with government employees will resolve themselves.

¹ Dana Priest and William Arkin, "Top Secret America," *Washington Post*, July 19, 2010, available at <http://projects.washingtonpost.com/top-secret-america/>

² Author experience writing proposals and contracts for various IC contractors, 2006—2010.

³ Ellen McCarthy, "CACI Contract: From Supplies to Interrogation," *Washington Post*, May 17, 2004, available at <http://www.washingtonpost.com/wp-dyn/articles/A31611-2004May16.html>

⁴ Author experience working as a contracted senior analyst on three different programs spread across the Department of Defense, 2007—2011.

⁵ Security Clearance Oversight Group, "Report of the Security Clearance Oversight Group Consistent with Title III of the Intelligence Reform and Terrorism Prevention Act of 2004," February, 2008, available at <http://www.fas.org/sgp/othergov/scog2008.pdf>

⁶ William Henderson, "Cost of Security/Suitability Investigations – FY2011," *Security Clearance Jobs Blog*, September 21, 2010, available at <http://www.clearancejobsblog.com/cleared-news/cost-of-securitysuitability-investigations-2/>

⁷ Dana Priest and William Arkin, "A hidden world, growing beyond control," *Washington Post*, July 19, 2010, available at <http://projects.washingtonpost.com/top-secret-america/articles/a-hidden-world-growing-beyond-control/>