



The Intelligence & Security Academy, LLC
Education, Training and Consulting in National Security

**STATEMENT OF DR. MARK M. LOWENTHAL,
PRESIDENT OF THE INTELLIGENCE & SECURITY ACADEMY, LLC;
FORMER ASSISTANT DIRECTOR OF CENTRAL INTELLIGENCE FOR ANALYSIS &
PRODUCTION**

**U.S. SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL
AFFAIRS**

**SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE
FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA**

SEPTEMBER 20, 2011

***INTELLIGENCE COMMUNITY CONTRACTORS:
ARE WE STRIKING THE RIGHT BALANCE?***

Mr. Chairman, Members of the Committee, I am very pleased to be given an opportunity to testify on the use of contractors in the U.S. Intelligence Community.

By way of introduction, I spent 25 years in federal service. During my last three years, 2002-2005, I served as the Assistant Director of Central Intelligence for Analysis & Production, the third ranking official in U.S. intelligence. About half of my staff was made up of contractors and their services were vital to the programs we undertook and carried out. Since my retirement in 2005, I have made my living as a contractor, as I did from 1997-2002. My firm provides education services to an array of intelligence and national security agencies, private sector firms and some U.S. allies. So, I have seen this issue from both sides. I would also note that I served as the staff director of the House Permanent Select Committee on Intelligence (104th Congress, 1995-96), so I have some appreciation for the perspective of Congress as well.

The Intelligence & Security Academy, LLC
1890 Preston White Drive, Suite 250 • Reston, Virginia • 20191
703-390-9940 tel | 703-390-9948 fax | www.intellacademy.com

The question posed in this hearing is one of balance between federal employees and contractors. I would offer an alternative way of looking at this: are we choosing the best way of getting the job done – in terms of necessary skills and inevitable costs? I think it is less a question of balance or ratios than it is securing the talents and services we need in the most efficient means possible.

Your letter inviting me to appear at this hearing asked me to address four specific points, as follows:

- *The March 31, 2010 draft policy letter by the Office of Federal Procurement Policy (OFFP) that addresses the issue of “inherent government functions.”*

As the Committee knows, this letter touches on the crucial distinction that has always been made between federal employees and contractors: functions that are “inherently governmental” and therefore could only be conducted by federal employees. As the OFFP letter notes, this has always been a somewhat difficult line to draw and it has not been done so consistently across the federal government.

I believe the draft letter does a good job in defining the “inherently governmental function.” The definitions of that term and of “critical function,” both in Section 3 of the draft letter, make sense and should be easy enough to follow. I believe that Appendix A of the OFFP letter, “Examples of inherently governmental functions” also makes sense.

That said, I do have some concerns about Appendix B of the OFFP draft, “Examples of functions closely associated with the performance of inherently governmental functions.” Several of the items on this list, although important, do not seem to have the same “inherent” quality and could, in my view, be carried out by contractors without any problem or conflict of interest. These include:

- “workforce modeling, fact finding, efficiency studies...”
- “planning activities.”
- “Services that involve or relate to analyses, feasibility studies, and policy options to be used by agency personnel in developing policy.”

I cite these examples in particular from Sections 1-3 in Appendix B because they strike me as less “inherently governmental” than the others and also because these are some of the activities where I used contractors during my tenure as Assistant Director of Central Intelligence. Two of the major initiatives that my office undertook were the creation of the National Intelligence Priorities Framework (NIPF) and the Analytic Resources Catalog (ARC), both of which

became major management tools under President Bush and continue to be used by the Intelligence Community leadership under President Obama. The services performed by contractors in these areas were objective and unbiased and of the highest quality and, quite frankly, I could not have created and implemented these programs without my contractor support.

It is also important to understand that whenever one attempts to define roles and functions, no list can be completely inclusive. In this case, whatever is omitted from the list becomes fair game for contractor activity. Therefore, OFFP and the Committee must be certain that the list has not omitted activities and also that it is not drawn up as to be overly restrictive in areas where contractors can be helpful.

