



## **Statement for the Record, PDDNI Stephanie O' Sullivan before the Senate Homeland Security and Governmental Affairs Committee June 18, 2014**

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### **Statement for the Record**

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**Senate Homeland Security and Governmental Affairs Committee**  
**June 18, 2014**

### **“The Intelligence Community: Keeping Watch Over its Contractor Workforce” Introduction**

Chairman Carper and Ranking Member Coburn, thank you for the invitation to testify today on the ODNI's oversight of Intelligence Community (IC) core contract personnel and their role in the intelligence enterprise. I appreciate the Committee's interest in this issue. I trust the information provided to you today will strengthen your confidence in the efforts of the IC leadership to manage and oversee this critical component of our combined workforce.

In addition to addressing the specific questions in your invitation letter regarding the Government Accountability Office's (GAO) recent report on IC core contract personnel, I will provide the Committee with some background on why core contract personnel have been and are an important part of our workforce. Furthermore, I will address our broader strategic workforce planning efforts, which includes oversight of IC core contract personnel.

### **The Growth of Core Contract Personnel and Why We Use Them**

The IC workforce is composed of three distinct types of personnel: civilian United States Government (USG) personnel, members of the armed forces, and core contract personnel. After the Cold War, the IC workforce was significantly downsized throughout the 1990s. Limits on hiring resulted in reductions in the number of analysts, operators, scientists, and support personnel across the Community. There was a degradation of the Community's capabilities as more experienced employees retired and far fewer employees were hired to take their place. During these years the IC was encouraged to “outsource” as much as possible, especially in the area of information technology support.

The terrorist attacks of September 11, 2001 and ensuing conflicts caused an abrupt shift. Expertise was needed quickly to meet rapidly evolving mission demands. To meet these emerging requirements, the IC leveraged contract personnel to provide the requisite skills and experience. Congressionally-established civilian personnel ceilings (which still exist for every IC element) and emergency supplemental funding also drove increased reliance on contract



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personnel. Given the unplanned and potentially fluctuating nature of Overseas Contingency Operations funding, contract personnel were better suited for many tasks. In addition, contract personnel brought unique skills in critical languages, terrorism analysis, cyber, and a host of other areas where there was inadequate expertise in our Community. We have, however, turned the corner and for the past several years have been reducing the number of core contract personnel across the IC, both in numbers and costs.

At the same time that the IC's use of contract personnel was expanding during the last decade, the IC hired thousands of new government employees, and trained and deployed them as quickly as possible. I would like to stress this point: government civilians are the heart of our workforce. And, despite reductions to core contract personnel, they remain an integral part of the IC workforce, (as do military personnel). We have identified, on a strategic level, the activities and functions that core contract personnel perform, but this is secondary to performing a much more important strategic level evaluation of the size of the civilian workforce, the roles and activities that it performs, how it is trained and managed, and so forth. For example, I can make investments, in terms of training and career development, in my civilian and military workforces that I cannot make with the contract workforce. The IC continues to proactively evaluate the role of contract personnel, taking into consideration the mission, expertise required, and cost. This is accomplished through contract utilization reviews, budget reviews, and mandated budget reductions which must be applied to IC elements. As a result, the IC has and continues to reduce core contract personnel in many areas and refine the balance with the other components of the IC workforce. This is a dynamic process that will continue.

### **Defining "Core Contract Personnel" and What They Do**

Contract personnel provide a broad spectrum of services, as permitted by law and regulation. As a general matter, the use of contract personnel is governed primarily by the Federal Acquisition Regulation. The Office of Management and Budget (OMB) and the Federal Activities Inventory Reform Act also provide guidance regarding the performance of inherently governmental activities.

The IC defines "core contract personnel" as those who support government civilian and military members by providing direct technical and intellectual expertise, or administrative assistance. While core contract personnel typically work alongside of and are integrated with USG civilian and military personnel and perform staff-like functions, they do not perform inherently governmental functions. Rather, they are performing work that is closely associated or directly supports government staff. More specifically, they often provide unique but perishable skills that would be costly to replicate in our Government workforce or perform functions that are not of an enduring nature. These attributes make core contract personnel an extremely flexible part of our



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workforce. I should mention that we do have one instance of core contract employees hired on Personal Services Contracts in accordance with the Federal Acquisition Regulation subpart 37.104, where it is critical for mission reasons that we employ personnel in a capacity in which they may appear to be government employees; however, the government continues to exercise full control over their work. The IC utilizes only a very small portion of such contract personnel and for a limited duration. Such contracts require high level of approval.

Core contract personnel have given their lives for this country alongside their government colleagues. Two IC contractors were among the nine people killed during a terrorist attack on a CIA facility located near the eastern Afghan city of Khost in December 2009, and two other contractors lost their lives during the attack on US diplomatic facilities in Benghazi, Libya, in September 2012.

Core contract personnel do not produce specific commodities such as a satellite or information systems, nor do they provide ongoing operations and maintenance in support of that product. Core contract personnel also do not provide what are considered commercially available services such as food, facilities maintenance, or janitorial services as defined by OMB Circular A-76 (Revised 2003).