- *Second, the Committee asked how the federal government assesses the value of contractors and utilizes their product.*

Before characterizing the use of contract employees it is important to understand why they get hired in the first place. Federal agencies have very little say in the employee/contractor ratio. This is largely determined by the budget and the budget is in the hands of the Congress. The President's budget may suggest allocations between employees and contractors but the ultimate decision rests here, in the Senate and the House.

We seem to go through different "fashions" of approach regarding contractors. In the 1990s, it was widely assumed that contractors were inherently less costly than full time federal employees as the contracts could be terminated more easily than employees could be dismissed. Moreover, contractors do not entail lifetime federal obligations regarding health care and retirement -- although their billing rates indemnify their employers for these costs as long as they are on a contract. But at a time when the Intelligence budget was flat and saw no growth, during the 1990s, contractors were seen as a viable alternative. After the terrorist attacks of 2001, contractors were seen as an expeditious way to ramp up during a sudden national security emergency. Now we have come full circle and are again concerned about the use of contractors.

Given the diverse range of activities undertaken by the Intelligence Community it is very difficult to make broad generalizations about the use of contractors. Like every other part of the federal government, the Intelligence Community relies on private sector vendors to provide some of our key equipment, whether information technology or high-end intelligence collection systems. Technical specifications for collection systems are created in a long and inclusive internal Government process. The actual building of these systems is carried out by

contractors. The quality and durability of our overhead systems is a testament to their success.

Contractors have also been used to support what might be called “front office managerial functions.” This certainly was true during my time on the Intelligence Community Staff (now called the Office of the Director of National Intelligence). Again, this as seen as the most expeditious way to ensure that these functions, which include some of the activities mentioned in the OFFP Letter, Appendix B, referenced above, such as planning and studies. As I noted, I do not view these contractor activities as stepping over the line into “inherently governmental” functions.

Contractors have also been used to provide additional analytic support. In most cases, these are Intelligence Community veterans, whose knowledge and experience are not commodities that should be lost entirely if at all avoidable. There are very strong demographic reasons for this that I will discuss below.

- *Third, is the issue of how the federal government manages and oversees the Intelligence Community contractor workforce.*

A major issue and one that distinguishes the Intelligence Community contractor workforce from virtually all other contractor groups, with the exception of the Defense Department, is the requirement for security clearances. Everyone understands the reasons for this requirement but not many are aware of its effects.

The Committee’s letter inviting me to testify referred to a *Washington Post* series on the use of contractors. I will tell you that most of my professional colleagues found that series to be hyperbolic in tone and highly subjective in its approach. Yes, there are a lot of contractors with security clearances. What the article failed to note is that this is not driven by the contractor community but by Government requirements. I am not suggesting that security requirements be abandoned or made more lax but we do need to appreciate why this is happening. There are many contracts where a certain level of clearance is a requirement. Therefore, in order to compete, contractors need employees who have clearances and who can be given access to secure sites. This has two interesting effects:

- First, there is a certain amount of competition among contractors for cleared employees. Contractors are always looking out for employees who can be enticed to switch employers. This somewhat relentless demand for cleared employees also becomes a major impetus for

acquisitions of firms. The attraction may be less the work that a firm does or the contracts that it has than the number of employees with clearances.

- Second, contractors have an interest in getting Government employees with clearances to join their firms. This has led to a certain amount of raiding, for lack of a better term, of federal employees with clearances. During his tenure as Director of the CIA, General Michael Hayden issued what I thought was a very sensible rule to address this particular problem. He said that if an employee had reached retirement age, he or she could return immediately as a contractor. But if the employee was leaving early in one's career to join a private sector firm, there would have to be a 1-year cooling off period before that person could come back to CIA as a contractor.

Beyond the demand for security clearances, I am not aware of any major differences in how the Intelligence Community manages and oversees its contractor workforce and the practices elsewhere in the federal government.

- *Finally, there are the issues of hiring, training and retention challenges in balancing the Intelligence Community workforce.*

This is an important set of issues. Most of my remarks will reflect trends in the analytic community, the part of the Intelligence Community with which I am most familiar.

The demographics of the analytic community are interesting if not disturbing. As I noted above, in the 1990s, the intelligence budget was flat. What post-Cold war "peace dividend" there was came primarily from holding down intelligence spending, not from defense, which made little sense given the 10:1 disparity in favor of defense. The net result, as former DCI George Tenet has stated, was the loss of 23,000 positions across the Intelligence Community – positions that were never budgeted for and filled or positions that were left vacant if the incumbent left. During this same period, however, contractor funds did not suffer as much, for the reasons stated above. Therefore, there was an influx of contractors at the same time that the permanent workforce was decreasing.

In the wake of the terrorist attacks in 2001, President Bush gave orders to increase the size of the analytic and operational cadres in CIA by 50 percent each. The net effect, in analysis, was that the number of new employees was disproportionate to the veteran employees. Other intelligence agencies, such as NSA and DIA also saw increases in the number of employees. We also stood up new entities, such as DHS. This has left us with a skewed analytic demographic:

today, some 50 percent of the analysts across the Intelligence Community have five years of experience or less. We have, in effect, the least experienced workforce in U.S. intelligence analysis that we have had since setting up the Intelligence Community in 1947.

At the same time, the Community hired larger numbers of contractors to meet the increased analytic and operational demands. In many cases, these contractors also brought more experience and expertise than the new employees could possibly have.

The National Intelligence Program (NIP) now faces rather steep cuts, along with many other federal programs. DNI James Clapper will face some rather stark choices. Again, it is easier to terminate contracts than to fire employees. At the same time, many of these contractors have more experience than the employees. The new employees also have a tremendous need for training, given their relative lack of experience. Unfortunately, education and training is always seen as one of the easiest places to make cuts, as it does not cut into manpower. DNI Clapper has said that he is going to try to protect education and training. I hope he does but the cuts he is facing will be deep.

I would like to offer the committee some other suggestions that I believe should be considered as you continue your examination of this issue:

- The Government should focus on value/performance based contracting as opposed to the current trend of low cost/technically acceptable contracting. Cost must always be weighed against capability and performance. For example, a senior experienced individual who is bid at \$150,000 a year may deliver better service than two relatively inexperienced individuals bid at a total of \$100,000 a year – but under the low cost/technically acceptable concept the low bid will win.
- E.O. 13495 (January 30, 2009) and subsequent Department of Labor final rules create a mandate that contractors who win a re-competed service contract from an incumbent contractor must first offer to hire the employees of the losing incumbent. The stated rationale is to reduce the disruption of a transition and to minimize the loss of experienced contract workers. Every contractor has experienced the pain of losing a contract and the results within their staff but the entire concept of re-competing a contract is for the government to see if there are better offers available. The incumbent hiring rule vitiates the entire rationale for a re-compete. It also has the effect of forcing firms to underbid in order to win the contract and then keeping incumbent staff only if they will accept salary cuts, hardly the outcome that was intended.

- The current trend towards contract consolidation favors the larger contracting firms who will be more capable in filling and managing these new, larger contracts. This puts smaller, perhaps more innovative firms at a disadvantage, in effect forcing them out. Ideally, consolidated contracts should have set-asides for smaller firms. The overall net effect may also be higher rates, which larger firms tend to be able to charge, vice the smaller firms.

Therefore, I think we come back to the place where I began. The question is not so much one of balance as it is of overall effectiveness. What is the best way for the Intelligence Community to be staffed in terms of expertise, demographic trends and costs? It is not an either/or choice between employees and contractors. It has to be a mix and it probably has to be on a case-by-case, agency-by-agency basis.



The Intelligence & Security Academy, LLC
Education, Training and Consulting in National Security