Core contract personnel hold clearances and have access to classified information in the performance of intelligence activities, including collection, analysis, information technology, training, and education. As such, they are required to follow the exact same laws, policies, and regulations as government employees and military personnel for access to and the handling of classified information.

I believe the IC's use of core contract personnel, since 9/11 and before, is appropriate and justified, and we take oversight of the contract workforce seriously.

### **Strengthening the IC Workforce and Oversight of Core Contract Personnel**

The IC has been focused on growing and strengthening its civilian workforce for more than a decade. Significant investments have been made to recruit, train, develop, and deploy Community personnel since 9/11. In many important areas, the IC needs people with special skills that cannot be readily acquired through hiring on the open market and that take many years to develop. Therefore, the IC is building its own hiring pipelines in areas such as analysis, cyber and cybersecurity; foreign language; and science, technology, engineering, and mathematics. Initiatives such as the National Security Agency/Department of Homeland Security Centers of Academic Excellence Program in Information Assurance, the National Security Education Program, and other similar programs have been designed to develop a pool



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of educated and capable individuals with mission critical skills. In addition, IC elements have strong internship and cooperative education programs in these areas which also continue to attract numbers of exceptional applicants and provide a pipeline to permanent employment.

The IC leadership closely monitors the results of the annual IC Employee Climate Survey to track employee satisfaction and inform retention. The survey, which has been administered annually since 2006, provides direct feedback on employee perceptions and perspectives. While the IC continues to experience relatively low attrition rates, the Director of National Intelligence (DNI) holds heads of IC elements accountable for taking action in areas where employees indicate valid concerns. The IC has been recognized by the Partnership for Public Service as one of the top five best places to work in the federal government for the last three years and in the top ten the two years prior. However, the last several years have presented challenges, including furloughs, sequestration, and pay freezes, that may negatively affect our ability to hire and retain government personnel.

Strategic workforce planning is the foundation of all of our human capital initiatives, and core contract personnel are included in our planning. We must have the capability – as a community – to project future mission-critical skill requirements; compare current inventories of civilian, military and core contract personnel capabilities against those requirements; and develop effective plans to close critical skill gaps.

Achieving the right balance among government civilians, military, and core contract personnel is critical to our ability to meet the demands of our mission. To this end, we have:

- Integrated personnel planning into the budget process. Every National Intelligence Program Congressional Budget Justification Book includes a Workforce Overview and graphical displays showing the balance between government personnel (civilian and military) and contract support; and
- Required IC elements to brief their Human Capital Employment Plans to the IC Chief Human Capital Office (CHCO). These strategic workforce plans address all three workforce components. They provide an overview and profile of each IC element's workforce, assessment of critical skills and workforce mix, and human capital priorities going forward.

The IC CHCO role is to oversee, facilitate and provide guidance in workforce planning. The appropriate workforce mix is not a static percentage, and may vary considerably across the IC elements and from year to year. The optimal mix of the workforce is determined based on an analysis of each IC element's mission needs. Funding, positions, critical skill needs, and



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mission requirements are all key determinants. Other factors to consider are the length of time involved in hiring the government employee, and whether the function is intended for the long-term. In addition, each IC element head has the responsibility to ensure the element has sufficient staff with trained government contract management personnel to oversee contract performance.

In 2006, the ODNI conducted its first inventory of core contract personnel directly supporting the IC's mission. This year we conducted our eighth inventory and will continue to refine and improve our methodology. We provide the results of the inventory to OMB and our oversight committees and include ODNI's analysis of the inventory submissions. It is important to note that the Inventory was not designed as an auditable database that would provide precise information. It was designed as a snapshot in time to check on how we are doing as a Community.

As GAO has noted, there have been challenges associated with conducting the inventory, which was one of the first of its kind in the Federal government. IC elements vary in their ability to capture core contract data in an efficient and timely manner. For example, some elements compile the data manually while some have relatively sophisticated databases. However, the IC continues to improve the capture and understanding of data on its core contract personnel. As a result, over the years we have highlighted to OMB and Congress major adjustments and revisions of inventory data that affected the count of previous years. We expect that further improvements in "data capture" will make our information more reliable.

The DNI approved Intelligence Community Directive (ICD) 612 on October 30, 2009 to guide the use of core contract personnel. Among its key provisions, this Directive:

- Reaffirms the prohibition on the use of core contract personnel to perform inherently governmental activities;
- Generally describes the circumstances in which core contract personnel may be employed to support IC missions and functions;
- Beginning in FY 2011, requires IC elements to determine, review, and evaluate the actual and projected number and uses of core contract personnel in support of their intelligence missions; and
- Makes permanent the annual inventory of IC core contract personnel, first initiated in June 2006.

Overall, the ODNI has made great strides in overseeing the use of IC core contract personnel and will continue to refine our oversight.



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Implementation of the Office of Federal Procurement Policy's (OFPP) Policy Letter 11-01, "Performance of Inherently Governmental and Critical Functions," creates a single definition for the term "inherently governmental function," reinforces the special management responsibilities that agencies use when relying on contract personnel to perform work that is closely associated with an inherently governmental function, establishes criteria to identify critical functions and positions that should only be performed by Federal employees, and provides guidance to improve management of functions that are inherently governmental or critical.

Implementation of this policy letter is a shared responsibility across the IC acquisition, human capital, and financial management communities. Because the IC has been closely reviewing its core contract personnel workforce for several years, IC elements have conducted reviews of the functions and activities of their core contract workforces, and have taken steps to remedy situations where there was over-reliance on core contract personnel in tasks closely associated with inherently governmental functions.

The OFPP policy letter introduces a new category, "critical function," to ensure agencies have sufficient internal capability to maintain control over functions that are critical to their mission and operations. Contract personnel may perform critical functions as long as the government has the internal capacity to manage contractor performance. We believe our "core contract personnel" practices are responsive to the policy letter's guidance, and we are reviewing the details carefully to consider where we may need to make additional refinements to our inventory to best implement this policy letter across the IC.

### **GAO Recommendations**

GAO recommended that the IC CHCO develop a plan to enhance internal controls for compiling annual Core Contract Personnel Inventory data, specify limitations of the data, and describe the methodologies used. In response, the IC CHCO, in coordination with the IC Chief Financial Officer, added a new section to the FY 2015 Core Contract Personnel Inventory data call that supported this recommendation. Specifically, we required each IC element to provide a written explanation of the methodology used to identify and calculate the values for the data points. The IC elements were asked to describe the methodology used to obtain, determine, and validate the value for the number of hours to determine a Full Time Equivalent. We also asked respondents to include any factors that may create variations in value and calculations. These changes will bring greater transparency to the IC's data on core contract personnel. In addition, any changes or clarification to the definitions will be coordinated with OMB to ensure we adhere to OMB guidance.



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GAO also recommended that the IC develop guidance to augment the findings of OFPP Policy Letter 11-01. As noted above, we are working closely across the IC to ensure we are in line with the policy letter. The IC CHCO issued guidance in the fall of 2013 as part of the core contract personnel inventory data call requesting that IC elements describe steps taken to ensure compliance with this Policy Letter; we are in the process of assessing Community compliance with this direction. Within ODNI, last September the Chief Management Officer issued ODNI Instruction 40.09, "Commercial Industrial Contracts," which includes guidance to mitigate risks associated with the performance of core contracts for work that is deemed critical or closely related to inherently governmental functions.

GAO also recommended that ODNI examine and revise ICD 612 and adjust the provision governing strategic workforce planning to require the IC elements to identify their assessments of the appropriate mix of government and contract personnel. The revision of this ICD is the highest policy priority for the IC CHCO, and we established a community-wide working group to update key terms associated with the ICD. Among the terms that need to be updated is the definition of a core contractor, which should help address previous inconsistencies in the inventory. IC CHCO met with the IC elements in May to discuss potential process and definition changes as well as feasibility of capturing additional data, a key challenge given the differing systems and methods of collecting contract information across the IC elements. IC CHCO sent out some options soliciting feedback on the viability of the proposed changes on 13 May. After reviewing the feedback, IC CHCO has scheduled a follow-on meeting on 19 June with the IC elements to further develop and propose a modified/clarified definition of a core contractor. The formal update of the ICD will be initiated by the ODNI Office of Policy and Strategy this summer.

GAO recommended that ODNI assess options for modifying the core contract personnel inventory to provide better insights into functions performed by core contract personnel if there are multiple services provided under a contract. We have initially assessed that the effort to develop the capability to track this level of information on every individual contract would be time and cost prohibitive. In addition, we believe it would be of minimal value for workforce planning, since the inventory focuses solely on the previous year's contract data. Nevertheless, in a good faith effort to improve the reliability of the contractor data, IC CHCO is proposing to allow multiple report entries for contracts providing multiple services for the next data capture. IC elements are still in the process of researching the feasibility of reporting this requirement, including estimating the amount of manual labor involved to capture this data. The initial feedback we have received indicates that we will not be able to capture the level of detail suggested by GAO. However, IC CHCO will continue to explore the provision of some additional level of identification of functions by those IC elements that have the ability to do so, and any changes along these lines will be incorporated into the update of ICD 612.



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Another GAO recommendation is for each IC element to capture data on individual contracts, identifying the number of core contract personnel considered “critical” or “closely related.” We are assessing the viability of capturing this level of information to include reference to “critical” and “closely related” functions during the revision of ICD 612 to facilitate compliance with OFPP Policy Letter 11-10.

### **Moving Forward**

To meet today’s national security threats, we need a workforce that is second to none, and this workforce will include core contract personnel. We will continue to manage this segment of our workforce in a manner that is consistent with law, regulation, our budgetary restrictions, and our mission requirements to protect our country. I believe that the IC’s use of core contract personnel has been consistent with these requirements and in the best interests of the taxpayers.

Thank you, I look forward to answering your questions.

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